

# **Imam Shafii Mathhab And Abortion**

Dr. Mohammad Ali Albar FRCP ( London ),  
Director of Medical Ethics Center  
International Medical Center  
Jeddah, Saudi Arabia

# A Short Biography of Imam-Al Shafi'i<sup>(1-2)</sup>

(767 — 820 [CE](#) / 150 — 204 [AH](#))

**Imam Muhammad ibn Idris al-Shafi'i** ), is the founder of Mathhab ( School ) of Sunni Islamic Jurisprudence Known in his name .

Al-Shāfi'ī belonged to the [Qurayshi](#) clan Banu Muttalib which was the sister clan of the [Banu Hashim](#) to which [Muhammad](#) and the [Abbasid caliphs](#) belonged

**Early life, studies with az-Zanji in Mecca:** He was born in [Gaza](#), near the town of [Asqalan](#). While still a child, his father died in [Syria](#) and thus his mother decided to move to [Mecca](#) when he was about two years old. There were more members of his family in Mecca, where his mother believed he would better be taken care of. He is reported to have studied under Muslim Ibn Khalid az-Zanji, the Mufti of Mecca at his time and is considered the first teacher of Imam ash-Shafi'i. He learnt Quran by heart at age 10 , and became expert in its exegesis and Arabic language .

He moved to [Medina](#) to be taught by [Malik ibn Anas](#). He memorized [Muwatta Imam Malik](#) at a very early age whereby Imam Malik was very impressed with his memory and knowledge of Quran and eloquence .

He was appointed as a judge in [Najran](#) in the time of [Harun ar-Rashid](#). He was falsely accused of aiding the [Alawis](#) in a revolt, and was taken in chains to Baghdad in 799CE/184H. Shaybānī was the chief justice at the time, and his defense of Shafi'i, coupled with Shafi'i's own eloquent defense, convinced Harun ar-Rashid to dismiss the charge.

In Baghdad, he developed his first [madh'hab](#), influenced by the teachings of both [Imam Abu Hanifa](#) and [Imam Malik](#).

Al-Shafi'i left Baghdad in 804CE/188H, and went to Mecca. Shafi'i eventually returned to Baghdad in 810CE/194H.

[Caliph Al-Ma'mun](#) is said to have offered Shafi'i a position as a judge, but Shafi'i declined the offer. In 814CE/198H, Shafi'i decided to leave Baghdad for [Egypt](#), where he dictated his works to his students, eg Al Risalah, the first book written in Osool (Fundamentals) of Islamic jurisprudence, Al Omm the Compendium of his Fiqh (Islamic jurisprudence) .

**Legacy :** Imam al-Shāfi'ī developed the science of [fiqh](#) unifying 'revealed sources' - the [Quran](#) and [hadith](#) - with human reasoning to provide a basis in law, Qiyas ( analogy) and Ijma (consensus of Islamic jurists ) .With this systematization of [shari'a](#) he provided a legacy of unity for all Muslims and forestalled the development of independent, regionally based legal systems. The four Sunni legal schools or [madhhabs](#)- keep their traditions within the framework that Shafi'i established, and added other sources eg Istihsan (preferential reasoning) ,by Hanfi school , al Masaleh al Mursalah ( general public welfare) by Maliki school , and Urf ( local customs ) by all Sunni Madhhabs .

The [Shafi'i](#) school - which is followed in many different places in the [Islamic world](#) : [Syria](#) [Kurdistan](#) , [Indonesia](#), [Malaysia](#), [Egypt](#), [Somalia](#), [Yemen](#) as well as [Sri Lanka](#) ,southern parts of [India](#) , and other places .

**The main works of Imam Shafii are :**

- [Al-Risala](#) — The best known book by al-Shafi'i in which he examined [principles of jurisprudence](#). The book has been translated into English.
- [Kitab al-Umm](#) - his main surviving text on [Shafi'i fiqh](#)
- Musnad ash-Shafi'i (on [hadith](#))
- Diwan ( Anthology ) of beautiful poetry of Imam Shafii.

He was known to be very generous, and an accomplished archer, a poet, and the most eloquent of his time.

**Prophetic Hadīths Predicting Al-Shāfi'ī :** There are many Hadiths ( Sayings of the prophet ,SAW) predicting the appearance of Imam Shafii, the Knowledgeable of Quraish, and rejuvenator of Islam. Imam Ahmed Ibn Hambal, Imam Nawawi, Ibn Hajar Asqalani and many others, all praised Imam Shafii and quoted Hadiths in his favor.

