

Therapeutic Abortion: Ensuring the Health and Survival of Mothers

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Siqt janin (abortion) is defined as the intentional or unintentional action that is performed on a pregnant woman, which compromises the life or the foetal development of an unborn baby, such that it dies or cannot continue living out of the uterus. Due to scientific and technological advancement in medicine, the controversy of therapeutic abortion is very much at the forefront of modern discussions. It is also a matter of dispute amongst Muslim jurists. Initial positions and rulings of jurists differ with regards to abortion in the first four months of pregnancy, which is prior to ensoulment (*nafkh ruh*). Although there is a difference in opinion among Sunni jurists regarding abortion before ensoulment, there is a consensus that under normal circumstances, after this critical juncture, it is forbidden. All Shi'i jurists, however, deem abortion without due reason, as forbidden regardless of the stage in pregnancy. Even so, most jurists permit the abortion of the foetus prior to ensoulment with the condition that there is substantial danger to expectant mother's health. Moreover, if there is danger to the mother's life, then some consider abortion permissible even after ensoulment.

Keywords: abortion, spiritual inspiration, *nafkh ruh*, permissibility, prohibition

Introduction

Siqt janin (abortion) is defined as the premature expulsion of the foetus that leads to its termination (Mawsu'ah al-Fiqh 2005, 5:394).

For Muslim jurists, the moment of ensoulment (*nafkh ruh*) during

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pregnancy is a critical juncture for Islamic decrees regarding abortion. In the first four months of pregnancy, i.e., prior to ensoulment, the foetus is in the early stages of inceptive formation. After this period, the mother can feel the baby move and kick. It is from this stage onwards that the differences in opinion emerge amongst Muslim jurists.

Most Shi'i and Sunni jurists consider abortion permissible before ensoulment if the continuation of the pregnancy is dangerous for the health of the mother. However, after ensoulment, abortion is only permissible provided that it poses a threat to the life of the mother. No jurisprudent, Sunni or Shi'i, permits the abortion of an ensouled foetus that does not endanger the life of the mother.

This jurisprudential article is significant in various aspects. Various important principles and factors with regards to the deduction of rulings related to therapeutic abortion will be discussed. Further, issues, including contemporary ones, specific to permissible cases of therapeutic abortion are examined. The study also looks into the evidence and logical reasoning behind permissible cases of therapeutic abortion. A comparison of the views of five Islamic juristic schools has been carried out, and as such, it encompasses the views of jurists in all Islamic periods, both classical and contemporary. Moreover, this research constitutes a comparative study of over 350 well known, authoritative books of jurisprudence, hadiths, and juristic principles in the five schools of law, namely the Shafi'i, Hanbali, Hanafi, Maliki, and Shi'i schools. It also includes other books related to the subject matter.

Terminology

Siqt janin consists of two words: *siqt* and *janin*. *Siqt* is originally an Arabic word that has been employed in Farsi to indicate the expulsion of a premature baby from the mother's uterus. The word is derived from the verbal noun *suqut* which means to occur, fall, or drop (Dehkhoda 1961, 17:173).

In medicine, abortion refers to the premature expulsion of the foetus such that it cannot continue to live. The difference between abortion and premature birth is that the latter refers to the birth of a viable baby (Pad n.d., 63). In jurisprudential terminology, the expulsion of the foetus prior to birth is referred to as an abortion (al-'Aziz 1993, 252).

A *janin* is a blood clot (*'alaqah*) or a mass of flesh (*mudghah*) (Lankarani 2004, 133; Dardir n.d., 4:802). According to Ibn 'Abidin, if a pregnancy ends before the foetus fully matures, it is called *siqt* (al-

Mawsu'ah al-fiqhiyyah al-kuwaytiyyah 1993, 2:64).

