

Basics of Permissibility and Impermissibility of Abortion in Ja'fari Jurisprudence

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Abstract

God has given all human beings the right to life. The abortion is a complex issue; Considering the medical and biological sciences, the fetus has a human genome and is considered human being. Child's right to life is the right of the woman to choose the way of life and basically to choose the method of motherhood in the course of her life. This study investigated the basics of permissibility and impermissibility of abortion in Ja'fari jurisprudence with a descriptive-analytical method based on library and documentary information. The findings showed that there are strong arguments regarding the book, tradition, rationality and consensus regarding the impermissibility of Ja'fari jurisprudence; In some cases, abortion is permissible according to some rules.

Keywords: Abortion, Protection of Mother's Life, Ja'fari Jurisprudence

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Introduction

Abortion is one of the crimes whose black statistics and figures is more hidden than many other crimes. It is considered a criminal offense in Iran's legal system, and punishments are provided for the perpetrators and accomplices. It is also one of the most important and controversial issues in various scientific, social and cultural circles of the country, but less is written or spoken about it. In today's world, the abortion is considered as one of the problems of all countries. Its spread beyond the conventional limit can be considered as a result of the new civilization and the scientific, industrial and social advances of the present age. Absolute freedom for abortion is also reprehensible and against Sharia, and of course its absolute prohibition should be examined with much thought. All over the world, the problems and issues of abortion are related to the fact that the relevant laws do not correspond to what many people actually do. Issues and problems related to abortion are complicated. Most of these difficulties are classified under

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moral, legal, social and medical problems. Today's society is more concerned about the happiness of human beings and their enjoyment of human rights and dignity. Abortion is a long-standing issue that has been forgotten by most of the countries during the last few centuries.

Regarding the abortion, the right of another person called "the unborn child" is considered because when the embryo of the unborn child is contracted, the unborn child is considered as a person and has certain rights, and one of the rights is the right to life. Violation of the rights of others cannot be analyzed and corrected based on the theory of free will, and violation of the rights of the fetus cannot be corrected with this theory and cannot be destroyed. In addition, those who say: "if the mother becomes pregnant unintentionally, she can abort the fetus and no sin or crime has been committed in this assumption", are wrong. It is not compatible with the foundations of Islamic law and reason, and it is a weak and baseless ruling; As a reason and argument to prove and correct abortion, it is also a kind of justification for the wrong practice of abortion. In some pregnancies, it can be said that they were unwanted, but if you look carefully, in principle, the relationship and intercourse between a man and a woman was done with their own free will. In Islamic law, the realization of responsibility is not only in the acts under the absolute discretion; Even the crime of wrongdoing or the work done out of tolerance and negligence will have civil and criminal liability. Like if someone commits a murder by mistake or causes financial destruction. Therefore, the realization of responsibility is not always associated with optional actions; A crime that is committed with free will have a heavy punishment. However, the punishment without authority and intention will have a lighter punishment (Hosseini Moghadam, 2007).

Abortion is one of the most important social problems and one of the controversial topics in criminal law today. According to the multiple components involved in abortion regulations in each country, different procedures can be distinguished in the world. Most countries have had different approaches to the issue of abortion at different times. Social developments and women's participation in the socio-economic field with a feminist perspective have led to the incompatibility of theoretical and practical aspects, and women have abortions regardless of criminal laws. Legal aspects of abortion can include threats to the mother's life, fetal disorders, and sexual assault.

Review of Literature

Bahadori (2018) in his study entitled "The Legal Criminal Policy of Iran's Legal System Regarding Abortion", stated that the crimes (whether intentional or unintentional) are only possible against the physical integrity of natural persons. Therefore, destroying all or part of the rights of natural persons is not considered a crime. To describe a person, the person in question must be alive, because crimes committed before the beginning of life are not called crimes against humans. Such crimes are referred to as crimes against the fetus, and after the end of a person's life, crimes against him/her can be prosecuted and punished under the title of crimes against corpses. The approval of the Islamic Penal Law in 2013 and the subsequent approval of the Third Party Insurance Law caused general changes regarding the provisions regarding abortion, including the permissibility or impermissibility of abortion in the penal system of the country, the punishment for abortion and retribution for its perpetrator under conditions and regulations regarding the dowry of the fetus.

