

## A SHIITE PERSPECTIVE TOWARD ABORTION

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### ABSTRACT

All schools of Islamic jurisprudence regard abortion as wrong and forbidden and allow abortion only before the stage of ensoulment, if the continuation of pregnancy would endanger the mother's life or put her into intolerable difficulties. In this article we describe and assess the viewpoint of Shiite jurisprudence toward abortion.

Using a selected collection of related references, and discussion describes with experts, this article the abortion in Shiite jurisprudence.

In the Shiite jurisprudence, the ensoulment occurs after about 4 months. Before this stage, all Shiite authorities regard abortion as forbidden (Haram) unless if continuing the pregnancy would put the mother's life in real danger or will be intolerable for her. But after that, they regard abortion as Haram, unless in conditions in which continuing the pregnancy results in dying of both mother and fetus, but abortion will save the life of mother. However, the Shiite authorities have not accepted to legitimate abortion in unwanted pregnancies and even in pregnancies resulted from adultery (Zina) or rape.

The debate over abortion is still controversial as ever. There are some important and notable related Fatwas that make jurisprudential basis for some new and problem solving legal acts, showing the inherent and valuable flexibility of the Shiite jurisprudence in dealing with such important issues. Some related issues, such as the priority of saving the life of mother after ensoulment can be referred to jurisprudential authorities for more assessment.

**Key Words:** Abortion, Islam, Shiite, Jurisprudence, Iran

### INTRODUCTION

All schools of Islamic jurisprudence regard abortion as wrong and forbidden. On the other hand, they allow abortion when physicians declare with reasonable certainty that the continuation of pregnancy will endanger the woman's life (1-4).

Islamic schools do not agree at all with those who say that a woman has full control over her body. Islam considers our bodies as a trust, which we have to preserve and maintain. It also confirms that the fetus is the creation of Almighty God. No one, not even the mother, has the right to make decision about his life, unless its presence threatens the life of the mother (2).

However, different schools of Islamic jurisprudence hold different views on whether any other reasons for abortion are permitted, and at which stage of pregnancy, if so. For example, among Sunni schools, the Hanafi school (prevalent in Turkey, the Middle East and, Central Asia), permitted abortion until the end of the fourth months. According to them, a pregnant woman could have an abortion without her husband's permission, but she should have reasonable grounds for this act. One reason, which was mentioned frequently, was the presence of a nursing infant. A new pregnancy put an upper limit on lactation, and the jurists believed that if the mother could not be replaced by a wet-nurse, the

infant would die. The Shafei School (dominant in Southeast Asia, southern Arabia and parts of East Africa) allows abortions to be performed up to day 120. For the Maliki School (prevalent in North and Black Africa) an abortion is permissible with the consent of both parents up to day of 40; it is no longer allowed after that. For the Hanbali School (predominant in Saudi Arabia and United Arabic Emirates), abortions are principally prohibited from day 40 onward (3).

Shiite jurisprudence (one of the large Islamic jurisprudence schools) makes the basis or has great influences on the governmental rules or public attitudes and behaviors regarding public health issues in pregnancy and abortion, in a large part of the world (Iran, most of Iraq, and large parts of Lebanon, Syria, Afghanistan, and some countries in the south of the Persian gulf). So, any global, regional, and in the above mentioned countries, national health planning regarding these issue needs to understand the Shiite perspective.

Abortion is of special importance because of its role in maternal mortality rate and because of the differences between the real conditions of the life in our society and the rules that are based on some jurisprudential principles, resulting in many cases of illegal and unsafe abortions each year and also its influences on decisions of the health sector

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regarding that which prenatal diagnostic tests should be included in public health programs (5-9). In this article we describe and assess the viewpoint of Shiite jurisprudence toward abortion. Of course there are numerous Shiite schools; however, we will describe the main and dominant one: 12-Imam (Jafari) Shiite school.

#### MATERIALS AND METHODS

This article offers explanation of the literature on abortion in Shiite jurisprudence. I examined related books, articles, Fatwas and websites, collected over a year through searches of databases such as Medline and Iran Medex and search engines such as Google and Yahoo, in addition to Fatwas requested from great Shiite authorities (great Ayatollahs) and references recommended by experts, and also related rules and guidelines in Islamic Republic of Iran. Search terms included Abortion, Miscarriage, Prenatal diagnosis, Islam, Islamic, and Shiite.

A selected collection of above mentioned references based on their relevances to the subject of this article were used for this purpose.