In Arabic, an abortion is referred to as *ijhad* and the transitive verb is *ajhada* (Ansari 1994, 393). In *Nihayah fi gharib al-hadith, izlaq* and *ijhad* are employed with the meaning of abortion (Jazari n.d., 32). Some synonyms of *ijhad* include *ilqa'*, *tarh*, *imlas* (al-Siddiqi 2000, 12:173), and *izlaq* (Mawsu'ah al-fiqh 2005, 5:394). Investigation by the author has shown that amongst Sunni jurists, only Shafi'i has used the term *ijhad* (Shafi'i 2005, 2927), although no definition for it has been presented. If a baby is born alive, it is called a *walad*; otherwise, it is called a *siqt*. Regardless, the unborn baby is called a *janin* (al-Siddiqi 2000, 12:172). *Janin* originally refers to anything that is hidden; therefore, as long as the child remains within the uterus of the mother, it is referred to as such (Ibn Hajar n.d., 14:8478; Ibn Manzur 1987, 2:386). In other words, since it is hidden by the womb, the product of a pregnancy from the moment of conception to the moment before birth is called a *janin* (Ibn Manzur 1987, 2:386). *Janin* is an Arabic word which follows the same pattern as *'azim*, and it means hidden. The plural forms of *janin* include *ajinnah* and *ajnun*. The Quran indicates this concealment in various verses.

He creates you in the wombs of your mothers... (39:6)

[S]ince you were foetuses in the bellies of your mothers... (53:32)

According to Shafi'i jurists, other than Ghazzali, the dominant opinion is that a *janin* is the beginning of human creation whether it is a *mudghah* or an *'alaqah*, and whether or not it seems human-like. However, if there is doubt as to whether it has human characteristics, then it is not a *janin* (Abi al-'Umar 2002, 2:549). According to the Maliki school, regardless of the stage of pregnancy, the foetus is called *janin* and relevant laws are assigned to it (Dusuqi 1926, 4: 268).

In abortion, blood money (*diyah*) is obligatory (Dardir n.d., 4:802). Just as there is no difference between the blood money of a child and an adult, there must be no difference between the start of gestation (i.e. the fertilised egg/embryo) and the fully developed ensouled foetus.

Hanbali and Shafi'i jurists have similar views with a few observable differences. First, according to the Hanbalis, if the aborted baby does not have human parts but has a human face and is in the *mudghah* stage, the laws of a *janin* may be applied to it (Abi al-'Umar 2002, 19:56). Also, Hanifah defines *janin* as a foetus in the *mudghah* stage, stating that the laws related to a *janin* do not apply to previous

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stages (Ibn ‘Abidin 1994, 1:158).

Ibn ‘Abidin (1994, 1:158) states that an unborn baby is called a *walad*. According to this juristic opinion, as long as the effects of a soul do not manifest in the foetus, the laws of a *walad* and *janin* do not apply to it. This is because that which is in the mother’s uterus is an *‘alaqah*, a *mudghah*, or unformed tissue and its nature is not yet clear; therefore, it is not considered to be a *janin* (Ibn ‘Abidin 1994, 1:158).

According to *al-Badai’*, as long as the embryo does not manifest signs of human creation, it is not a *janin*, but a *mudghah* (Kasani 1996, 7:325). The manifestation of human creation refers to the development of different parts of the body like fingers, nails, or hair. If the embryo does not possess such parts, it is not considered to be a *janin* (Kasani 1996, 1:158).

Shi’i jurists rarely bring forth definitions for *janin*. Rather, they limit the discussion to the stages of pregnancy and the blood price for abortion in each stage. In *Sharh lum‘ah*, Shahid Thani explains the word *janin* as that which is carried in the mother’s womb (Husayni ‘Amuli 1997, 4:143). It is called such because it is hidden within the uterus of the mother. This word, an object noun meaning *that which is covered*, is derived from the root *j-n-n* which suggests a sense of covering. On the same authority, *janin* is defined correspondingly in *Sharh tabsirah* by ‘Allamah Dhu al-Majdayn and *Miftahal-karamah*.

Examination of Rulings

Rulings of abortion can be generally categorised as follows.

1. Abortion in Normal Circumstances

The views of the four Sunni schools of law differ with regards to abortion, especially in the stages prior to ensoulment. The most important reason for this is that in primary sources, there is no clear reference to this issue and thus it is subject to *ijtihad* according to the juristic fundamentals of each school of law.

All schools agree on basic principles although there are differences in how each school interprets them. Juristic verdicts for this category can be divided into the three groups: (1) permissible (*ja‘iz*), (2) detestable (*makruh*), and (3) forbidden (*haram*).