Emami and Qashlaq et al. (2017) in a research entitled "Applicable Analysis of The Jurisprudential Rule of Urgency in The Issue of Permissibility of Abortion", stated that according to criminal laws, abortion is considered a crime in most cases and in very rare and exceptional cases, this practice is considered permissible. One of these cases is the permissibility of abortion based on the jurisprudential rule of

emergency. The emergency of the mother to save her life causes abortion to be permissible. The emergency rule indicates the validity of such a state for the validity of abortion; Like the famous hadith of the Prophet known as Hadith Raaf, which is in the position of removing the ruling from the obligees in special condition. Therefore, the purpose of the current research was to analyze the practical jurisprudence rule of emergency in the issue of abortion permission. This research was practical in terms of purpose, which was carried out by content analysis method. Documentary and library methods were used in the research and the analysis of the obtained information was qualitative and based on the researcher's inference from Quranic sources and jurisprudence and legal texts. Therefore, the information was collected by means of library and documentary tools. It was concluded that Iran's law allows abortion in cases of necessity before the birth of the soul (month four).

Alipour Garmi (2017) in a research entitled "Defective Abortion After Month Four from The Perspective of Ja'fari Jurisprudence and The Subject Law of Iran" stated that abortion of defective fetus is one of the controversial cases that the Islamic Jurisprudence Assembly has allowed if he/she is less than four months old. According to detailed medical research and examinations if it is proven that the fetus is born with a congenital defect and cannot be cured and causes a painful life for himself/ herself and the family, it is permissible to abort it upon the request of the parents. Abortion is one of the most common issues in different societies, including in our country. For this reason, different laws regarding abortion have been established in different countries, according to the views of the schools of thought. From the point of view of the Ja'fari Jurisprudence, the fetus is a respectable being, and its abortion is prohibited and illegitimate at any stage, except in the cases that are recognized as secondary. To him, the life of the fetus has two basic stages, from the beginning of the coagulation of the Zygote until the time of the breath of the soul and from the time of the breath of the soul until the time of birth. In the first stage, since the fetus has vegetative life and is not a real human being, it is not considered murder, but for many other reasons, its abortion is forbidden and illegitimate and deserves punishment and payment of Diya.

Abdol Tajdini (2017) in a research entitled "Basics and Cases of Permissibility of Abortion in Ja'fari Jurisprudence and Iran Law" stated that basically, the abortion at any stage of the fetus, is prohibited and criminalized and the perpetrator is sentenced to the punishments, and of course the law allows abortion in exceptional cases. The rule of Sharia is an authoritative rule that people cannot compromise against it. In exceptional cases, due to the necessity, it is possible to allow abortion in the conflict between the two prohibitions (mother's death and abortion before four months old). The abortion has been widespread among humans from long time ago, and in the civilized world today, it is considered a common harm and has become relatively common due to various social, moral, and economic motives.

Conceptualization in the Word

Fetus in the literal sense is anything covered and hidden from view until it is in the mother's womb (Razmsaz, 2000: 29). It is also used in jurisprudence and criminal law in this sense; The origin of fetal life is considered to be the beginning of the Zygote establishment and the pregnancy of the mother and its end is considered to be the moment of the birth of the child (Pad, 1989, 67). In general, a young child that is in the mother's womb and has not been born is called a fetus (Amid, Hassan, quoted by Mehdi Soudmand, 2008: 5). Abortion literally means to fall, to drop, to come out, to disappear, and to occur. In one of the definitions based on Moin Encyclopedic Dictionary, the abortion is a word with an Arabic root, which like other Arabic terms, found its way into the Persian language and is derived from the Arabic infinitive fall (Moin, 1985: 30).

Abortion in the literal sense means premature delivery of the baby (Dehkhoda, 1802; 1981). Abortion is the separation of the fetus from the mother's womb before the natural time and without any necessity (Meftah Mohammad Aqzit, 2006: 213 Abortion). It has synonyms such as scrapping, design, and dropping a dead child (Ibn Manzoor, Lasan al-Arab, Razi, Mukhtar al-Sahah). The Arabic language assembly has also used the term abortion to abort the fetus during the fourth to the seventh month of pregnancy. Abortion is used in Farsi to mean snow, dew that sounds as snow, a fire that rises from a flint and does not burn, and an unfinished child. Abortion means dropping the fetus from the mother's womb before the end of the natural pregnancy period (Gudarzi, quoted by Tahereh Farrokhi, 1996: 332).

