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Abortion in Islamic Ethics, and How it is Perceived in Turkey: A Secular, Muslim Country

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Abstract

Abortion is among the most widely discussed concepts of medical ethics. Since the well-known ethical theories have emerged from Western world, the position of Islamic ethics regarding main issues of medical ethics has been overlooked. Muslims constitute a considerable amount of world population. Turkish Republic is the only Muslim country ruled with secular democracy and one of the three Muslim countries where abortion is legalized. The first aim of this paper is to present discussions on abortion in Islamic ethics in the context of major ethical concepts; the legal status of the fetus, respect for life and the right not to be born. The second aim is to put forth Turkey's present legislation about abortion in the context of Islamic ethical and religious aspects.

Keywords

Abortion; Islamic ethics; Turkey; Medical ethics

Introduction

Ethics is thought to be a western concept emerging from Christian lands. The conventional and newly emerging ethical issues are discussed in the western thought discourse which has been influenced by Christian belief to some extent. The vast improvements in medical and biomedical sciences such as genetics, stem cell, and organ and cell transplantation together with archaic medical issues consisting abortion, euthanasia and contraception, have inevitably raised ethical questions regarding the plausibility or these implementations all over the world, including the wide geography of Muslim countries (Yari et al. 2011). However, the position of Islam, which is the second most widely believed religion in the world, is not that widely discussed as an independent field of ethics (Rispler-Chaim 1989).

The increasing number of Muslim physicians practicing in Western countries creates the need to know more about Islamic bioethics, since the use or nonuse of a renewed medical intervention by Muslim physicians may depend more on ethics derived from Islamic law,

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rather than purely medical considerations (Padela et al. 2008). Likewise, the increasing Muslim patient population in these countries due to migration flows may constitute an issue for Western physicians regarding how to approach Muslim patients, since the socio-religious norms associated with the human health may differ significantly (Rispler-Chaim 1989).

Islamic bioethics consists of a combination of principles, responsibilities and rights derived mainly from the Qur'an, and the tradition of Prophet Mohammad. The ethical decision making and bioethical deliberation depend on the interpretation of sources of Islamic bioethics, with particular loyalty to the religion and respect to continuities between the material and spiritual realms and between ethics and jurisprudence. In this way, Islamic bioethics has the flexibility to respond to new ethical issues emerging from innovations of biomedical technologies (Daar and Al Khitamy 2001).

Islamic law, the "Shariah," does not have an organized and unified authority such as the Papal system in Catholic Christianity (Brockopp 2003). The absence of a unified church or a theological body that has the right to speak for the entire Islam communities, the consensus and analogy of Muslim groups ended up with the formation of four major Sunni schools of jurisprudence; Hanafi, Shafii, Maliki and Hanbali. The Hanafi School is prevalent in Middle East, Turkey and central Asia, the Shafii School is dominant Southeast Asia, South Arabia and parts of Africa, the Maliki School has its most adherents in North Africa, and the Hanbali School is predominant in Saudi Arabia and United Arab Emirates. Shiite jurisprudence, on the other hand, is prevalent in Iran, most of Iraq, parts of Lebanon, Syria, Afghanistan and some countries in the south of the Persian Gulf (Aramesh 2007). All of these schools have their own interpretations to determine if a bioethical issue is acceptable, forbidden, discouraged or obligatory for the Muslim community they address (Daar and Al Khitamy 2001). It is noteworthy that the ethical deliberation of Islam takes into account the pluralistic cultural and historical experience of Muslim communities living in different parts of the world (Sachedina 2005). Muslims are free to choose their schools and also have the freedom to obey the teachings any of them regarding ethical issues. Moreover, Islam encourages Muslims to read the Qur'an to find ethically right solutions to contemporary issues arising from everyday life by using their own intelligence and reasoning (Brockopp 2003). On the other hand, Islam states that, despite the human intelligence is capable of discovering what is ethically right thing to do, it has limited capability to understand the reasons behind a particular assertion of the divine commandment of the God. Moreover, judgements of human intelligence are subjective and may contradict to each other, so that the guidance of the Muslim schools is essential to establish a proper and sustainable society (Sachedina 2005).