### **His Move to Egypt**

When he entered Egypt he was patronized by the ascetic friend of the poor and descendant of the Prophet (sa), Al-Sayyida Nafisa .In Egypt he established his new Madhhab and all his books were rewritten there.

### **Imām Al-Shāfi'ī Reconciled the Schools of Hadīth and Fiqh**

Al-Shāfi'ī is the paradigm of hadīth-informed jurisprudence among the Salaf, gathering under one roof the superlative insight of Abū Hanīfa and Mālik's legal opinion (ra'ī) on the one hand, on the other, the extensive knowledge of narrators and the evidence they transmitted which characterized al ulema of Hadiths like Imam Malik and Imam Ahmed.

### **His Death**

He died at the age of 54 on the 30th of [Rajab](#) in 204 AH (20 January 820 AD) in [al-Fustat](#), [Egypt](#). Imam Shafii suffered from intestinal illness and severe bleeding from hemorrhoids (Piles) which caused his demise. Saladin built a madrassah and a shrine on the site of his tomb. Saladin's brother Afdal built a mausoleum for him. It remains a site where people petition for justice.

# Islam (Shafii Madhhab) and Abortion

## Definition of Abortion:

Abortion is defined as the expulsion of the contents of the gravid uterus (pregnant womb) prior to viability of the fetus. The laws are different from one country to another regarding viability. Technically viability is reached at 23-24 weeks (from last menstrual period), and when the fetus weighs more than 500 grams. Pregnancy is usually calculated from the beginning of last menstrual period. (LMP). However Muslim jurists compute time of pregnancy, from the moment of conception ( fertilization of the ovum ) which occurs two week after the beginning of LMP.(3)

If abortion is spontaneous it is called miscarriage. Induced abortion is rampant nowadays and about 44 million abortions are carried annually globally. More than 95% of these cases are carried due to social reasons including, family planning, promiscuity, teenage pregnancy and indulgence in sex mania. Only less than 5% are due to medical reasons.(4)

## Abortion in Some Muslim Countries

About two million induced abortions occur each year in Indonesia. The law allows abortion only if the woman provides confirmation from a doctor that her pregnancy is life-threatening, a letter of consent from her husband or a family member, a positive pregnancy test result and a statement guaranteeing that she will practice contraception afterwards.(5)

Pakistan has an estimated abortion rate of 29 abortions per 1,000 women of reproductive age, and an estimated 890,000 abortions are performed annually in Pakistan. (6)Pregnant women who wish to have an abortion in Pakistan often visit illegal clinics run by midwives, but abortion is considered illegal except for medical grounds.

Tunisia passed a law 65/24 dated 1st July 1965, which allowed abortion for tenuous reasons. The situation became worse when law no. 73-75 dated 19th November 1973 came into effect. It allowed abortion on demand in the first trimester of pregnancy, and on flimsy reasons in the second half of pregnancy. (7) Turkey allows abortion with some restrictions based on some medical or social reasons. The remaining Islamic countries only allow abortion to safeguard the

expectant mother from serious problems in pregnancy that might put her health or life at risk. Many permit abortion when there is a seriously malformed embryo or fetus. The time limit for carrying out such abortions is 120 days computed from fertilization, which is equivalent to 134 days from the Last Menstrual Period (LMP).(8-9)

### **Islamic attitude towards abortion:**

Allah has made clear that killing people is forbidden, as their lives are made sacred by Allah's having created them. There are a lot of Quaranic ayas and Hadiths on the sanctity of life. "We decreed upon the children of Israel that whoever kills a soul for other than manslaughter or corruption in the land; it shall be as if he killed all mankind, and whosoever saves the life of one, it shall be as if he saved the life of mankind.(10)

Killing one's children is especially forbidden by Allah. "They are lost indeed who kill their children foolishly without knowledge, and forbid what Allah has given to them, forging a lie against Allah; they have indeed gone astray, and they are not the followers of the right course.' (11)

The Quran deplores killing children for want, or fear of want, "Kill not your children on a plea of want. We provide sustenance for you and for them. (11)

"Kill not your children for fear of want. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin."(12)

Ibn Massoud (a companion of the Prophet) asked the Prophet: What is the gravest sin? The Prophet (PBUH) answered: "That you associate partners with God who created you." Ibn Massoud asked: What is next to this? And the Prophet answered "That you kill your offspring for fear of them sharing your food with you".(13)

