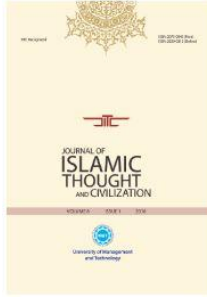


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GENERAL IMPACT FACTOR



## Maximum Period of Gestation: Legal and Medical Conundrum of Child's Legitimacy under Islamic Law

Isa Abdur-Razaq Sarumi\*

### Abstract

The legitimacy of a child born to a legally married couple is indubitable. However, it becomes problematic when a woman appears to be pregnant for a longer time period than the usual period of gestation following her husband's demise or after the completion of the waiting period (*istibra*). The unavailability of definitive legal texts (*nusūs*) either from the Qur'ān or *Sunnah* for the maximum period of gestation has triggered exerting independent juristic reasoning (*ijtihad*) by Muslim scholars. Therefore, this paper explores scholars' dissent and legal implications for the maximum period of gestation from the classical Islamic literature buttressed with scientific medical perspectives. The paper adopts a qualitative doctrinal approach by revisiting classical books along with the available modern literature. The research finds that even though most of the views held by classical scholars are inconsistent with the modern medical perspective with the exception of the *Zahiri* School of Law, exceptional cases cannot be ruled out.

**Keywords:** gestation, post-term, pregnancy, legitimacy, *nusūs*

### Introduction

The genealogical relationship has a significant position in Islam since the conditions for its establishment are comprehensively stipulated under Islamic Law. The length of the gestation period is one of the modes of determining the legitimacy of a child. Muslim jurists unanimously agree that the minimum period of gestation comprises six (lunar) months. However, the maximum period of gestation has long been wrapped in obscurity, both in the classical and contemporary legal discourse. The extreme divergence in determining the exact maximum period of gestation has consequently resulted in scholars' differing opinions about determining the legitimacy of a child born after nine months which is predominantly believed to be the maximum period. A huge conundrum arises in the affiliation of a child born after nine months following the husband's demise or the completion of the waiting period of divorce (*istibra*). The legal conundrum of determining the legitimacy of such a child makes his right to inheritance more complex. Besides, the imposition of the prescribed punishment of adultery (*zina*) on a woman who claims to be pregnant for the unusual period of gestation makes the situation even more problematic. The scientific medical perspectives about the maximum period of gestation are in contravention of the opinion held by the vast majority of Muslim jurists, though in line with the few scholars who believe that pregnancy cannot be more than 42 weeks. The article, therefore, looks into the opinions held by the early

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Muslim jurists and the position of the modern medical perspective. The research suggests undertaking investigations by using modern medical technology whenever there is a claim of being pregnant for more than the usual period following either the demise of the husband or the waiting period of divorce (*istibra*).

## 2. Minimum Period of Gestation

The minimum period of gestation has been unanimously agreed upon by Muslim jurists to be six months after a valid marriage contract.<sup>1</sup> If a child is born within a period of less than six months, he is assumed to be a product of an illicit act, and such a child is considered illegitimate. The husband can legitimately maintain the non-paternity of a child born in less than six months to his wife on the condition that the baby does not show any signs of being premature. Consensus of Muslim jurists has been recorded by al-Shawkani and Ibn Qudamah that no contrary opinions have been voiced by any reputable Muslim jurist. If such a situation happens, it would be apparent that the wife must have been impregnated before marriage.<sup>2</sup> The scholars' judgement is based on the following Qur'ānic verse from which Ali ibn Abu Tālib (*RA*) deduced the minimum period of gestation. Allah says, "And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents; to Me is the [final] destination."<sup>3</sup> Another verse says, "The mothers shall give suck to their offspring for two whole years if the father desires to complete the term."<sup>4</sup>

If the entire gestation and fostering period consist of thirty months and the fostering period is said to be of two years, the remaining months must be six as unanimously agreed by Muslim jurists.<sup>5</sup>

'Ali (*RA*) cited this verse as an evidence that the minimum period of pregnancy is of a six-month duration. It has also been reported from *Qatādah* that the case of a woman who gave birth to a child in a period of six months was taken to 'Umar (*RA*) who asked the Companions [*Sahaba (RA)*] about it and 'Ali (*RA*) said, 'Don't you see that Allah says, "...and his gestation and weaning (period) is thirty months.<sup>6</sup>, and Allah also says "...and his weaning is in two years," so the pregnancy here is six months.' Then, 'Umar

<sup>1</sup>Lynn Welchman, "Bahrain, Qatar, UAE: First time Family Law Codifications in Three Gulf States," In Bill Atkin, (ed.), *International Survey of Family Law* (Bristol: Jordan, 2010), 163-178.