Sources of Islamic Ethics

The Arabic translation of the word "ethics" is "akhlaq" or "adab." "Akhlaq" is a word that is transferred from Arabic to most Muslim countries' languages such as Turkish. However, the word "akhlaq" means the conventional traditional norms of well-behaving in a society, which is not quite the same as the word "ethics" means in Western languages (Padela 2007). Moreover, these norms do not necessarily directly reflect the Islamic values and ideals, on the contrary they may originate from cultural traditions, and hence they may differ widely

among various Islam countries. Therefore, the word “ethics” is used instead of “akhlaq” in most Islamic countries (Brockopp 2003).

Islamic precepts are based on four basic sources in descending order: The Qur’an, the “Sunna,” consensus of the scholars “Jima” and argument by analogy “Giyas” (Carney 1983). When Muslims seek ethical guidance, they first look to the Qur’an. The Qur’an serves as the basis of all inquiry. The Qur’an is literally the God’s own speech, and therefore cannot be contradicted or overruled. Unlike the Hebrew and the Christian scriptures, there is no competing pseudopigrapha of texts written in the same period with the Qur’an. The ethical statements in the Qur’an are placed in hortatory declamations, no concrete list of ethical codes exist in Muslim belief (Asman 2004).

The second source of ethical guidance is the “Sunna,” which is the collection of Prophet Muhammed’s particular way of doing things, words and deeds. Muslims consider Prophet Muhammad, to be sent to transfer the message about the unity of God and establish an ethical order on earth to the will of God (Sachedina 2005). Unlike the Qur’an, the deeds and words of the Prophet Muhammad are not written in one original source, but rather preserved and passed on through generations in a precise oral form that is called the *Hadiths*. As with the Qur’an, the *Hadiths* are also consulted through commentaries (Katz 2003).

The third source is the consensus of the scholars called the *Fatawa*. The *Fatawa* serve as a ground for general public who did not receive training on the interpretation of the Qur’an. The Muslim scholars called *Ulema* consider the Islamic law, justice, and analogical reasoning based on cases and public good to sort out ethical dilemmas (Sachedina 2005). The opinions of the scholars are not binding and not legally enforced; however, they provide rough moral guidance regarding the application of ethical precepts in every day Muslim life (Katz 2003). *Fatawas* of different scholars may state opposing arguments regarding the same issue. A Muslim is not obliged to act in compliance with the *Fatawa* given to him, unless he is convinced of its truthfulness (Asman 2004).

The fourth source that is the opinion of the exemplary scholars may also be seen as a foundation of the Islamic law, although with special conditions, particularly regarding the person who gives the decision (Katz 2003). Islamic ethics is sometimes derided as “casuistry,” since the consensus of the scholars and argument by analogy sources originate from real or imaginary cases without regard to any ethical principle. Often, paradigmatic cases function in the same way principles do; however, identifying these paradigmatic cases and the principles underlying the discussion requires a broad knowledge of Islam.

Abortion and Islam

In Islam, the major dilemma regarding abortion lies between the religious imperative of saving and protecting the potential human life to maintain a strong community of faithful Muslims and individual needs those overpower community welfare (Bowen 2003).

In general, Muslim authorities consider abortion as an act of interfering God’s role as the author of life and death (Al Faruqui 1982). According to Islam, the power to procreate belongs to the God, since the God forms the fetus in the womb and gives the spirit to the

fetus, not the womankind. This reasoning follows that women do not have the right to terminate the pregnancy according to their own will. However, this does not necessarily suggest that Islam is against abortion beyond question. On the contrary, there are different views among Muslim authorities regarding the ethical acceptability and timing of abortion (Brockopp 2003). The Qur'an says no explicit words about abortion, nor do the Hadith and Sunna. Therefore, the prohibition or allowance of abortion emerges from the interpretations and analogies of hadith applied to Qur'anic verses, particularly the ones prohibiting killing humans (Brockopp 2008). The discussions regarding the plausibility of abortion in Islam comprises of major ethical concepts:

- The legal status of the fetus
- Respect for life
- The right not to be born.

Apart from these concepts, a common pagan Arabic tradition influences discussions about abortion in Islam. Before Islam was introduced, Arab community used to bury their baby girls alive, right after their birth. This was done with the fear of disgrace or poverty and was called Wa'd (Katz 2003). There are several verses in the Qur'an prohibiting this practice. Many of these Qur'anic verses were extended to the discussions about abortion to support the anti-abortion view in Islamic world. Islamic texts differentiate between abortion and infanticide, though both acts are sometime regarded as closely related.