Permissibility

Hanafi jurisprudents have two views on abortion. Some, such as Kasani, rule that abortion is only permissible prior to a gestational age of forty days (Kasani 1996, 7:35). Others, including Ibn Humam,

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declare that before ensoulment, i.e. a gestational age of 120 days, abortion is permissible even without the consent of the husband (Mawsu'ah al-fiqh al-islami al-muqarin 2008, 5:396). According to this view, abortion is permissible from the beginning of pregnancy until the creational or formational stage (al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah 1993, 2:56).

Maliki jurists such as Dardir consider abortion permissible before forty days of pregnancy (Mustafa 'Atawi 2001, 190).

The view of Shafi'i (2005, 2269) is similar to Kasani and Dardir in that he considers abortion prior to forty days permissible. Other Shafi'i jurists like Abu Ishaq Marwazi consider abortion permissible in embryo stage (*nutfah*) and the '*alaqah* stage (Sana'i 2007, 3:103). Contrary to their predecessors, a number of contemporary Shafi'i jurisprudents also consider abortion permissible after 40 days (Buti n.d., 84; Hamish 2007, 203).

Some Hanbali jurists proclaim that abortion by medication is permissible in the first stage of pregnancy (*nutfah*), i.e. prior to 40 days of gestation (Buhuti 1999, 423). Other Hanbali jurisprudents believe that abortion is permissible before ensoulment (i.e. before the first 120 days of pregnancy) (Ibn Quddamah 1998, 9:540).

Several contemporary Sunni jurists believe that abortion is permissible if the married couple do not desire the pregnancy and abortion is not harmful to the mother (Badr 2010, 116).

Detestability

If two conditions are met, some Maliki jurists allow abortion but consider it detestable. First, the abortion must be carried out in the first forty days of gestation and, second, the husband must consent to it (Dusuqi 1926, 2:267).

Prohibition

Most classical and modern Sunni jurisprudents consider abortion prior to ensoulment (120-day gestational age) forbidden unless there is sufficient reason.

Muhammad Ghazzali (1998, 2:51) states that the reason abortion is forbidden relates to the fertilised egg (*nutfah*). He believes that a fertilised egg has the potential to live. As such, the potential exists for its perfection which is preparatory for its ensoulment.

Among the Maliki there are three different verdicts. The first opinion is that the prevention of pregnancy is forbidden, and the usage

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of contraceptives is prohibited. Consequently, abortion is forbidden to an even greater degree. The second opinion is that the abortion of a fertilised egg is forbidden; however, prevention and the usage of contraceptives are not. The third opinion is that abortion is absolutely forbidden after forty days of pregnancy (Ibn Juzay n.d., 297; Dardir n.d., 2:266-77; Dusuqi 1926, 2:266).

Some Hanafi jurists maintain that abortion is forbidden even in its early embryonic development (up to forty days of gestation) (Sarkhasi 1993, 3:51). They have two reasons for this. First, after the sperm fertilizes the egg and is implanted in the uterus, it will eventually go through ensoulment, so the laws of life apply to it and it must be protected. The second reason is based on analogy. During hajj, a person who has entered the state of *ihram* is accountable for the breaking of a bird's egg. Here, the source of the dictum is breaking an egg, not killing a bird. If breaking an egg entails punishment, then certainly, the abortion of a foetus without due reason is a sin to an even greater degree and as such, must be punished. Though this act does not entail the death penalty, if it occurs after the manifestation of human creation in the *janin*, *ghurrah*, a fine must be paid in compensation for the abortion and this is obligatory on the perpetrator (Ibn Najim 1997, 9:101).

Among the Hanbali jurists, Ibn Jawzi forbids abortion from the conception of the fertilised egg (al-Zurqa 2003, 265).

Some contemporary Sunni jurists including Shaltut (1975, 289-290), Dabu (1994, 109), and Qaradawi (2005, 2:547) maintain that the abortion of a foetus is impermissible except in cases of exigency.

Though there is no concurrence among Sunni jurists with regards to the permissibility of an abortion prior to a gestational age of 120 days, all consider abortion impermissible after ensoulment. Also, there is a consensus among Shi'i jurists that abortion is forbidden without due reason regardless of gestational age. For example, Hakim, Khamenei, Bahjat, Tabrizi, Makarem Shirazi (Mahmudi 2005, 1:195-96), and Sistani (1993, 430) all consider abortion impermissible even if it is only a fertilised egg.