<sup>2</sup>Abdullah ibn Ahmad Ibn Qudamah, *al-Mughni*, vol. 9 (Beirut: Dar al-Kitab al-Arabiyy, 1985), 53.

<sup>3</sup>Al-Qur'ān: Luqman 31:14.

<sup>4</sup>Ibid., Baqarah 02:233.

<sup>5</sup>Ibn Ibrahim Ibn al-Mundhir Muhammad, *al-Ijma'* (Riyadh: Dar al-Muslim li al-Nashr wa al-Taozi', 2004), 95; See Ibn al-Muflih, *al-Mubdi'fi Sharh-al Muqni*, vol. 8, (Turath For Solutions, 2013), 111; See Ibn Amir Haj Muhammad, *al-Taqrir wa al-Tahbir ala Tahrir ibn al-Kumalf* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1983), 146.

<sup>6</sup>Al-Qur'ān: Al-Ahqāf 46:15.

(RA) exonerated the woman. The transmitter of the event added, “We were informed that she gave birth to another baby after a six-month pregnancy too.”<sup>7</sup>

Moreover, Malik (RA) reported in his *Muwatta*’ that the case of a woman who gave birth after six months of marriage was brought to ‘Uthman ibn ‘Affan (RA) who ordered that she should be stoned to death. ‘Ali ibn Abi Talib (may Allah be pleased with him) said to him: “She should not be stoned, as Allah says in His Book, (...and his gestation and weaning [period] is thirty months).<sup>8</sup> Allah also says: Mothers may breastfeed their children for two complete years for whoever wishes to complete the nursing (period).<sup>9</sup> So, the pregnancy is for six months and she should not be stoned.<sup>10</sup>

However, Muslim scholars differ regarding the commencement of the period of gestation. *Hanafis* hold the view that gestation commences from the day of ‘*aqd*’ while others opine that it commences from the day when consummation is likely possible.<sup>11</sup> Ibn Taymiyyah and Ibn Qayyim’s opinion is slightly different for they count the period of gestation from the day consummation actually occurs.<sup>12</sup>

The above verses demonstrate that the nursing and weaning period is twenty-four months (as stated in the second verse) and the gestation and nursing period is thirty months (as stated in the first verse). It, ipso facto, indicates that the minimum gestation period is six months.

Recorded history has attested to several births in the sixth month of pregnancy. It has been reported that Hasan ibn ‘Ali, Umayyad Caliph Abdul-Malik ibn Marwan and the famous poet Jarīr were born in the sixth month.<sup>13</sup> Al-Shawkani said that it had not been recorded in the books of history that a child born in a period of fewer than six months ever survived. Meanwhile, such a case in our time is unheard of. The prevailing situation is that a child born in the sixth month rarely survives, though the rarity proves the possibility of the case.<sup>14</sup>

Ibn Qayyim asserted that the proof of six months as the minimum period of gestation has been definitively established by the divine texts and nature. As the divine

<sup>7</sup>Jalaluddin al-Suyuti, *al-Mabsut fi al-Tafsir bil-Ma’tthur*, vol.13 (Markaz hijr lil Buhuuth wa al-Dirasat al-Arabiyyah wa al-Islamiyyah, 2003), 323.

<sup>8</sup>Al-Qur’ān: Al-Ahqāf 46:15.

<sup>9</sup>al-Baqarah 02:233.

<sup>10</sup>Muhammad Badi Bal’alim, *Iqamat al-Hujjah bi al-Dalil Sharhu’ala Nudhum ib Badi li Mukhtasar* Khalil, vol. 3 (Riyadh: Dar ibn Hazm, n.d.), 171.

