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Protection of Fetal Rights in Islam and Sikhism: A Critical Engagement with Western Legal Discourse

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Abstract

The question of fetal rights occupies a central yet contested position in contemporary legal and ethical discourse. While Western legal paradigms often frame the issue through the lens of individual autonomy and reproductive choice, Islamic jurisprudence and Sikh ethical thought articulate alternative frameworks grounded in the sanctity of life and divine ontology. This study offers a comparative analysis of fetal rights in Islam and Sikhism, critically engaging with dominant Western legal narratives. Drawing upon the Qur'ān, Hadith, classical Islamic jurisprudence (fiqh), and the Guru Granth Sahib, the paper explores how both traditions conceptualize the moral and ontological status of the unborn. The study argues that Islam provides a structured juridical framework for fetal protection, whereas Sikhism advances a spiritually grounded ethic of life dignity. In contrast, Western legal discourse often reflects a rights-based individualism that can marginalize the moral status of the unborn. The article ultimately proposes a dialogical rethinking of fetal rights that integrates legal rigor with ethical depth (An-Na'im, 2008; Cook, 2007).

Keywords: *Protection of Fetal Rights, Islam and Sikhism, Western Legal Discourse*

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1. Introduction

The moral and legal status of the fetus remains one of the most polarizing issues in global bioethics. Western legal systems, particularly in liberal democracies, tend to prioritize maternal autonomy, often framing abortion as a matter of individual rights. However, religious traditions such as Islam and Sikhism offer fundamentally different epistemological and ethical frameworks. Islamic jurisprudence conceptualizes the fetus as a developing entity endowed with conditional rights that progressively intensify, particularly after ensoulment (nafkh al-rūḥ). Sikhism, while lacking a formal legal system akin to fiqh, articulates a profound reverence for life rooted in divine unity (Ik Onkar). This article seeks to examine how these traditions articulate the protection of unborn life and how their perspectives challenge or complement Western legal paradigms.

2. Fetal Ontology in Islamic Thought

2.1 Creation and Development in the Qur'ān

وَلَقَدْ خَلَقْنَا الْإِنسَانَ مِن سُلَالَةٍ مِّن طِينٍ ۝ ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَّكِينٍ ۝ ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً

(Qur'ān 23:12–14)

Analysis: This passage provides a detailed embryological account, emphasizing the gradual development of human life. The Qur'ān frames the fetus as a divinely guided process, thereby assigning it intrinsic value from its earliest stages (Kamali, 2008).

2.2 Ensoulment and Legal Status

A foundational Hadith states:

إِنَّ أَحَدَكُمْ يُجْمَعُ خَلْقُهُ... ثُمَّ يُنْفَخُ فِيهِ الرُّوحُ (Ṣaḥīḥ al-Bukhārī,3208)

Explanation: Ensoulment occurs at approximately 120 days

After this stage, abortion is categorically prohibited except under extreme necessity

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This marks a transition from potential life to full moral personhood in Islamic law (Hallaq, 2009).

2.3 Legal Rights of the Fetus in Islam

Islamic jurisprudence recognizes several rights of the unborn:

1. Right to Life: Abortion generally prohibited

2. Right to Lineage (Nasab): Preservation of identity through lawful marriage

3. Right to Inheritance: Conditional upon live birth

4. Right to Protection: Harm to the fetus entails legal liability

These rights demonstrate that the fetus is treated as a protected legal subject, not merely biological tissue (Kamali, 2008).

3. Ethical Foundations in Sikh Thought

Sikhism approaches the question of life through a metaphysical lens rooted in divine unity:

ਇਕ ਨੂਰ ਤੇ ਸਭੁ ਜਗੁ ਉਪਜਿਆ ਕਉਨ ਭਲੇ ਕੋ ਮੰਦੇ

Analysis: All existence emerges from a single divine light, implying that even unborn life possesses inherent dignity.

3.1 Sanctity of Creation

ਪਵਣੁ ਗੁਰੂ ਪਾਣੀ ਪਿਤਾ ਮਾਤਾ ਧਰਤਿ ਮਹਤੁ

This verse situates human life within a sacred cosmology, reinforcing respect for all forms of existence.

3.2 Implicit Recognition of Fetal Value

While Sikhism does not codify fetal rights in legal terms, it strongly affirms:

* The sacredness of birth
* The dignity of motherhood
* The continuity of life

ਭੰਡਿ ਜੰਮੀਐ ਭੰਡਿ ਨਿੰਮੀਐ...

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Explanation: This verse elevates the role of women as the origin of life, thereby indirectly affirming the value of the unborn.

4. Western Legal Discourse on Fetal Rights

Western frameworks, particularly post-20th century, emphasize:

* Autonomy (choice-based ethics)
* Privacy rights
* Medical discretion

Landmark legal developments (e.g., Roe v. Wade) framed abortion as a constitutional right, though recent shifts indicate ongoing contestation.

4.1 Critical Evaluation

Western discourse often:

* Prioritizes individual liberty over collective moral values
* Treats fetal life as contingent
* Lacks metaphysical grounding

In contrast:

* Islam → moral-legal integration
* Sikhism → ethical-spiritual integration

5. Comparative Synthesis

Dimension	Islam	Sikhism	Western Law
Framework	Legal, Ethical & Spiritual	Ethical & Spiritual	Legal & Individual-Centric
Fetal Status	Protected Human Life (from conception with stages)	Sacred and Divinely Ordained Life	Legally Contested / Context-Dependent
Basis	Divine Revelation (Qur'an & Sunnah)	Belief in Divine Unity (Ik Onkar)	Secular Ethics & Human Rights

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6. Bioethical Foundations: Religion and the Moral Status of the Unborn

Contemporary bioethics often operates within a secular framework that privileges autonomy, rational agency, and individual choice. However, both Islamic jurisprudence and Sikh ethical philosophy introduce a transcendent moral ontology, wherein life is not self-owned but divinely entrusted. In Islamic thought, the concept of amānah (trust) positions human life—including fetal existence—as a sacred deposit from God. This notion inherently restricts arbitrary human intervention:

وَلَا تَقْتُلُوا أَنفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا (Qur'ān 4:29)

Explanation: The prohibition extends beyond self-harm to encompass any unjust termination of life, including potential life forms (Sachedina, 2009). In Sikhism, ethical responsibility is grounded in divine unity (Ik Onkar), where life is perceived as an interconnected manifestation of the divine. Thus, harming life—even in embryonic form—raises profound spiritual implications.