#### RESULTS

As the most important source for Islamic jurisprudence, the holy Qur'an does not explicitly mention abortion. But it gives a very high priority to the sanctity of life:

"Whosoever has spared the life of a soul, it is as though he has spared the life of all people. Whosoever has killed a soul, it is as though he has murdered all of mankind." 5: 32

The holy Qur'an makes it clear that a child should not be killed because the parents fear that they will not be able to support him or her. They should trust Allah that look after things:

"Kill not your offspring for fear of poverty; it is we who provide for them and for you. Surely, killing them is a great sin." 17:32 (4)

In the last 3 decades, because of the commitment of Iranian government to adaptation of the law to the Shiite jurisprudic rules, the religious authorities paid a great deal of attention to issue practicable Fatwas regarding important topics such as abortion. In the Shiite jurisprudence, the ensoulment (breathing the divine soul into the fetus) occurs after about 4 months (1). Before this stage, all Shiite authorities regard abortion as forbidden (Haram) unless if continuing the pregnancy would put the mother's life in real danger or will be intolerable for her. But after that, they regard abortion as Haram, even if it endangers the mother's life, unless in conditions in which continuing the pregnancy results in dying of both mother and fetus, but abortion will save the life of mother (10-14). In occasions in which there is

equal danger for the mother and fetus, and one of them will certainly survive, it has been said that the pregnancy should be continued till one of them dies and another one remains alive (13). If the danger is not equal for mother and fetus, the physician should save the one who has more chance to survive (10).

Regarding the stages before ensoulment, however, the abortion is permitted if its consequences, including growing the fetus or birth of a child, were intolerable for the parents (put them into Haraj). So, some genetic anomalies as major Thalassemia or Hemophilia have been accepted as permitted reasons for abortion (10). Based on these Fatwas, the act of abortion therapy has been approved in Iran's parliament and the health deputy of the ministry of health, has proposed a related guideline in which issued a detailed list as the indications for abortion, after confirmation by a committee of experts (15).

However, the Shiite authorities have not accepted to legitimate abortion in unwanted pregnancies and even in pregnancies resulted from adultery (Zina) or rape (10-14).

Whatever the cause of abortion, Islamic jurists insist that the payment of blood money (Diya) according to related rules is incumbent (1, 10-14).

#### DISCUSSION

The debate over abortion is still controversial as ever. Of course this uncertainty does not limit to Islamic countries. However, in such countries, especially in Iran, jurisprudence plays an important role in finding proper solutions. The importance of this issue is partly because of the apparent differences that exist between the real conditions of the life in our society, and the rules that are based on some jurisprudic principles (16). Each year, there are many cases of maternal mortality because of illegal abortions in Iran(8) , so, there is a need to supply solutions to women who for different reasons wish to abort and at the same time enact laws that would not contradict Islamic principles. Of course, there are some important and notable related Fatwas that make a jurisprudic base for approval of some new and problem solving acts by the Islamic parliament (15).

Accepting the major chromosomal anomalies as approved indications for abortion before ensoulment shows the inherent and valuable flexibility of the Shiite jurisprudence in dealing with such important issues, and it seems that this valuable flexibility can be used for extending the permitted indications of abortion before 4 months to some other problematic topics, probably such as inability of the family or society in supplying future children. Of course, the final decision has to be made by jurisprudic authorities, based on

related specialized discussions.

On the other hand, the priority of saving the life of mother, when there is equal risk for mother and fetus, or even when the fetus is at greater risk, after ensoulment (4months) can be referred to jurisprudential authorities for more assessment and decision making.

Even though the Shiite authorities have not accepted the rape as an indication for abortion even before 4 months; in some countries in which the problem occurred in extended dimensions, Islamic authorities issued Fatwas allowing women to abort, for example, It is reported that Bosnian women raped by the Serbian army were issued a fatwa

allowing them to abort, of course, were urged to complete the abortion before the 120 day. A similar fatwa was issued in Algeria (4). In Egypt (where abortion is illegal) in June 2004, Muhammad Saeed Tantawi, the Grand Sheikh of Al Azhar, approved a draft law allowing women to abort a pregnancy that was the result of rape. His decision caused controversy among other Muslim scholars: The mufti of Egypt, Ali Gomaa, said Tantawi's decision was wrong and violated the Qur'an's injunction that forbids killing innocent souls(4). This demonstrates that Islamic law has the valuable flexibility to be compassionate in appropriate circumstances.

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