In the Term of Jurists (Ulama)

Abortion in the terminology of jurists has the same sense meaning giving birth before the appointed time and deformed. However, the jurists have made a distinction between involuntary abortion and dropping baby through someone else's action; This means that abortion caused by a person's act is considered a crime and punishable in contrast to the first case. In many cases, instead of the word abortion, they have used its synonyms such as induction, plan, and dropping a dead child, which all mean abortion (Razi, 1988: 437).

In Medical Science

In the dictionary of medical terms, abortion is the exit of pregnancy products before the end of pregnancy and before the ability to live independently. Since the fetus is not able to survive in the mother's womb before six months, so if it comes out of the womb before six months of pregnancy, and this is considered abortion. If the fetus is born after six months of pregnancy, although it is viable, its ability to survive is low due to premature birth, and most cases of abortion are performed in the first twelve weeks of pregnancy (listed on the website: Www.sehha.com). Abortion can also be defined medically as expulsion of a fetus before the twenty-eighth week of pregnancy, and is considered premature birth (Clayton, 1980: 133). From a medical point of view, abortion is the intentional, artificial or spontaneous expulsion of a baby before the natural term, and before the 20th week of pregnancy, when the fetus does not have the power to live (Hakar, 2004, p. 357). The World Health Assembly has defined abortion as follows: the spontaneous or intentional termination of pregnancy from the first day of menstruation to the 20th week (Mohagheq Damad, 1994: 41). Dr. Wasfi Mohammad Ali's opinion about abortion from a medical point of view is:

1. Emptying the uterus of the fetus in the first third month of pregnancy.
2. Emptying the uterus of the fetus, whose age is more than the three-month-old and less than the seven-month-old.
3. Premature birth, emptying the uterus of the fetus, which is from the seventh month of pregnancy to before the end of the natural period of pregnancy (Wasfi Mohammad Ali, 1970: 406). According to the Shari'i physician, abortion is the state of pregnancy before the end of the natural period of pregnancy at any stage (Louis Shaman, 172: 1773).

In the Islamic Penal Code

Jurists do not agree on abortion; The legislators of each country, according to their criminal law system, have different opinions on the definition of abortion. Today, there is no specific or comprehensive definition and prevention of abortion in the laws of Iraq and Iran, and this matter has been left to the jurisprudence; However according to the legal articles, abortion can be defined as follows.

The act of unnatural termination of pregnancy intentionally before the natural term of pregnancy, without any necessity and by any means (Zari Khalil Mahmoud, 1977, p. 356); Termination of

pregnancy before the normal due date (Fawzia Abdul Sattar, 1982, p. 491). Legally speaking, abortion means doing any criminal act that will stop the period of fetal development and expel it before its natural term.

Professor Garo defines it as the deliberate and premature expulsion of giving birth. Garceau, another French jurist, defined abortion as interrupting the natural period of pregnancy.

Regarding the definition of abortion, Dr. Mustafa Ebrahim Al-Zalmi says: It is stopping the natural period of pregnancy that causes the carry of baby to be lost (Mustafa Ebrahim Zalmi, 2011: 8).

In a clear and comprehensive definition, abortion is the involuntarily or mediated expulsion of a fetus, with the knowledge of its existence and with the intention of abortion without legal authorization.

Basics of Impermissibility of Abortion

A: The book (Quran)

Several reasons can be cited to prove the sanctity of abortion, the first reason is the sanctity of the Quranic verses, which indicate the sanctity of killing a human being. The verses cited in this topic are considered as general reasons, because the topic is the sanctity of killing a human being, and adapting a fetus to a human being is difficult in the opinion of some ulama. Here are some verses:

1- "And don't kill the soul that is forbidden by Allah unless it is justified" (For example, don't kill as revenge), (An'am, verse 151).