<sup>11</sup>Al-Zaila’i Fakh al-din Uthman, *Tabyin al-Haqaiq Sharhu Kanzu al-Daqaiq*, vol. 3 (Cairo: Dar al-Kitab al-Islami, 1895), 39.

<sup>12</sup>Ibn Taymiyyah, *Majmu’u al-Fatawā* (Cairo: Darul Wafa, 2008).

<sup>13</sup>Abdul al-Rahman Jalaluddin al-Suyuti, *Tarikh al-Khulafa* (Qatar: Wizārat al-Awqāf wa Shu’un al-Islamiyyah, 2015), 215.

<sup>14</sup>Muhammad ibn ‘Ali al-Shawkani, *al-Sail al-Jarrar al-Mutadaffiq ‘ala Hadāiq al-Azhār*, vol. 2 (Cairo: Dar Ibn Hazm, 2010), 334.

proof, the previously cited verses are incontrovertible and the reports from medical experts saying that the minimum period of gestation is one hundred and eighty-four nights are well-grounded.<sup>15</sup>

Modern scientific research has subscribed firmly to the view that a child born in the sixth month of pregnancy could survive.<sup>16</sup> British researchers have confirmed that a number of babies born when their mothers were just 24 weeks pregnant survived; meanwhile, those delivered earlier rarely lived.<sup>17</sup> Although, a baby born after 24 weeks of gestation is deemed as an unfinished product, is likely to be physically frail and must be kept under intensive care. This is why such children are considered premature.<sup>18</sup>

In the case of *Falmata Abdu v Abba Mai Seje, Abdulahi*, the respondent, brought an actio against his wife claiming that she gave birth to a child, seven months after her marriage with the respondent. The previous husband gave evidence that he knew about the pregnancy and he reproached Falmata for the concealment. Hence on appeal, the *Shari'ah* Court of Appeal in Nigeria ruled that when a child is born only a day after the minimum of gestation which is six months, the child belongs to the husband. Moreover, pregnancy becomes discernible in *Shari'ah* within the period of three months.<sup>19</sup>

### 3. Maximum Period of Gestation

Conflicting opinions regarding the maximum period of gestation have been recorded in the classical books of Muslim jurists. The major reason for the conflicting views is the dearth of either explicit or implicit evidence from the Holy Qur'an and the *Sunnah* of the Prophet (SAW). Among the scholars are those of the opinion that the period of gestation does not generally exceed nine months. This view was advocated by Daud, the founder of the *Dhahiri* School of Law and his ardent disciple (Ibn 'Azm).<sup>20</sup> The view has also been favoured by many a contemporary scholar. However, other scholars hold

<sup>15</sup>Ibn al-Qayyim, *al-Tibyān fī Aqsām al-Qur'ān* (Makkah: Dar 'Alam al-Fawaid li al-Nashr wa Tawzi,' 2013), 213.

<sup>16</sup>Walter S. Jones, and Evelyn B. Man, "Thyroid Function in Human Pregnancy: VI. Premature Deliveries and Reproductive Failures of Pregnant Women with Low Serum Butanol-Extractable Iodines. Maternal Serum TBG and TBPA Capacities," *American Journal of Obstetrics and Gynecology* 104, No. 6 (1969): 909-914.

<sup>17</sup>Daily Mail Reporter, "More premature babies born at 24 weeks are surviving - but the number living with disabilities will also rise" <<http://www.dailymail.co.uk/health/article-2243233/More-premature-babies-born-24-weeks-surviving--number-living-disabilities-rise.html>> accessed 27<sup>th</sup> of March, 2017.

<sup>18</sup>Janet Green, Philip Darbyshire, Anne Adams, and Debra Jackson, "Looking like a Proper Baby: Nurses' Experiences of Caring for Extremely Premature Infants," *Journal of Clinical Nursing* 24, no. 1-2 (2015): 81-89.

<sup>19</sup>Falmata Abdu v Abba Mai Seje, Case No. SCA/CV/6/BO/76.