And when the girl [who was] buried alive is asked For what sin she was killed (The Qur'an 81/8)

And likewise, to many of the polytheists their partners have made [to seem] pleasing the killing of their children in order to bring about their destruction and to cover them with confusion in their religion. And if Allah had willed, they would not have done so. So leave them and that which they invent. (The Qur'an 6/137)

Say, "Come, I will recite what your Lord has prohibited to you. [He commands] that you not associate anything with Him, and to parents, good treatment, and do not kill your children out of poverty; We will provide for you and them. And do not approach immoralities - what is apparent of them and what is concealed. And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. This has He instructed you that you may use reason. (The Qur'an 6/151)

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. (The Qur'an 17/31)

The Legal Status of the Fetus

The legal status of the fetus is very much determined by how beginning of life is defined. The theories on personhood are developed to determine the timing of bestowing the full rights of a person to the fetus; therefore, they inevitably have various ethical and legal implications. If fetus is considered a person since the time of conception, then, abortion would be equivalent to killing a full living human being. Despite some people support this idea, others shed the light on the fact that fetal development is a continuing process. There is

a considerable difference between an embryo and a full term fetus; hence, it is required to determine a certain stage of development to consider the transformation of a fetus to a person. The visibility of heartbeat, detection of brain waves, or viability of fetus outside the mother's womb are offered to draw the line; however, all these attempts remain arbitrary, since no scientific consensus is achieved about the issue (Munson 2012).

The personhood issue in Islam can be traced in Islamic legal texts. Although the remarks regarding the deliberate termination of the pregnancy are very limited and incidental, some outstanding ones will be discussed here to define how personhood and abortion are related in the context of Islamic ethics:

- Ibn Taymiyyah (1263–1328), a well-known Islamic scholar and theologian from Damascus, in his verdict about a man who attempted to induce an abortion to his slave said that causing the abortion of the fetus is forbidden and is equivalent to *Wa'd* (Katz 2003).
- In a case in which a woman hit a pregnant woman during a fight and killed the fetus and the pregnant woman, the Prophet Mohammed verdict was blood money should be paid both for the pregnant woman and for the fetus. A relative of the accused woman objected to this verdict by saying that “it is not fair to ask for blood money for someone who neither ate nor drank, neither uttered a sound nor cried out after birth.” This objection indicated the general belief in Arabic society of the time, that is, life begins after birth and viability is proven by the ability to function such as eating or crying out. The statement claims that a newborn acquires the rights of a living person only after it displays visible signs of a living baby. However, the verdict of Prophet Mohammed does not agree with this approach. Katz says that asking a slave as a compensation of the dead fetus suggests a rough symbolic equivalence between the potential life that has been lost and the life of the enslaved person (Katz 2003). This equivalence is also regarded in terms of the monetary value of the slave rather than the status of it as a human being. The blood money required for the fetus is called *ghurra*, which is one twentieth of the full blood money for an adult free person. This places the fetus in an intermediate status, which is higher than the disregarded position in pre-Islamic period and the free person with full rights (Katz 2003).

The *ghurra* penalty incurred by the death of the fetus resembles in some ways to the compensation paid for the loss of body parts of a human being. This approach originates from the inseparable position of the fetus from the mother's womb, and considers it as a part of pregnant woman's body, rather than a potential human. This reasoning requires the *ghurra* to be paid to the mother, since fetus was a part of her body. However, Katz says that this approach did not find much support from the classical schools, and the fetus's status with respect to mother's body remained problematic (Katz 2003).

In Islamic law, *kahhara* is an expiation of the accidental killing and it functions as compensation between the God and the culprit. Since there is no direct accessibility to the fetus in the womb and its' viability is in question until birth, wrongfully induced miscarriage and abortion are usually considered as quasi-incidental killing by some Muslim authorities.

However, there is no consensus among the four classical schools of Sunni law. While the *Shafii* and *Hanbali* schools hold *kahhara* obligatory for abortion, the *Hanafi* and the *Maliki* schools see it as an optional act of devotion. The absence of imposed obligation of *kahhara* payment in cases of accidental termination of pregnancy in the *Hanafi* and the *Maliki* schools strengthens the intermediate status of the fetus (Katz 2003). The idea of the intermediate status of the fetus is in compliance with the potential life theory, which suggests the fetus has a higher ethical value than any other tissue in the body, since it has the potential to be a full person in near future (Munson 2012).