2. Special Circumstances Prior to Ensoulment: Health Risks and Great Difficulty

Before ensoulment, if the continuation of a pregnancy endangers the mother's health or life and abortion is necessary to protect her life, then a conflict arises between the necessity of protecting life and the prohibition of abortion. In such cases, does the preservation of the mother's life take precedence over that of the foetus? Is the mother

prioritised over the foetus, resulting in the permissibility of abortion?

Danger to the mother's health is a broad matter covering a gamut of severity levels. For instance, a delay in treating an illness may decrease the lifespan of the mother and endanger her health, or such a delay may have no effect. In such a case, the permissibility of abortion depends on the severity of the danger which could be two-fold. First, if the mother's illness is not dangerous enough such that it is threatening to her life or that of the foetus, treatment can be postponed until after childbirth. Second, if delaying the treatment endangers the mother's life and the continuation of the pregnancy and the survival of the foetus will necessitate an aggravation of the mother's sickness or disability, then a secondary ruling (*hukm thanawiyyah*) will apply. This secondary ruling is such that abortion is permissible in order to prevent harm to the pregnant woman. For clarification, several examples are presented below.

When a mother has a severe disease, or there is possibility of disability and treatment is required, abortion is permissible as part of the treatment. Similarly, a mother may have cancer or conclusive knowledge of the danger she is in. Wisdom dictates that even though certainty (*yaqin*) may not have been reached, knowing that there is a high probability is a valid method in understanding the real world. Therefore, abortion is permissible (Makarem Shirazi 2001, 504).

According to Ayatollah Khamenei, if continuation of the pregnancy is a danger to the mother's life on the authority of reliable medical specialists in the relevant field, abortion is permissible prior to ensoulment (Khamenei 1999, 279-280). If it is well established that continued pregnancy may lead to disability in the mother, Imam Khomeini states that abortion is permissible (Ruhani 2000, 89).

If there is a pregnant women with cancer, and the cancer is in its advanced stages, then therapeutic abortion is carried out regardless of the gestational age, and the mother is treated. There are two aspects to this. First, the mother's life is in danger, and second, a prohibition against ending the pregnancy would result in the death of the mother and the birth of a motherless child.

If the cancer is in its early stages and the pregnancy is nearing its completion, the child is removed from the uterus only when the foetus can survive being removed. The premature infant remains in intensive care until it is mature enough to live without it. If the pregnancy is in its early stages, however, therapeutic abortion is carried out, and the treatment for cancer begins. Therapeutic abortion is only performed if

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the basic treatment for the cancer, like chemotherapy and radiotherapy, is harmful for the foetus.

In response to a question in this regard, one jurist has stated that if the mother's life is in danger and the foetus is in its early stages, then an abortion would be permissible. It is also permissible in such cases to deliver babies before they are full term, allowing them to develop under special care (Makarem Shirazi 2008, 90). Makarem Shirazi also considers abortion prior to ensoulment permissible when the survival of the mother depends on it. He argues that this is to preserve the mother's life, which is more important according to religious law (Makarem Shirazi 2001, 292). Ayatollah Tabrizi decrees the same (Khui 1989, 2:325).

Imam Khomeini (2001, 3:282) was asked about a pregnant woman suffering from a mental disorder as follows: If a woman suffering from dementia becomes pregnant, and according to the above-mentioned criteria, it is predicted that the condition is progressive, then is an abortion permissible in light of the possibility of the transmission of the condition to the child and the fact that the mother cannot care for the child? Imam Khomeini answered that abortion would not be permissible in this case.

In response to whether or not it is permissible to abort pregnancies prior to ensoulment in women who, due to multiple pregnancies, suffer from various disorders including bone pain, severe neurasthenia, and heart conditions, Ayatollah Tabrizi (Tabrizi 1999, 1:477) stated that in the case that a woman fears for her life as a result of the new pregnancy, or fears that it would cause her great difficulty and disrupt her life, she can use preventative methods, even sterilisation. However, if she becomes pregnant, she cannot have an abortion whether self-induced or medically performed. Of course, if the pregnancy will cause unbearable harm or loss, abortion will be permissible prior to ensoulment.