<sup>20</sup>Abu Muhammad 'Ali Ibn Ahmad Ibn Hazm, *Kitab al-Muhalla fil Athār*, vol. 10 (Beirut: Dar al-Fikr, 2010), 132.

the opinion that it is possible that the gestation period can exceed nine months. These scholars have, however, differed over determining the maximum period.<sup>21</sup>

Several views have been reported of the scholars who believe that the pregnancy period can be more than nine months. Some of them believe that the maximum period of gestation is one year.<sup>22</sup> *Hanafis* maintain that pregnancy can extend to two years.<sup>23</sup> Laith ibn S'ad believed that the possibility of three years of pregnancy could not be ruled out.<sup>24</sup> Shafi'is and Hambalis concur that the maximum period of pregnancy is four years;<sup>25</sup> this view has also been reckoned as the greater opinion of *Malikis*. However, it has been reported in a narration by Maliki School that the maximum period of pregnancy is five or six years.<sup>26</sup> The narration of six years has also been attributed to al-Zuhri.<sup>27</sup> Besides, a period of seven years is considered to be another narration by Malik, al-Zuhri and Rabi'ah.<sup>28</sup> Abu 'Ubaid and al-Shawkani are of the opinion that pregnancy has no specific limit, as long as there are signs that indicate the existence of the foetus we must wait for delivery no matter how long.<sup>29</sup>

The scholars who hold the opinion that pregnancy can be significantly longer than nine months argue that any matter not specified by the *Shari'ah* has to be determined by the prevalent custom of the society and the underlying reality. Al-Shawkani has buttressed this view with the fact that neither an authentic nor a weak hadith has been reported from the Prophet (SAW) about the maximum period of gestation. It is, however, indisputable that the period of nine months is a widespread phenomenon. Nevertheless, its prevalence does not necessarily rule out having pregnancy exceeding nine months.<sup>30</sup>

<sup>21</sup>Umar Muhammad Ibrahim al-Ghanim, *Ahkām al-Janīn* (Jeddah: Dar al-Andalus al-Khadrā: 2013), 76.

<sup>22</sup>This opinion is ventured by Muhammad ibn 'Abdul al-Hakam and supported by ibn Rushd. See Wahabah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, vol. 7 (Beirut: Dar al-Fikr, 1984), 677.

<sup>23</sup>Sayyid Muhammad Amin Ibn Abidin ash-Shami, *Radd al-Muhtār ala al-Dur al-Mukhtar*. vol. 5. (Damascus: Dar al-Fikr li al-Tibā'at wa al-Nahsr, 2000), 511; See Muhammad ibn 'Abd al-Wahid Ibn al-Humam, *Sharh Fath al-Qadir*, vol. 4 (Maktabat al-Rashidiyah, 1985), 362.

<sup>24</sup>Abdullah ibn Ahmad Ibn Qudamah, *al-Mughni*, vol.7 (Beirut: Dar al-Kitab al-Arabiyy, 1985), 477.

<sup>25</sup>Muhammad ibn Idris al-Shafī, *Kitab ul-Umm* (Lebanon: Dar al-M'arifah, 1973), 221; See al-Nawawi, *Raodat al-Talibi*, vol. 6 (Beirut: al-Makb al-Islamy, 1984), 39; see Imam Ala-ud Din al-Mardawi, *al-Insāf fi M'arifat al-Rājih mina al-Khilaf 'ala madhab al-Imam Ahmad bn Hanbal*, vol. 5 (Beirut, Dar Ihyāi al-Turāth al-'Arabiyy: 1998), 212.

<sup>26</sup>Ibn 'Abdul al-Barr Abu Umar Yusuf, *al-Kāfi fi Fiqh Ahli al-Madinah al-Maliki* (Riyadh: Maktabat al-Riyadh al-Hadithah,180), 293.

<sup>27</sup>Abubakar Ahmad Ali al-Jassas, *Mukhtasar Ikhtilaf al-'Ulamā*, vol. 2 (Beirut: Dar al-Baṣ āir al-Islamiyyah, 1995), 405.

<sup>28</sup>Ibid.

<sup>29</sup>Ibrahim Muahammad al-Hanafi Abi al-Yaman, *Lisān al-Hukkām fi M'arifat al-Ahkām* (Cairo: al-Bāb al-Halaby, 1973), 332.