In general, it is plausible to say that all Islamic schools demand the payment of blood money in different amounts depending on the reason of the abortion (Aramesh 2007). Moreover, the four *Sunni* schools and the *Shiite* jurisprudence agree that abortion after the ensoulment is forbidden—after the 120 day of pregnancy-, with the exception of saving the mother's life (Aramesh 2007; Yari et al. 2011). However, it is hard to find such a consensus about the practice of abortion before ensoulment. The most restrictive schools are the *Maliki* and the *Hanbali* Schools which permit abortion only up to first 40 days of pregnancy with the consent of both parents (Aramesh 2007).

Respect for Life

In Islam, the hand of the God is present in all doings and beings, particularly in the creation of a new life. The Qur'an says that "He [Allah] proportioned him [men] and breathed into him from His [created] soul and made for you hearing and vision and hearts..." (The Qur'an 32/9), "And when I have proportioned him and breathed into him of My [created] soul..." (The Qur'an 15/29). In Islam, human beings are God's vice-regents on earth (Daar and Al Khitamy 2001). Therefore, respect for human and preserving human life is of utmost importance, and killing a person is equivalent to killing divine soul and an attempt to destroy the God's entity (Bowen 2003).

Respect for life extends to the duty of preserving the potential life in the mother's womb, so that preserving the life of the fetus has ethical value. The potential life of the fetus is considered as an appearance of the divine predestination or predetermination of Allah's will that is called *qadar* or *taqdir*. Since abortion impairs the potential life, it also destroys the will of the God for that soul to be born (Bowen 2003). This is the basic argument to object abortion even before the ensoulment, that is to say 120 days of gestation.

Abortion also leads to a well-known ethical dilemma about the value of the life of mother versus potential life of the fetus. In general Muslims agree the life of the mother has priority over the potential life of the fetus (Aramesh 2007). This agreement grounds on the fact that the life of the fetus originates from the life of mother. This brings a hierarchy of life that avoids sacrificing of the mother's life for the sake of the potential life of the fetus. Therefore, it is plausible to think that Islam agrees to perform therapeutic abortion when the life of the mother is at risk (Bowen 2003).

A similar hierarchy applies when a pregnant mother has also a newborn baby whom she is breast feeding. The early and medieval Islam held that if a mother becomes pregnant before the end of 2-year period of nursing, the nursing child would be harmed since it is believed

that pregnancy absorbs fundamental nutrients from the mother's body (Aramesh 2007). This situation is called *ghayla* that means the "assassination of the nursing child." Since the existing life of the nursing child has priority over the potential life of the fetus, Muslims find abortion plausible before 120 days of gestation in these circumstances (Rispler-Chaim 1989; Bowen 2003).

In Islamic discourse respect for life is regarded in two concepts: the importance of the individual and care for the welfare of the community. Islamic ethics requires a balance between these two concepts, without giving precedence to any of them. Hence, Muslims consider respect for life as basic to religion, but not superlative to all other concepts with ethical value, such as community welfare (Bowen 2003).

The well-being of the Islam community is called *Islah*, and it is of foremost importance when issuing opinions such as the plausibility of abortion in a given case. However, opposing opinions are issued with the claim of "*islah* of Muslim community" about abortion. The first concern of opponents of abortion is the need to place respect for life to the basis of all community actions (Bowen 2003). The increase in abortion has the risk to loosen the community bounds and jeopardize the fundamental Islamic belief of presence of divine spirit in human beings. The second concern arises from the first one. The loosened social bounds in the Muslim community may stimulate the trends harmful to the traditional family and community life. The main function of women in Muslim populations is to form a stable and pious family (Al Faruqui 1982). From this point of view, the pro-natalist and anti-abortion position of *ulema* is not surprising. Opening the doors for abortion may lead to a slippery slope that may eventually deform the Islamic family and community life. These concerns extend to contraception, and consider family planning as an explicit danger for social order. However, it is common among *ulema* to think that abortion is ethically worse than contraception, since it not only destroys the social pattern, but also kills potential life and belief in divine ensoulment (Bowen 2003).