If surgery is necessary for the mother and will save her life, but possibly lead to the death of the foetus, surgery is permissible according to some jurisprudents (Lankarani 2004, 113). The following case was presented to a Shi'i jurisprudent:

On the authority of medical specialists, a woman suffering from an eye condition requires an emergency surgical procedure. However, she is three months pregnant and must have an abortion prior to the eye operation. If the woman does not undergo surgery, she will become blind and much harm will also come to the foetus. In this

case, is abortion permissible?

The response was

In this case there does not seem to be a problem in ending the pregnancy. The same holds for a severe illness if it were threatening the mother's life before the ensoulment of the foetus. Also, if the foetus suffers from a condition or deformity that would impose severe hardship upon the parents and others, there is no problem with ending the pregnancy before ensoulment. In these three cases, it is permissible to end a pregnancy (Makarem Shirazi 2008, 92).

If an expecting mother has a pre-existing intolerable condition, her treatment is necessary even if there is a possibility that the foetus may die, whether before or after ensoulment (Lankarani 2004, 113).

Jurisprudential Principles

Some jurisprudential principles related to this issue include:

1. *Preference of the primary*: When there is a conflict between the pregnant woman's life and the survival of a foetus that has not gone through ensoulment, and the foetus poses a serious threat to the expectant mother, who possesses a soul and is complete, then it is permissible to abort the baby in order to save the mother (Makarem Shirazi 2001, 504). In this case, the lives of two people are not at stake; rather, one is a foetus in its early stages that is not yet truly human, and the other is a woman who is a complete human (Makarem Shirazi 1994, 49-50).
2. *Prevention of distress and constriction ('usr wa haraj)*: This is another related jurisprudential tenet. This principle dictates that nobody may impose great hardship on another. Even God, the divine legislator, does not formulate laws that cause great hardship. In light of the comprehensiveness of this concept, all types of severe hardships are prohibited (Mar'ashi Shushtari 1995, 194).
3. *Refraining from causing loss or harm to oneself and others (la darar wa la dirar)*: This principle affects primary rulings. According to this principle, a secondary ruling can take precedence over the primary ruling of the absolute prohibition of abortion. In cases where the existence of the foetus causes great harm to the mother, or the mother is not capable of enduring an illness that cannot be treated as long as the foetus remains, an abortion can be decreed permissible in order to neutralise the harm, which God, the divine legislator, does not desire (Sistani 1993, 407).

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4. *Legitimate defence*: All people have the right to defend themselves against harm. If an unborn foetus endangers the life of a mother without her consent, it is the mother's right to defend her life by aborting the pregnancy (Kharrazi 1996, 16). This is because there is no difference between external and internal factors that cause harm when it comes to the legitimacy of defence. In this case, the foetus threatens the life of the host (the mother), so the mother may defend her own life through abortion (Kharrazi 1996, 16).
5. *Principle of necessity (idtirar)*: This principle can also govern jurisprudential rulings. This fundamental principle also serves as a proof for the permissibility of an abortion to save a pregnant woman's life. The mother's only choice to save her own life is to abort the foetus; hence, it is a necessity.

Jurisprudential Evidence

As predicated by jurisprudential evidence, when there is no sufficient reason for an abortion, the primary ruling (*hukm awwali*) stands and abortion is forbidden. However, in special cases, the primary ruling can be foregone. For example, in order to save the life of a pregnant woman or to protect her health, abortion may be a legitimate (*halal*) measure to take. This is proven using a variety of fundamental principles and rationales.

Some of these arguments are as follows: As indicated in some traditions, abortion, in the foetal stages of the '*alaqah* and '*mudghah*, is not tantamount to murder. This is evidenced by a tradition attributed to Amir al-Mu'minin (a) stating that the blood price of a foetus with flesh on its bones is one hundred dinars. This means that when the foetus is fully formed, its blood price is half of that of a living human (Hurr 'Amili 1993, 29:312). Shahid Thani believes that in this case, *kaffarah* is not obligatory unless the foetus is killed since *kaffarah* is only incumbent if the foetus was already ensouled (Najafi 1981, 2:373).

3. Special Circumstances Subsequent to Spiritual Inspiration: Mortal Danger

Three issues are considered in abortion prior to the foetus' ensoulment, including great difficulty and the mother's health and life. However, after ensoulment, only the third issue—the mother's life—is a matter of jurisprudential debate. At this stage, there is consensus that in the absence of mortal danger, the mother's health is no longer a reason to abort the child.