<sup>30</sup>Al-Shawkani, al-Sail al-Jarrar *al-Mutadaffiq 'ala Hda'iq al-Azhar*, vol. 2 (Turath for Solutions, 2013), 334.

The opinion of the Hanafi School of law that the maximum period of pregnancy is two years is based upon the narration from ‘Aisha, (RA) though it is not to be treated as *Hadith*.<sup>31</sup> Al-Walid ibn Muslim reported that he told Malik Ibn Anas about the *Hadith* of Jamila Binti S’ad that ‘Aisha said that a woman’s pregnancy cannot exceed two years. He asked in an astounding manner about the person to whom this statement was attributed; he affirmatively said that his neighbour, the wife of ‘Ajlān was pregnant for four years before giving birth and she had three pregnancies in twelve years.<sup>32</sup>

It has also been reported that a man lodged a complaint to ‘Umar Ibn Khattab (RA) against his wife whom he found pregnant after he had been away for two years. Umar (RA), thereby, consulted people whether the woman deserved to be stoned as a punishment for adultery or exonerated. Mu’adh ibn Jabal said, if she is guilty, the foetus in her womb is not. You should leave her until she gives birth. Having been persuaded, he waited until the woman gave birth to a baby, with front teeth sprouted, whose father avowed for the similarity between them. Being convinced by Mu’adh’s *ijtihad*, Umar (RA) said, women are unequal to give birth to a personality like Mu’adh. Umar would have perished if not for Mu’adh’s independent reasoning (*ijtihad*).<sup>33</sup>

There are several narrations of women whose pregnancies exceeded nine months in the classical books of *Fiqh*. It has been reported that the women of the tribe of ‘Ajlān delivered their babies in thirty months and one of them had the nickname ‘a woman with elephant’s pregnancy.’<sup>34</sup> During the era of Umar Ibn ‘Abdul al-‘Azīz, a slave-girl’s pregnancy lasted for three years. Imam Malik was born after three years of his mother’s pregnancy. Haram Ibn Hayyān and Dahhāk Ibn Muzāhim were born after two years of their mothers’ pregnancy. It was also reported by Malik that a woman’s pregnancy lasted for seven years.<sup>35</sup>

On the contrary, Ibn Hazm’s opinion is at variance with all of the above narrations and he vehemently argues that the maximum period of pregnancy must not exceed the usual nine months.<sup>36</sup> He claimed that the authenticity of the narrations stating that pregnancy could exceed nine months is highly questionable and, therefore, the legal ruling cannot be based on unsubstantiated rumours.<sup>37</sup> The scholars who hold the view that

<sup>31</sup>Ibn Hajar, *al-Talkhīṣ al-Khabīr fi Takhrīj Ahādī’i al-Rafi’i al-Kabīr*, vol. 3 (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1989), 235.

<sup>32</sup>Al-Zaila’I Abdullah ibn Yusuf, *Nasb al-Rāyah li Ahādīth al-Hidāyah*, vol. 3 (Beirut: Mu’assasat al-Al-Rayyan, 1997), 264.

<sup>33</sup>Ahmad ibn Husain Al-Bayhaqi, *Sunan al-Kubra*, vol. 7 (Beirut: Dar al-Kutub al-‘Ilmiyyah, 2003), 443.

<sup>34</sup>Ibn Hajar al-‘Asqalāni, *Nuzhat al-Albāb fi al-Alqāb* (Riyadh: Maktabat al-Rushd, 1998), 190.

<sup>35</sup>Muhammad Ibn Ahmad al-Dhahbi, *Tadhkirat al-Huffaz*, vol. 1 (Dairat al-Ma’arifi al-‘Uthmaniyyah, 2009), 165.

<sup>36</sup>Ibn Hazm, *Kitab al-Muhalla fil Athār*, vol.10, 132-133.