Therefore, if a soul is applied to a fetus, even before the birth of a soul, God has forbidden killing it unjustly and intentionally. Of course, jurists differ in applying the word soul to the fetus. Some consider the verse to include an embryo that is the totality of creation and the spirit has been breathed into it and some others claim that the fetus is a potential soul from the beginning of the formation of the Zygote, and after forty days it has organs such as head and hands, and it moves before the age of four months, that is, before the birth of the soul but the mother does not feel these movements because the fetus is small in size and floats inside the uterine sac. In addition, today there are advanced devices that can hear the heartbeat of the fetus in the fifth week or observe the movement of the fetus even before the fifth week. Some believe that the embryo can move from the beginning of Zygote formation (Mohsani, 2003, p. 60). According to what has been mentioned, it is not unlikely that the verse includes the stage before the birth of the soul, and as a result, abortion before the birth of the soul can be regarded as sanctity. This verse forbids the killing of a respectable soul, unless it is justified. It means that the party deserves to be killed, as if he/she killed someone.

Respecting human blood and sanctity of murder are among the issues on which all human laws are unanimous, they consider it one of the biggest sins (Makarem Shirazi et al., 1994, p. 105).

2- "And for this reason, we wrote and decreed on Bani Israel that whoever killed a human except for self-revenge or for the corruption he/she had done on the earth, it is as if he/she (the killer) killed all the people". Human is part of one truth. The same humanity that is in many people is also in one person, and as it is in one person, it is also in all. By creating these people and multiplying this generation, God wanted the fact that she does not have much talent for life. Destroying a person through murder is corruption in creation and invalidating the divine purpose in humanity, which is to survive by multiplying people (Tabatabai, 2007, p. 481). Tips that can be used from the verse:

1- Killing a person is disregarding the status of humanity.

2- Killing one person is depriving all people of security.

3- The murder of one person is the basis for the murder of all." (Qaraati, 1995, p. 72).

3- "And do not kill your children out of fear of poverty and hardship, we are the ones who provide for them and you, indeed killing them is a great sin".

The issue of prohibition of infanticide is repeatedly mentioned in the Quran, this heinous act is one of the examples of murder. Therefore, it is specially mentioned that it is one of the ugliest examples of cruelty and hardness of heart. The Arabs lived in a land that suffered a lot of famine, and for this reason, when they saw the signs of famine, the first thing they did was kill their children, so to speak, to preserve their dignity and respect (Tabatabai, 2007, p. 51).

The messages of the verse: 1- A child has the right to life and parents should not take this right away from him/her. 2- Poverty affects even the strongest human emotions. 3- Fear of losses and poverty is not a license to sin and ignore the rights of others. 4- Killing children and abortion are sins and crimes (Qaraati, 1995, p. 51). In today's world, where everyone claims science and technology, child killing has appeared in another form (abortion) due to the fear of livelihood and well-being of life.

B: Tradition

In many hadiths, the issue of the sanctity of abortion has been specifically raised, in which abortion is forbidden at any stage of the fetal stages. The citation and interpretation of the hadiths can be examined in several ways.

1- Narratives Indicating Priority

In many hadiths, the sanctity of destroying the Zygote after its conception has been mentioned, if destroying the Zygote is haram (forbidden), the first method of abortion will be haram. Including:

1) I asked Imam Reza (pbuh) "if a woman is afraid of pregnancy, is it permissible for her to take medicine and abort what she has in her stomach?". He said: No (it is not permissible). Ishaq bin Ammar says "I told Imam that he is not more than a Zygote, He replied: "The beginning of human creation is the Zygote". It means there is no difference. In this narration, Ishaq bin Ammar raises a suspicion that a short period of time has passed since the woman's pregnancy and the fetus is in the first stage of fetal development. In response, Imam declares abortion prohibited and haram. According to this story, it is clear that abortion is not permissible (Makarem Shirazi, 1422, p. 288).

2) I told Imam Sadiq (pbuh) that I bought a maidservant and she did not menstruate because of a blood disease or wind in the womb, she took medicine for treatment and she menstruated on the same day. Is it permissible for the owner of a maidservant to have intercourse in this case, even though I don't know if this blood loss is due to pregnancy or something else!? Imam said: "do not do it". I said that one month has passed since the period of menstruation and if the lack of menstruation was due to pregnancy, it will be like a Zygote that has been separated from a man. Imam said that after the Zygote is placed in the womb, it is separated, but when the Zygote is placed outside the womb, nothing is created from it. So, even if a month has passed since her menses, don not give medicine to that maidservant until the time of her menses comes.