The Hadith of the Prophet narrated by Ibn Massoud state: "The creation of each one of you is collected in the womb of his mother in forty days. And something that clings (Alakah) he becomes for forty days, and then he becomes Modgha (a chewed lump) for forty days. The angel is sent to him and the angel writes four things: his provision (sustenance), his life span, his deeds and whether he will be wretched or blessed. Then the spirit is breathed into him".(13)

There is complete agreement among Islamic scholars that the soul is breathed at 120 days from the moment of conception (134 days from the last menstrual period as computed by obstetricians) ,as mentioned in the Hadith of Abdullah Ibn Masood narrated by both Al Bukhari and Muslim, the most authentic books of Hadiths.(14-15)

The contemporary Muslim scholar, Sheikh Yusuf Al-Qaradawi states in his well-known book, "The Lawful and the Prohibited in Islam"(16)

“Muslim jurists have agreed unanimously that after the fetus is completely formed and has been given a soul, abortion is Haram. It is also a crime, the commission of which is prohibited to the Muslim because it constitutes an offense against a complete, living human being. Jurists insist that the payment of blood money (diya) becomes incumbent if the baby is aborted alive and then died, while a fine of lesser amount is to be paid if it is aborted dead. The amount in such case would be one tenth of the whole Diya, equivalent to 500golden dinars.

However, there is one exceptional situation. If it is reliably shown that the continuation of the pregnancy would result in the death of the mother, then, in accordance with the general principle of the Shari'ah, that of choosing the lesser of two evils, abortion is allowed to be performed.

**The Shafii school** : have different opinions on allowing abortion prior to 120 days of conception.

Imam al-Ghazzali makes a clear distinction between contraception and abortion, saying that contraception is not like abortion. Abortion is a crime against an existing being. It follows from this that there are stages of existence. The first stages of existence are the settling of the semen in the womb and its mixing with the secretions of the woman. Then come the next gestational stage. Disturbing the pregnancy at this stage is a crime. When it develops further and becomes a lump, aborting it is a greater crime. When it acquires a soul and its creation is completed, the crime becomes more grievous. The crime reaches a maximum seriousness when it is committed after it (the fetus) is separated (from the mother) alive.(17)

Imam al-Ghazzali is stringent and does not allow abortion from the moment the conception is formed i.e. the Nutfa stage which is stated in the Hadith of Prophet Mohammed (SWAS) to be 40 days.

The criminality increases with the advancement of pregnancy, reaching its extreme by killing the child after his/her delivery

Imam Ramli(18) allowed abortion prior to ensoulment (before 120 days) and Imam Subki(19) allowed abortion as long as it is Nutfa (40 days) or even Alaqah (up to 80 days) if the

pregnancy is not legal. The contemporary jurists allowed abortion if it was due to rape as soon as possible. They quoted what happened in Bosnia to Muslim ladies who were raped and incarcerated, as an excuse for abortion at Nutfa and Alaqa stages. The majority of the Shafii jurists will allow abortion if it happened in the first 40 days (Nutfa stage). Actually most of the Islamic jurist of all Madhhabs (Schools of Jurisprudence) will allow abortion in similar cases at the Nutfa stage .

In *Tuhfah* Ibn Hajar, al Haitami al Makki, ( vol. 7, p. 186), assessed that after the nutfah clings to the uterus (womb) it is unlawful to abort. (20)

In *Nihayah* Al Muhtaj , Ramli ( vol. 8, p. 442-43), assessed that it is only unlawful after the Ruh (the Soul) is blown into the fetus . Before that point it is permissible. (18)

In his *Hashiyah* on *Nihayah* (comment on the book of Ramli *Nihayah* Al Muhtaj) Shabramalsi ,(vol. 6, p. 182), observed that Ramli's presentation of the passages in another book called *ummahat al-awlad* (the female slave who had children from her master having special status in Islam) were Ramli accepted abortion in such cases . (21)

In *I-anat al-Talibin*, by Abu Bakr Shata (from Makkah) (vol. 4, p. 247), observed this difference of opinion too; furthermore, he mentioned the passage in which Ramli stated his preferred opinion as allowing abortion prior to ensoulment (nafkh al-ruh i.e. before 120 days) , and not allowing abortion after ensoulment. (22)

In *Nihayah's* text, the citations from Zarkashi and Furati indicate to the discussion covering the oral use of an abortifacient. In his *Hashiyah*, ( vol. 8, p. 442), Rashidi further emphasized that Furati's discussion is on the topic of using an abortifacient (23). The citation from Abu Ishaq al-Marwazi is as well on that topic as related by Ibn Hajar al Haitami al Makki in *Tuhfah* ,(vol. 9, p. 41). (24)

Once the organs are formed (Organogenesis) , which occur in the Alaqa stage (41-80 days) the contemporary jurists become more stringent and will not allow abortion except if continuation of pregnancy is going to endanger the health of the expectant mother or there is evidence that the fetus is grossly malformed .