<sup>37</sup>Ibid.

the maximum period of gestation must not exceed nine months have substantiated their opinion with the following verses,

“The mothers shall breast-feed their offspring for two whole years if the father wishes the breastfeeding to be completed.”<sup>38</sup> And “We have enjoined on man Kindness to his parents: in pain did his mother bear him and in pain did she give him birth.”<sup>39</sup>

Ibn Hazm deduced from the above verses that it is beyond the realms of possibility for any woman’s pregnancy to exceed thirty months; any claim of possibility is tantamount to a deliberate rejection of Allah’s injunction.<sup>40</sup> It has also been reported that,

Said ibn al-Musayyab said, “Umar ibn al-Khattab said, “If a woman is divorced and has one or two periods and then stops menstruating, she must wait nine months. If it is clear that she is pregnant, that is that. If not, she must do an ‘idda of three months after the nine, and then she is free to marry.”<sup>41</sup>

The ruling of Umar (RA) has been held by the scholars who believe that the maximum period of gestation is nine months.

#### 4. Medical Analysis of the Duration of Human Pregnancy

During fertilisation, the union of an egg and a sperm into a single cell is typically the first step in a complex series of events that consequently lead to pregnancy. Fertilisation takes place in the fallopian tube. Over the next few days, the single cell divides into multiple cells. At the same time, the small cluster of dividing cells moves through the fallopian tube to the lining of the uterus. There it implants itself and starts to grow. From implantation till the end of the eighth week of pregnancy, the baby is called an embryo. From the ninth week of pregnancy till birth, it is called a foetus.<sup>42</sup>

The average length of human gestation is 280 days, or 40 weeks, beginning on the first day of the woman’s last menstrual period. The medical term for the due date is estimated date of confinement (EDC). Though, only about four per cent of women actually gives birth on their EDC. After 42 weeks the labour is more likely to be

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<sup>38</sup>Al-Qur’ān: Baqarah 2:233.

<sup>39</sup>Al-Ahqāf 46:15.

<sup>40</sup>Yusuf Ibn Musa, *al-M’untasar mina al-Mukhtasar min Mushkil al-Āthār*, vol. 1 (Beirut: ‘Alam al-Turāth, 2015), 317; See *Kitab al-Muhalla fil Athār*, vol. 10, 132.

<sup>41</sup>Malik b Anas, *Muwatta Malik*, Chapter no: 29, Hadith 70.  
<http://mobile.ahadith.co.uk/chapter.php?page=8&cid=75>

<sup>42</sup>R. S. Jeyendran, H. H. Van der Ven, M. Perez-Pelaez, B. G. Crabo, and L. J. D. Zaneveld, “Development of an Assay to Assess the Functional Integrity of the Human Sperm Membrane and its Relationship to Other Semen Characteristics,” *Journal of Reproduction and Fertility* 70, no. 1 (1984): 219-228.



prolonged or stalled, the mother and her baby are at an increased risk of injury during a vaginal delivery, and there's a greater risk of still birth.<sup>43</sup>

A pregnancy that has reached or extended beyond 42 0/7 weeks of gestation from the last menstrual period (LMP) is known as post-term, whereas a late-term pregnancy is defined as one that has reached between 41 0/7 weeks and 41 6/7 weeks of gestation.<sup>44</sup> Prolonged pregnancy is associated with foetal, neonatal and maternal complications. Risks increase after term and significantly so after 41 weeks of pregnancy. A policy of induction of labour appears to improve outcomes and reduce perinatal mortality. If pregnancy is prolonged beyond 42 weeks of gestation, then perinatal mortality increases. The World Health Organization (WHO) defines a post-term pregnancy as one that has extended to or beyond 42 weeks (294 days) of gestation.<sup>45</sup> In 1997, the SOGC (The Society of Obstetricians and Gynaecologists of Canada) published clinical practice guidelines recommending that women with an uncomplicated pregnancy who reach 41 to 42 weeks' gestation should be offered elective delivery.<sup>46</sup>

The above jurisprudential and medical exposition makes it evident that the normal period of gestation is nine months, though the period is believed to exceed the stated period by a few days or weeks. A medical expert, Abdullah al-Barr explained that some women might be under the illusion of being pregnant for years which is known as phantom pregnancy.<sup>47</sup> This may occur as a consequence of a high expectation of having a baby. Sometimes, a woman who is desperately keen to have a baby may experience abdominal swelling with amenorrhoea;<sup>48</sup> a situation that could make her believe she is

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<sup>43</sup>Michael J. Davidoff, Todd Dias, Karla Damus, Rebecca Russell, Vani R. Bettgowda, Siobhan Dolan, Richard H. Schwarz, Nancy S. Green, and Joann Petrini, "Changes in the Gestational Age Distribution among US Singleton Births: Impact on Rates of Late Preterm Birth, 1992 to 2002," *Seminars in Perinatology*, vol. 30, no. 1 (2006): 8-15. WB Saunders.