2- Narratives Indicating the Delay of Stoning

It is said in the narratives that if a pregnant woman commits an act against chastity, the execution of the sentence of stoning will be delayed until the birth of the baby and the end of the breastfeeding period.

Imam Ali (pbuh) was asked about a pregnant woman who committed adultery, and He said that the stoning will be delayed until the time of delivery and after breastfeeding period of the child. According to this narration, one can clearly understand the necessity of preserving the life of the fetus (Al-Hurr al-Amili, 1412, p.106)

3-Narratives Indicating the Mother's Deprivation from Inheritance

According to the hadiths, if a mother aborts her fetus, she will not inherit from the Diya of the fetus because she killed her child. Abi Ubaidah narrates from Imam Ja'far al-Sadiq (pbuh) that a woman aborted by taking medicine without her husband's knowledge. Imam said: "The mother does not inherit from the Diya of the fetus because she is the murderer of the fetus". As the jurists say that one of the obstacles to inheritance is murder, that is, if someone commits a murder, he/she does not inherit from the victim. Killing a fetus is murder, and the murderer does not inherit from the fetus. Since in our traditions, the deprivation of the mother from Diya of the aborted fetus is emphasized, it is concluded that abortion is considered as an example of murder.

C- Rationality

Rationality considers abortion to be one of the worst injustices. According to the ugliness of oppression, according to rationality, abortion is prohibited and blamed, because doing it is actually an attack on someone who has no the power to defend himself/herself and this type of violation is intellectually haram and prohibited. Therefore, in most rational societies, abortion is prohibited and this indicates the ugliness of this practice. The reasons that can be listed for considering this act as ugly are the following.

- 1- The fact that the fetus is the origin of the human being and from four and a half months onwards it also acquires the shape and image of a human being; Therefore, it has gained special dignity and respect and its abortion carries the suspicion of human murder.
- 2- The desire to continue the generation is a natural desire, and abortion is an action against this desire, therefore it is considered a bad thing.
- 3- The freedom of abortion will lead to sexual immorality and illicit relationships, and its prohibition will guarantee the moral strength of the family.
- 4- Abortion, especially in the past, was not always successful, and as a result, sometimes the procedures carried out caused the disability of the child (Vatani, 2004, p. 24).

D: Consensus

Shia and Sunni scholars believe that abortion at any stage is the reason for the obligation of Diya. But since the Diya is against the crime, it is concluded that abortion is a crime and since committing a crime is haram according to the jurists, abortion will also be haram (Mohaghegh Damad, 2010, p. 223). Proof of Diya for an aborted fetus, as a general rule, cannot always be placed against the crime, because in some cases the Diya is fixed while it is not against the crime. Like the case where the murder is a pure mistake and the Diya is proved, but it does not prove the crime, or vice versa, someone commits a crime, but the Diya is not obligated. Like a person who kills a disbeliever in covenants, his work is forbidden, but no Diya is required for him. Therefore, the claimed consensus can be violated simply by the obligation of Diya. According to the four reasons that have been presented regarding the sanctity of abortion, (whether before or after the conception of the soul), there is no doubt about the sanctity of abortion. Therefore, from the beginning of formation, the fetus has an "ontological" status that distinguishes him as a human being (Vahid Dastjardi, 2012, p. 87). Therefore, from the moment of coagulation of the Zygote, the fetus has a real and potential human personality. According to this view, abortion means denying the right to life of an unborn being. Therefore, abortion is prohibited at any stage of the fetus's life; Because the act of abortion is actually the destruction of a living being.

Basics of Permissibility of Abortion

The first paragraph: Among the evidences, confrontation is one of the reasons for the permissibility of killing the fetus by the mother.