6.1 The Question of Moral Personhood

A central debate in Western bioethics concerns the threshold of personhood. Philosophers argue that personhood requires attributes such as consciousness, rationality, or viability (Singer, 2011).

In contrast:

* Islam defines personhood through divine intervention (ensoulment)
* Sikhism situates personhood within a continuous divine presence

This divergence reveals a fundamental epistemological conflict:

* Western model → Functional criteria
* Islamic/Sikh model → Ontological sanctity

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7. Islamic Jurisprudence and Legal Accountability

Islamic law introduces a nuanced doctrine of liability concerning harm to the fetus. A well-known Hadith establishes financial compensation (ghurra) for causing miscarriage:

فَقَضَى رَسُولُ اللَّهِ ﷺ بِغُرَّةٍ(Ṣaḥīḥ Muslim,4394)

Analysis: The fetus is recognized as a legal entity with compensable value, This reflects early legal recognition of prenatal rights, Furthermore, juristic schools (Ḥanafī, Mālikī, Shāfiʿī, Ḥanbalī) differ slightly in interpretation but unanimously affirm the sanctity of foetal life (Hallaq, 2009).

7.1 Gradualism and Ethical Flexibility

Islamic jurisprudence employs a gradualist model:

* Early stage → limited concessions
* Post-ensoulment → near absolute prohibition

This framework allows ethical flexibility without compromising the sanctity of life. It contrasts sharply with binary legal frameworks that either fully permit or prohibit abortion.

8. Sikh Ethical Praxis and Contemporary Interpretations

Modern Sikh scholars interpret the Guru Granth Sahib in light of contemporary ethical challenges. While classical Sikh texts do not elaborate a legal doctrine of abortion, they strongly condemn practices such as:

* Female feticide
* Gender discrimination

ਸਭਨਾ ਜੀਆ ਕਾ ਇਕੁ ਦਾਤਾ ਸੋ ਮੈ ਵਿਸਰਿ ਨ ਜਾਈ

Explanation: This verse emphasizes divine sustenance of all beings, reinforcing a universal ethic of care.

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8.1 The Role of Community Ethics (Rehat Maryada)

The Sikh Rehat Maryada (code of conduct) does not explicitly legislate on foetal rights but promotes:

* Moral discipline
* Respect for life
* Social justice

Thus, Sikhism operates through a community-centered ethical framework rather than a codified legal system.

9. Western Legal Paradigms: A Critical Reassessment

Western legal discourse, particularly in liberal democracies, is shaped by:

* Individual autonomy
* Bodily integrity
* Rights-based liberalism

However, critics argue that such frameworks:

* Fragment moral responsibility
* Reduce life to biological criteria
* Neglect metaphysical dimensions

Recent legal shifts (post-Roe developments in the United States) illustrate that even Western systems are internally contested (Tribe, 2012).

9.1 Points of Convergence and Divergence

Convergence:

* Recognition of maternal health
* Ethical concern for suffering

Divergence:

* Source of moral authority
* Definition of life
* Legal enforceability

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Islam and Sikhism both challenge the reductionist tendencies of secular bioethics by reintroducing sacred value frameworks.

10. Toward an Integrated Ethical Model

A constructive approach to fetal rights requires moving beyond dichotomies. This study proposes:

* Ethical Pluralism: Incorporating religious perspectives into global bioethics
* Legal Sensitivity: Recognizing cultural and religious diversity
* Protection-Oriented Framework: Prioritizing vulnerability and dependency

Islamic jurisprudence offers a structured legal model, while Sikhism contributes a holistic ethical vision. Together, they provide a more balanced paradigm than purely secular approaches.

11. Conclusion

The protection of fetal rights represents a profound intersection of law, ethics, and theology. This study has demonstrated that:

* Islam provides a comprehensive juridical framework grounded in revelation
* Sikhism articulates a deep ethical commitment to the sanctity of life
* Western legal discourse, while influential, remains philosophically contested and ethically limited
* A meaningful global discourse on fetal rights must therefore engage with religious traditions not as peripheral voices but as central contributors to moral reasoning.

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References

* Al-Qur'ān
* Al-Bukhari, M. ibn Isma'il. (n.d.). Sahih al-Bukhari.
* An-Na'im, A. A. (2008). Islam and the secular state. Harvard University Press.
* Cook, R. J. (2007). Abortion laws worldwide. WHO Press.
* Hallaq, W. B. (2009). An introduction to Islamic law. Cambridge University Press.
* Kamali, M. H. (2008). Principles of Islamic jurisprudence. Islamic Texts Society.
* Muslim, M. ibn al-Hajjaj. (2007). Sahih Muslim (Trans. Nasiruddin al-Khattab). Darussalam.
* Sachedina, A. (2009). Islamic biomedical ethics. Oxford University Press.
* Singer, P. (2011). Practical ethics. Cambridge University Press.
* Tribe, L. H. (2012). Abortion: The clash of absolutes. W. W. Norton.