<sup>44</sup>Brain Hollis, "Prolonged Pregnancy," *Current opinion in Obstetrics and Gynaecology* 14, no. 2 (2002): 203-207.

<sup>45</sup>Max Mongelli, Mark Wilcox, and Jason Gardosi, "Estimating the Date of Confinement: Ultrasonographic Biometry versus Certain Menstrual Dates," *American Journal of Obstetrics and Gynaecology* 174, no. 1 (1996): 278-281.

<sup>46</sup>Martina Delaney, Anne Roggensack, Dean C. Leduc, Charlotte Ballermann, Anne Biringer, Loraine Dontigny, Thomas P. Gleason et al., "Guidelines for the Management of Pregnancy at 41+ 0 to 42+ 0 weeks," *Journal of Obstetrics and Gynaecology Canada* 30, No. 9 (2008): 800-810.

<sup>47</sup>Phantom pregnancy or pseudocyesis is a rare condition in which a mentally stable woman believes that she is pregnant, experiences the usual symptoms of pregnancy, but the presence of a foetus is not evidenced. In addition, there are objective features of pregnancy in the woman, such as amenorrhoea and enlargement of the belly. Pseudocyesis is associated with normal or raised basal prolactin concentrations, and normal or raised luteinizing hormone (LH) levels. Both the hormones show exaggerated pulsatility.

<sup>48</sup>Amenorrhoea is the absence of menstrual bleeding. Amenorrhoea is a normal feature in prepubertal, pregnant, and postmenopausal females. In females of reproductive age, diagnosing amenorrhoea is a matter of first determining whether pregnancy is the etiology. In the absence of pregnancy, the challenge is to determine the exact cause of absent menses. See Melanie C. Davies, Margaret L. Hall, and

pregnant.<sup>49</sup> Meanwhile, the view of remaining pregnant for one year or over a year is something of a rarity. And it is firmly established in Islamic legal maxim that the effect is given to what is of common occurrence, not to what happens infrequently (*al-ibrat lil al-ghalib wa nādiratu la hukma laha*).<sup>50</sup> Based on this principle, a vast majority of the contemporary scholars have given precedence to Ibn Hazm's opinion which says that the maximum period of gestation should not exceed nine months. Some, however, believe that the maximum period of gestation is one year, while others refrain from giving any opinion on the matter. Some Muslim countries like Egypt, Sudan, Syria, Tunisia, and Morocco, Kuwait, and Libya have established the maximum period to be one year.<sup>51</sup>

It is admittedly accepted that the usual period of pregnancy is nine months with one or more weeks in case of post-term pregnancy. However, the fact that it is rare for pregnancy exceeding one year and more does not make its occurrence impossible. It has been reported in the book of hadith that Ibn Sayyad was born after a twelve-month pregnancy. Abu Dharr (may Allah be pleased with him) narrates that Allah's Messenger (SAW) dispatched me to Ibn Sayyad's mother and said: "Ask her how long she bore him for?" when I reached her I asked her. She said: "I was pregnant with him for twelve months..."<sup>52</sup>

Apart from the stories recorded in the books of *Fiqh*, the post-term pregnancy has also been witnessed in modern times with medical confirmation. One of the longest periods of pregnancy ever recorded was in 1945, when a young woman gave birth after 375 days. The woman famously known as Beulah Hunter was 25 years old when she gave birth.<sup>53</sup> Doctors have reported a mysterious occurrence in the small Chilean town of La Boca where a calcified foetus was found in the uterus of an elderly woman who said

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Howard S. Jacobs, "Bone Mineral Loss in Young Women with Amenorrhoea," *Bmj* 301, no. 6755 (1990): 790-793.