Whenever we are faced with two conflicting duties, one is to save one's own life and the other is to save the life of the fetus, and it is not possible to do both of them, then what is the duty? Here it is necessary to say something about the principle of the rule. Two mandatory Shariah rulings that are intertwined with each other and the obligee does not have the power to comply with both of them include two conditions as follows. First: they are equal in all respects; In which case the two judgments are balanced. Here, the most of jurists are inclined to ignore the two confrontation sentences, and a group is inclined to choose one, and the one who is obliged to do each one, is rationally free in decision. Like two people who are equal in all respects and points are both drowning and it is possible to save both of them. Here, it is logically obligatory to save everyone we can (Muzaffar, 1410, p. 186). Second: One of the two concurrent rulings is superior to the other in some respects; Here the ruling that is more important is preferred and will be followed. One of the two concurrent obligations should be superior to the other, such as the basis of Islam and the defense of religion and Islam versus the preservation of life and property; The preservation of Islam is first and foremost.

However, there are two theories among the jurists regarding the issue of abortion in confrontation:

A: Abortion is impermissible.

According to most Shia jurists, since there is no preference between the life of the mother and the fetus, it is not permissible to end the pregnancy and endanger the life of the fetus; In this case, one must wait until one of the mother or the fetus dies and the other survives (Mohaghegh Damad, 2010, p. 224)..

If both the woman and the fetus are alive and there is fear and danger in the survival of the pregnancy, then it seems that we should wait until God decides (Takes one's soul). To Shariah, there is no preference between the mother and the fetus, and credit matters are not considered as Shariah reasons and have no validity (Najafi, 1997, p. 378). If both mother and fetus are alive and there is fear for their lives, we should wait until God decrees that one of them dies.

B: Abortion is permissible

On the other hand, some jurists believe that if there is a conflict between preserving the life of the mother and preserving the life of the fetus, the life of the mother takes precedence over preserving the fetus and abortion is permissible. Here are some comments:

1- Ayatollah Khomei: He believes that others cannot choose between the mother and the fetus, but the mother can choose her own life and do something that will cause the death of the fetus and save her own life; Because on the one hand, preserving the life of the fetus causes distress and embarrassment to the mother, thus she can abort the fetus. On the other hand, she is faced with two concurrent obligations that it is not possible to fulfill both of them; One is to save her own life and the other is to save the life of the fetus. In this case, she has the right to comply with one of these two obligations. He believes that in the assumption of confrontation, the mother should prefer her life over the life of the fetus.

Performing this duty for the mother (preservation of her own life) is dependent on performing a forbidden prelude, that is the killing of the fetus. Thus, the confrontation between doing the obligatory thing and the Haram which has the aspect of prelude, has been established. That is, she prefers saving her own life over the sanctity of killing a fetus, and this is a rule that is implemented in many matters (Khomei, 1998, p. 317).

As he answered the question of someone who asked: "What are the cases of abortion?" He answered: "If it is after inspiration of the soul and the survival of the fetus causes the death of the mother, abortion is permissible (Khomei, 1416, p. 332).

2-Imam Khomeini: "If there is knowledge of the death of mother and possibility of the fetus's survival by not losing the fetus, is it permissible to lose the potentially viable fetus to preserve the mother's soul, which will definitely survive if the fetus is lost?". If the ruling is permissible, state the ruling of the form of fear as well. Answer: In the case mentioned, it is permissible, and in the case of fear, it is a problem, but impermissible is preferable (Mehrpour, 1992, p. 228).

After inspiration of the soul, if it is a matter of saving one of them, it is permissible to offer the preservation of the mother's life over the preservation of the fetus!? If there is knowledge of the loss of both and the possibility of keeping one of the two, is it part of the lottery, or is it not permissible to lose one of the two even in the form of a lottery in the case of knowledge, like in the case of fear?

Answer: If it is possible, there is no preference between keeping one of them and it is not a lottery, and if there is knowledge of the loss of both and it is possible to preserve one of the two, it is a lottery" (Mehrpour, 1992, p. 228).

3- Makarem Shirazi: "After inspiration of the soul, if it is known that the mother and the fetus will die, is abortion permissible?". Answer: Assuming that if the mother remains the same, both will die, the mother's life can be saved by abortion (Makarem Shirazi, 2001, p. 459).