The Right not to be Born

Contemporary ethics considers a life would worth living, if it maintains a certain level of ability or does not impose unbearable burden over the people who take care of her. In case the potential life of a fetus does not qualify for these preconditions, such as the existence of genetic deformities or congenital disorders it may be considered a "wrongful birth." Under such conditions "right not to be born" arises with the claim of abortion. The ethical aspect of "the right not to be born" depends also on the timing of bestowment of personhood to the fetus (Risphel-Chaim 1999).

Ethical discussions on the right not to be born and wrongful birth most frequently comes on the scene in two scenarios: the diagnosis of a seriously impaired fetus and the fetus of a rape. The opinions of Muslim scholars vary widely about the plausibility of abortion for impaired fetuses (Risphel-Chaim 1999). However, majority of them are reluctant to approve to abort the impaired fetus, since Islam considers life as the crown of creation and each life is believed to be endowed with a reason (Daar and Al Khitamy 2001). One of the reasons for this reluctance depends on the ambiguousness of the definition of "serious impairment," and the inanity of claiming a life is not worth living if the person is not "totally able" physically

or mentally. The main arguments of *ulema* who are against abortion of the impaired fetus are the possibility of developing cures for the impairment of the fetus in future and the absence of endangerment to mother's life. The unwanted consequences of the slippery slope of approving to end the lives of the ones who are perceived as a burden on the society is another reason for the *ulema* to object abortion of the impaired fetus. General apprehension is that such an approval would bring endorsement for euthanasia for elders or terminally ill patients with no hope of recovery (Risphel-Chaim 1999).

The position of Islam is more concrete regarding the fetus of rape. Most Muslim scholars agree that both the child of rape and the mother are innocent and the attempt to kill an innocent fetus would be a sin (Asman 2004). As long as the fetus does not risk the mother's life, the pregnancy should be preserved. The emotional stress of the mother, disgrace and the difficulties she is supposed to face in social and economic life are not taken into account during this reasoning (Risphel-Chaim 1999).

The Muslim scholars refer to precise command of the Qur'an "...whoever kills a soul unless for a soul or for corruption [done] in the land—it is as if he had slain mankind entirely. And whoever saves one—it is as if he had saved mankind entirely..." (The Qur'an 5/32), and ignore discussions about the quality of life of the mother, child and close relatives of the victims of rape.

Fatawa was issued from the Supreme Council in Algeria, putting forth that abortion in case of rape were allowed, since rape was being used by religious extremists as a weapon of war. However, there were opposing *fatawas* too. Kuwaiti *ulema* refused to allow abortion of Kuwaiti women raped by Iraqi soldiers during Gulf war, depending on the argument to protect the life of the innocent fetus. Recently, *ulema* from Algeria, Saudi Arabia, Egypt and Iran issued *fatawas* in favor of abortion in cases of rape or fetal impairment. Even so, it should be kept in mind that *fatawa* are not binding, unless they are translated into official legislations (Hessini 2007).

Abortion in Turkey

Turkish Legislation on Abortion

Turkish Republic is a secular democracy founded on the ashes of Ottoman Empire in 1923. Ottoman Empire was ruled due to Sunni Islamic Law: *Sunni Sheri'a*. The clues about legal and social acceptability of abortion in Ottoman Empire are found in historic documents from eighteenth and nineteenth centuries. In 1790 an imperial edict was issued by the local governor of Iznik about the prohibition of abortion, saying that it is a great sin and risk for the mother's life. In 1826, two Jewish midwives—called the bloody midwives—were exiled from Istanbul with the accusation of performing abortion (Konan 2008). During the first half of nineteenth century several *fatawas* and imperial edicts were issued to prohibit physicians and pharmacists to perform abortion either by administering drugs or other methods. In some of these *fatawas* and edicts women were directly addressed and reminded that abortion is both a sin and treason, since it demolishes the population and weakens the Empire. The first penal code to criminalize abortion was issued in 1858. According to this law, the person

who causes the abortion of the fetus either deliberately or by mistake was to be imprisoned with hard labor (Konan 2008).