Almost all the jurists of different Madhhabs will allow abortion at any time if continuation of pregnancy is going to endanger the life of the expectant mother even if it's after the ensoulment (after 120 days from conception) If it's only endangering her health or, the fetus is malformed , it will not be allowed to perform abortion after the ensoulment time (120 days)

The majority of the Maliki school and Imam al- Gazzali will not allow abortion even in the Nutfa stage (first 40 days) if there is no danger to the mother's health or life.

All social reasons are not excuse for performing abortion except in cases of rape or incest by the majority of all Muslim Jurists of different Sunni Madhhabs.

The fatwa of Majma Islami (Islamic Jurisprudence council of Makkah al-Mukarramah) decision 4, 12<sup>th</sup> session, 10 February, 1990 allowed abortion if the fetus is severely malformed and not amenable to treatment, as agreed by three or more competent physicians and demanded by the affected mother and her spouse, provided that the abortion is performed prior to ensoulment (120 days from conception). Similarly, if continuation of pregnancy is going to endanger her health, as advised by medical committee, then abortion will be allowed, prior to 120 days from conception (134 days from the beginning of last menstrual period). However, if continuation of pregnancy is threatening her life then abortion would be allowed at any time. (25)

Advances in medicine made this option rarely needed, and what actually happens is preterm delivery.

## **Religious consequences of abortion and miscarriage**

The consequences will depend on the stage of pregnancy i.e. Nutfa, Alaqa, Modgha, or after ensoulment

1. If abortion or miscarriage occurs in the Nutfa stage (first 40 days of pregnancy) there will be no Diah (full blood fine) or Ghorra (one tenth of the full Diah). Similarly there is no period of Nifas (Puerperium i.e. the bleeding period after delivery), and hence she can pray, fast and sex with her husband after miscarriage or abortion. There will be also no Kafarah i.e. fast in for for two consecutive months as in case of murder or unintentional killing. (26)

The aborted material will not need Ghosel (washing of the dead), Kafan (proper shrouding of the dead), or prayers carried for the dead persons, but the aborted material should be buried (27).

2. If the abortion or miscarriage is in the Alaqa stage (41-80 days from the moment of conception, and there is evidence of formation of human organs) then the lady should be considered in Nifas (Puerperium). Hence she would not be allowed to pray or fast or have sex with her husband until bleeding completely stops. The aborted material should not have Ghosel or Kafan or even prayed for. However the aborted material should be buried. (28)

The majority of the jurists ask for Ghorrah (one tenth of the whole Diah) of the fetus if it was killed purposely whenever the aborted material show signs of human organs like hand or foot. Imam Malik said that the perpetrator should pay the Ghorrah, while Shafii and Hanafi agreed that it should be paid by the Aqila.



However if a physician did an abortion for a lady on clear medical reason agreed upon by a committee then he will not be liable to pay Ghorrah. But if the physician did an abortion without a recognized cause for abortion, then he is liable and should pay the Ghorrah and Kafarah (fasting 2 consecutive months)(29)

3. If the abortion is the Mudgha stage (81-120) prior to ensoulment the rules will be the same as Alaqa

4. If the abortion occurred after ensoulment (after 120 days from the moment of conception)

The aborted fetus should have Ghosel, Kafan and should be prayed for and buried according to Imam Ahmed ibn Hambal and Imam Shafii in his old Madhhab .But in the new Madhhab of Imam Shafii , he would not be prayed for unless he/she was delivered showing signs of life and then died.In that case the compensation will be a full Diyah to be paid by the Aaqila (tribe of the perpetrator) and the perpetrator should fast two consecutive months.If she/he was delivered dead then the compensation will be only Ghorrah (one tenth of the full Diyah).In Imam Shafii new Madhhab there is no need for prayers unless he/she was delivered with signs of life and then died.However there will be Ghosel , simple Kafan and burial .

Many Shafii jurists agree that after six months the aborted material should have Ghosel , Kafan and prayers and burial even though it was delivered dead.(30)

The Islamic jurists agreed since the time of Sahabah (Companions of Prophet) the fetus reaches viability after six months of conception.Some Shafii jurists will not accept Ghosel, Kafan,Prayer and burial unless he/she was delivered living.

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