A woman who is in the seventh month of pregnancy, needs urgent surgery due to an accident. She requires anesthesia, but the child dies due to the anesthesia (we have certain knowledge about the death of the child). Is it permissible for the mother to undergo surgery? Answer: If the mother's life is in danger and the only way is surgery and anesthesia, there is no problem" (Makarem Shirazi, 2001, p. 459).

4- Ayatollah Khoei: "A woman suffering from a dangerous disease such as a severe heart disease, if the pregnancy is a threat to her life, is abortion permissible?"

Answer: If the survival of the pregnancy is a danger to the mother's life, abortion is permissible, but she must pay the Diya (Khoei, 1992, p. 309).

If a pregnant woman wants to abort her fetus and live, or if she wants to die and her fetus is alive, is abortion permissible, what is the doctor's duty? Is the doctor's opinion valid during the mentioned period and is the Diya obligatory?

Answer: Yes, in this case, abortion is permissible and the doctors' opinion is valid, as long as there is no trust in their mistakes, and the Diya is obligatory on the protector (Khoei, 1992, p. 309).

Among the two presented theories, the second theory, which states that in case of confrontation, abortion is permissible and preservation of the mother's life comes first, has better stability and strength. According to the mentioned theory:

1- When there is confrontation between two tasks such as saving the life of the mother and saving the fetus, one should refer to the preferences of confrontation (precedence of more important over important), which is a rational matter.

2- On the assumption that mother is certainly survived and the fetus is the possibly survived, in case of confrontation between the certainty of survival and the possibility of survival, rationally consider the preservation of the certainty of survival before the possibility of survival. In the topic of discussion, as Imam Khomeini said in response to a question, probable abortion will be permissible in contrast to saving the life of the definitely surviving mother.

3- One of the conditions of retribution is that the victim is not the son of the murderer, the father is not retaliated against killing his son (Al-Hurr al-Amili, 1412, p. 4).

There is a difference of opinion among jurists that the word "parent" is descriptive and includes both father and mother. If we accept that the mother is also included under the title of parent, then the mother

will not be retaliated for killing the child; Because just as the father is the cause, origin and root of his child's existence, the mother also has such characteristics. In the topic under discussion (abortion), the mother is the cause, the origin, the root, and the precursor for the fetus. Rationally, in case of confrontation between preserving the life of the mother, which is the primary against the fetus, which is the secondary and preliminary, the ulama rule to preserve the life of the mother, and in this case, they consider abortion as permissible. As Ayatollah Khoei has mentioned this matter.

Second paragraph: Legitimate Defense

Some believe that the mother can abort the fetus in defense of her life (Kharazi, 16). In the issue of the legitimacy of defense, it does not matter if the attack is from an external agent or from an internal agent. Here, the fetus as a guest has endangered the life of the host and exposed her to destruction, the mother can defend and protect her own life by aborting the fetus.

A: Conditions of Defense

1- Necessity of defense: The right of defense is legitimate when it is to the extent of necessity, then neither defense without necessity is legitimate defense, nor necessity is exemplified outside the scope of legitimate defense.

2- Unachievable without danger: it means that there is no other way to escape from danger than committing a crime. Jurists consider escape as one of the examples of legitimate defense.

3- Proportion of attack and defense: one of the important conditions of legitimate defense is that the defense must be proportional to aggression and danger.

In all the mentioned cases, due to caution, it is obligatory to defend from a lower level and reach a more severe level. Thus, if it is repelled by informing and giving a kind of warning, it should be done. If it cannot be repelled except by yelling and frightening threats, the same should be done and satisfied with that. If it is repelled by hand, it should be enough. If it is repelled by a sword, then it is enough. If it is possible to get rid of it by injuring, it should be satisfied with that. If repelling is not possible except by killing, it is permissible to use any lethal means, and of course it is obligatory to follow the order if it is possible and there is an opportunity and there is no fear of the attacker being overpowered. If by observing the order, there is fear of death and the thief's victory, the order is not obligatory (Imam Khomeini, 2004, p. 448).

One of the aspects of permissibility of abortion, which is harmful to the mother, is the existence of some narrations that indicate the permissibility of self-defense, even if it leads to the murder of another.