<sup>49</sup>Muhammad Ali al-Barr, *Khalq al-Insān Baina al-Tibb wa al-Qurān* (Jeddah, al-Dar al-Su'udiyyah li al-Nashr wa al-Taozi', 1991), 453.

<sup>50</sup>Abdul al-Rashid Qasim, *al-Qawaid wa al-Thawabit al-Fiqhiyyah inda Ibn Taymiyyah fi al-Jināyāt wa al-'Uqūbāt* (Masters Dissertation, Umm al-Qurah University, 1419 hijr), 265.

<sup>51</sup>Aasim I. Padela, Ahsan Arozullah, and Ebrahim Moosa. "Brain Death in Islamic Ethico-Legal Deliberation: Challenges for Applied Islamic Bioethics," *Bioethics* 27, no. 3 (2013): 132-139.

<sup>52</sup>Ahmad b Hanbal, *Musnad Ahmad*, vol. 5, 148. The *Hadith* is graded authentic by Ibn Hajar al-'Asqalāni, see Fath al-Bāri, vol. 13, 325.

<sup>53</sup>Fisseha Solomon, "Outcomes of Post-Term Pregnancy: Case Control Study in the Three Aau Teaching Hospitals (Tah, Gmh and Zmh)." (PhD Diss., Aau., 2014).

that she had never realised she had been pregnant for six decades.<sup>54</sup> It has also been reported that Jessica Zucker was pregnant for over a year.<sup>55</sup>

Generally, the modern medical evidence contravenes the belief that pregnancy can exceed nine months let alone one year or more. However, the narrations from the classical books of *Fiqh* and some contemporary information about some women prove its possibility, though in rare cases. This does not show a contradiction between the Islamic law and science, rather it is an effort to pave the way for exceptional cases to avoid a miscarriage of justice. Besides, there are several scientific mechanisms to verify the actual duration of the pregnancy whenever there is a claim of prolonged pregnancy following the death of a husband or after the waiting period of divorce.

## 5. Conclusion

Within the discursive Islamic legal tradition, the period of gestation is one of the means for determining the legitimacy of a child. The minimum period of gestation is unanimously believed to be six months after consummation. However, the maximum period of pregnancy remains highly controversial among the scholars. The view held by the *Dhahiriyyah* School of Law appears to be in complete accord with medical facts. The views of other Schools of Law are based on either the occurrence in their time or what they read in the books of history in rare cases. Nevertheless, rarity does not necessarily mean non-existence and similar cases have been reported in recent times. Besides, ‘Umar (RA) retracted his judgement after being convinced by Mu’adh’s (RA) opinion to leave the woman in order to save the foetus. Having been persuaded, he waited until the woman gave birth to a baby, with front teeth sprouted, whose father avowed for the similarity between them. Thereupon ‘Umar said: “Umar said, women are unequal to give birth to a personality like Mu’adh (RA). Therefore, this paper suggests undertaking investigations through the use of modern medical technology when there is a claim of pregnancy for more than the usual period either following the demise of the husband or the waiting period of divorce (*istibra*). In addition, experts chosen to conduct the investigation should be known for their integrity, honesty and perfection in the field. If the result confirms the woman’s claim, the child becomes legitimate. If the result, however, contradicts her claim, the child ought not to be affiliated with the husband.

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<sup>54</sup>Rafael Romo, “Woman in Chile Learns She Has Carried Fetus in her Uterus for More than 60 Years,” August 4, 2015. Accessed April 17, 2017<<http://edition.cnn.com/2015/08/04/americas/chile-elderly-woman-fetus/>>>

<sup>55</sup>Jessica Zucker, “I was Pregnant for Over a Year,” *The Blog*, Accessed March 30, 2017 <[http://www.huffingtonpost.com/jessica-zucker-phd/i-was-pregnant-for-over-a-year\\_b\\_4756892.html](http://www.huffingtonpost.com/jessica-zucker-phd/i-was-pregnant-for-over-a-year_b_4756892.html)>

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