The pro-natalist policies to avoid the decline in the Muslim population in the ethnically and religiously heterogenic environment of the Ottoman Empire continued during the first years of secular Turkish Republic, since the population was tragically demolished because of World War 1 and War of Independence (Gürsoy 1996). The policies of this period were against abortion and family planning. The Penal Code that was issued in 1926 prohibited abortion. According to this law, anyone who commits abortion or assists an abortion was punished by imprisonment from 2 to 12 years. In 1930, public health law was issued by which, activities against pregnancy including, promoting family planning, using or delivering contraceptive drugs or devices and abortion, were banned. Pregnancy and giving birth to as many babies as possible were promoted through social policies and monetary aid to the families. These policies were successful in increasing the population number; however, while inducing population growth, they also increased the number of illegal abortions performed by people other than physicians or mid-wives, most of the time in unsuitable conditions. The illegal abortion rate reached 165 in 1000 pregnancies in 1950s (Fişek 1963). The detrimental effects of the ban on abortion and modern contraceptive methods were seen on maternal health and well-being data, and a survey indicated that 12.000 women were dying annually due to self-induced septic abortions (Gürsoy 1996). The Turkish Ministry of Health summoned a committee in 1958 to scrutinize the situation, and this committee advised the Ministry of Health to liberalize the access to contraceptive drugs and devices (Fişek 1963). In the 5-year plan of 1963–1967, family planning was recognized as the main component of population policies. Following this policy change the legislation to liberalize medical abortion and implementation and usage of contraceptive methods was published in 1967. In 1983, the bylaw on abortion was issued. This bylaw legitimized abortion due to mother's wish up 10 weeks of pregnancy and determined the indications of medical abortion after 10 weeks (Turkish official gazette 1983). After the issue of this legislation, illegal abortions decreased significantly (Turkey National Maternal mortality Study 2005). Today all Turkish women of legal age have the right to demand abortion in the first 10 weeks of their pregnancies either in public hospitals or in private clinics.

Ethical and Religious Aspects of Abortion in Turkey

With the establishment of Turkish Republic, radical administrative and cultural reform took place in the country, including the abolition of the *Sheri'a* and replacing it by secular legislations inspired by Italian and Swiss jurisprudence (Gürsoy 1996). Therefore, the Islamic law and the *Sharia* are not the main reference points for Turkish jurisprudence anymore. However, the majority of population consists of Muslims in Turkey, which makes the compliance with *Islam Sharia* a requirement for legislations if they are to be accepted by the population in general (Aramesh 2007).

In the last decade, the discussions about the plausibility of abortion gained popularity in Turkey. In 2012, the Turkish Presidency of Religious Affairs, which is the main authority of Islam in Turkey, released a *fatawa* about abortion, stating that abortion, without any medical indication, is equivalent to murder and nobody, including the mother and father, has the right

to decide to end the life of the fetus. This was not the first *fatawa* of the Presidency (Turkish Presidency of Religious Affairs 2016).

In 1993, a *fatawa* was issued by to approve the abortion of fetuses of rape in Bosnia. The argument behind this approval was that rape was used by Serbians as a war strategy to destruct Muslim community of Bosnia and that Muslim women have the right to abort the fetuses of rape to protect the honor of Islam and sustainability of Muslim community in that geographic area. Between 2007 and 2012 over 2500 questions were directed by Turkish people to the Presidency about abortion (Turkish Presidency of Religious Affairs 2016). The Presidency answered these entire questions depending on the same principle, that is, embryo should be considered a person since the moment of insemination, and embryo possesses the right to live, the mother or father has no authority to decide for the life of the embryo. The Presidency refers to science to prove that embryo is a person, saying that it has a unique genetic substance, its own heart and blood circulation and the only dependence to mother is the feeding, oxygen supply and protecting the body integrity in the womb. The Presidency puts forth that having and feeding the embryo in the womb does not give the pregnant mother the right to decide in name of the embryo.

This argument of the Presidency which bestows right to live to the embryo from the moment of fertilization is similar to the Roman Catholic argument. On the other hand, the Presidency reflects a major difference from the Roman Catholic Church, by prioritizing the mother's life if the pregnancy threatens mother's health or life (Turkish Presidency of Religious Affairs 2016).

Turkish Presidency of Religious Affairs defends a casuistic approach for cases of rape and that each case should be assessed with a team of physicians, psychologists, forensic medicine specialists and *ulema* to decide the plausibility of abortion in any particular case. It is remarkable that no reference to women's rights is made all through these arguments. Moreover, the Presidency explicitly states that abortion is *not* an issue of women's rights; instead, it is a matter of religion, conscience and respect to life (Turkish Presidency of Religious Affairs 2016).