The first narrative: I asked Imam Sadiq (pbuh) about a man who was riding an animal and ran into a person who was walking and was about to run over him. The pedestrian stopped the animal and as a result, the rider fell from the animal and was injured. Imam said that the person who had driven the animal away was not wrong because he had driven it away from himself (Al-Hurr al-Amili, 1412, p. 58).

The second narrative: I asked Imam Baqir (pbuh) about a man who had killed a madman. Imam said that if madman intended to kill him and he rejected madman from himself, none of the Qisas and Diya is his responsibility, and his Diya will be given to his heirs from the Muslim treasury (Al-Hurr al-Amili, 1412, p. 71).

The two mentioned narrations are used in such a way that it is obligatory to defend one's self, and in case of defense, if someone is killed, his/her blood is wasted. According to the topic of discussion, if the presence of the fetus endangers the mother's life, abortion is permissible. However, it should be noted that the defense must be proportional to the type of attack that happened, if there is no proportionality between the attack and the damage prevention, it is not a legitimate defense and the commit an abortion

is not permissible. As it was emphasized in the response of the jurists that abortion is permissible if there is a certain risk of death (diagnosis of this issue is the responsibility of the expert). According to the legal defense ruling, abortion can be considered permissible if it poses a risk to the mother's health.

B: The Rule of Negation of Difficulty and Embarrassment

If the survival of the fetus requires an organ defect or an intolerable disease for the mother and it is not possible to keep the fetus alive outside the womb, abortion can be permissible only in the stage before inspiration of the soul; After inspiration of the soul, since this rule applies to all human beings, it cannot be cited for the benefit of some (the mother) and the detriment of others (the fetus), (Hosseini Sistani, 407). In this way, the permissibility of abortion will be a secondary ruling, which takes precedence over the primary and absolute ruling of the sanctity of abortion, and will be fulfilled by Sharia law.

C: Harmless Rule

In cases which the survival of the fetus causes significant loss of life and threatens the mother's health in such a way that it cannot be tolerated rationally, abortion is permissible to ward off the harm. However, in the stage after inspiration of the soul, this rule does not find a way, because it is in conflict with the implementation of the harmless rule, and it is not possible to prefer one over the other.

The third paragraph: The principle of innocence

Regarding the principle of innocence, in the case of a conflict between the sanctity of abortion and the necessity of self-preservation, this principle can be used in cases which it does not lead to murder. There is another way for the mother to have an abortion due to birth defect or the fetus caused by sexual assault; She can entrust the custody of the child to someone else, because taking care of the child is not the responsibility of the mother.

Regardless of the recent debates regarding abortion after inspiration of the soul, the Holy Sharia of Islam has a middle view about the rights of fetus; It is not agreed on the unconditional freedom of abortion and also does not rule on its absolute sanctity. Honoring the fetus in all stages of development, it has prohibited any aggression and harming it, except in the exceptional cases that were mentioned in the previous discussions. In this view, there is consensus on the principle of supporting the right to life of the fetus as a being that has a human personality and abortion is permissible only in limited and special cases. Therefore, abortion is permissible to preserve the life of the mother before the soul is inspiration, and after the soul is inspiration, with a difference in its basics.

Conclusion

Abortion is the expulsion of a pregnancy before the natural birth date in such a way that it is not alive. It is one of the issues that have faced different approaches throughout history. Abortion is done for reasons such as family planning, concealing illicit relationships, avoiding unwanted pregnancy, woman pregnancy in the absence of the man, being raped, and women not being fully familiar with the means of preventing pregnancy or the lack of effectiveness of the related means, etc. According to Ja'fari jurisprudence, a fetus cannot be considered a complete human being before the soul is inspiration, however the fetus is a respectable being and abortion is not permissible except in cases of necessity, and after the soul has been come, no necessity justifies killing it. Abortion has been criminalized in Iran's legal system before the revolution. In the Islamic Penal Code approved in 1925, articles 90 and 91 of the Punishment Law in 1983, and articles 622, 623 and 624 of the Islamic Penal Code approved in 1996 were dedicated to intentional abortion. Abortion is not prohibited and illegal in all condition, but it is permissible and even obligatory in some cases, because the protection of the mother's life requires that the fetus be aborted. Of

course, abortion must be approved by a group of physicians in this matter, so that all human and moral aspects of it would be considered.

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