It is also relevant to note how abortion is perceived morally in the Turkish society. During Ottoman Empire a British consular reported that abortion was considered a common moral implementation among society. Similarly in the report written by the Izmir consul, it was stated that people generally did not think that abortion was a crime (Gürsoy 1996). Field surveys show that the perception of the society regarding abortion did not change widely in modern Turkish Republic. A survey conducted between 1986 and 1989 in low income areas of Istanbul showed that women think that abortion is ethically permissible (Gürsoy 1992). Another field survey conducted in five different provinces of Turkey in 2014 showed that women widely have abortion and that they do not consider it a sin or an unethical behavior, since giving birth to a child whom they are incapable of looking after, would be a greater sin (Ekmekci 2015, 2016). The participants' approval for abortion was higher in cases, when the pregnant is single, thinks she has way too much children than she can take care of or if the mother has disabled children. This shows that religious or ethical considerations are sometimes overlooked, when people face paramount socioeconomic difficulties.

Discussion

There are different views in Islamic ethics about abortion. The first difference in opinions is about when the fetus is to be considered alive. Some authorities put forth that ensoulment takes place 120 days after conception and ensoulment is the concrete sign of life. This indicates that abortion after 120 days of conception is banned. However, it is not plausible to say that abortion is allowed by Islam before 120 days. Only the *Hanafi* school of *Sunni* Muslims find it allowable in the first trimester. Other schools are not positive about abortion, since they consider the formation of fetus as a continuing reflection of the God's creative process. Therefore, they do not agree abortion including the stages before ensoulment.

In Islam fetal life is regarded as a good among other valuable things such as the life of the mother and the well-being of whole Muslim community. God's creating of life is only a part of God's complex ruling on earth (Al Faruqi 1982). The casuistic inclination of Muslim ethics to discuss ethical issues on case base indicates the belief in the complexity of God's ruling. This view makes each case unique to be handled in its particular web of relationships (Brockopp 2003).

In Islamic communities, most of the discussions about abortion is centered on concepts of respect for life and community welfare. The rise in status of women and empowering women by acknowledging their rights are usually overlooked (Daar and Al Khitamy 2001). Enhancing women's access to education, making prenatal health care available for all women, guaranteeing access to modern contraception methods, and securing women's rights in accordance with international codes are of fundamental importance to decrease the need for abortion by avoiding unwanted pregnancies and decrease women's rights infringements in Muslim communities (Hessini 2007).

Turkey has a unique position among Muslim countries, since the Turkish jurisprudence does not emerge from Islam *Sharia*, but from secular laws of the Western societies. However, more than 90 % of Turkish population is Muslim, which makes the compliance of Turkish laws with Islamic *Sharia* a necessity for the population to approve and obey them.

Turkish Muslim community is mainly Sunni Muslims from the *Hanafi* School. The relative liberal attitude of the *Hanafi* School regarding abortion is consistent with the secular Turkish law, which approves abortion on demand up to 10 weeks of gestation. Therapeutic abortion due to save mother's health or avoid the birth of a seriously impaired fetus is possible with the decision of a committee of physicians at any time during the pregnancy, even after 10 weeks. However, it is hard to say that the recent *fatawas* of the Turkish Presidency of Religious Affairs comply with the existing Turkish legislation. The Presidency's argument that the fetus should be considered a person since the time of insemination, changes the conceptualization of abortion on demand from a legal right to a sin. Although this change in perception is not reflected to legislation, yet it may have some effect on attitude of both the physicians and Muslim population's attitude toward abortion on demand.

On the other hand, it is plausible to say that the *fatawa* of the Turkish Presidency of Religious Affairs complies with the general view of all four schools of Islam about the women's rights over her own body. Islam considers human body as a trust that has to be

preserved and maintained (Al Faruqi 1982). This extends to the body of the fetus as well, so that no one including the parents is not bestowed with the right to make a decision about terminating the life of the fetus (Aramesh 2007). However, this reasoning ignores women's rights over her body by overlooking the respect for autonomy principle of Western ethics, and is contradictory to the arguments of the proponents of abortion, who put forth that the woman has full right over her body and it is up to her autonomous decision to keep or terminate the pregnancy. On the other hand it is in full compliance with the Islamic view that prioritizes the community welfare, sustainability of the Muslim community, and preserving Islamic life style with full obedience to religious rules over individual autonomy and personal values. This dilemma is the main source of the discussions regarding abortion in Turkey that may be defined as the collision of the secular and religious and western to eastern.

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