After the ensoulment of the foetus, if the continuation of the

pregnancy endangers the mother's life such that the foetus must be aborted to save her life, there is a clash between the necessity of protecting the mother's life and the prohibition of abortion.

Differing viewpoints exist in this regard. Some jurists decree that abortion is forbidden. Others state that it is permissible, and a few claim that it is obligatory (*wajib*).

Sunni Views

1. Prohibition

Some Sunni jurists state that abortion after ensoulment is forbidden even if the mother's life is at stake. They do not allow the violation of the sanctity of a living person, even if there is a great necessity and even if it would lead to the death of the mother.

As such, the abortion of a living foetus in order to save the life of the mother is not permissible (Ibn Quddamah 1998, 7:645). Two reasons have been presented for this declaration. First, a person in grave danger may not take the life of another in order to save their own. A foetus is just as alive as its mother and thus it is not permissible for her to terminate her child's life to save her own (Ibn Quddamah 1998, 8:601-2). Second, abortion subsequent to ensoulment is murder, a grave (*kabirah*) sin. However, if the foetus dies due to its mother's death, it is an act of God. As such, abortion is impermissible (Ghanim 2000, 158). Using evidence from the Quran and Sunnah, advocates of this view consider abortion at this stage to be the equivalent of the murder of a faithful servant of God (Badr 2010, 219).

The Hanafi school of law considers abortion forbidden after ensoulment (al-Mawsu'at al-fiqhiyyah al-kawaytiyyah 1993, 2:57). However, they consider it permissible to abort a dead foetus. They maintain that as long as the foetus is alive, abortion is not permissible under any circumstance.

Their reasoning is as follows: The death of the mother is uncertain and the foetus is considered to be a living person after its ensoulment. It is not permissible to kill a living person for something that is not certain. Here, jurists believe that the value of both lives are equal without any difference. Thus, the murder of one person cannot be justified in order to save the life of another ('Abd al-Fattah Libnah 1996, 371-75).

Jurisprudential Evidence

After ensoulment, even if the persistence of pregnancy will cause the

mother's death, abortion is forbidden due to the reasons below:

The Quran prohibits murder in general and the murder of children "And do not kill the soul which: Allah has forbidden, except by right" (17:33). This verse is relevant because after ensoulment, the life of a foetus is sacred ('Amrusi 2010, 216). It is not permissible to sacrifice unborn children to save others who are equal to them in innocence and sanctity (Ghanim 2000, 158).

In another verse, God states: "And when the girl [who was] buried alive is asked for what sin she was killed" (81:8-9). In this verse, *maw'udah* refers to young girls who were buried alive. It also indicates that their fathers will be held accountable for their murder on the Day of Judgement. This verse is relevant because such an accounting in the afterlife includes a reckoning for foetuses terminated after ensoulment. This would be because abortion is similar to being buried alive, i.e. the child is killed. According to religious law, punishment for abortion is obligatory (Hamish 2007, 200).

Traditions of the Prophet (s) also prohibit the termination of the foetus. According to Prophetic tradition, a blood price must be paid for the abortion of a foetus after its ensoulment (Qushayri Naysaburi 1999, 753-6) because the foetus is considered to be a complete human being. God, the Almighty, has given unborn children inalienable rights, and a right bestowed by God cannot be taken away (Hamish 2007, 200).

2. Permissibility and Requirement

Some jurisprudents believe that it is permissible to terminate a pregnancy to save the life of the mother. Others decree that abortion is obligatory in some cases, especially when the pregnancy can lead to the mother's death.

Like doctors, various contemporary Sunni jurists believe that when the foetus endangers the expectant mother's life, it is permissible to abort it since the mother's life is of primary concern, and the foetus secondary (Shuman 1998, 49). Some jurists consider foetuses after ensoulment as equal to complete humans and as such, the abortion of foetuses after this stage is tantamount to murder unless there is danger to the life of the mother (Mustafa 'Atawi 2001, 263). The Islamic Fiqh Academy, for instance, considers abortion after ensoulment permissible only if the mother's life is in danger (al-Dubsi 2010, 140). Also, according to Qaradawi (2005, 2:754), in cases where the foetus causes harm to the mother and the necessity of abortion is certain and not simply speculation, an abortion is permissible.

Jurisprudential Evidence

This group of Sunni jurists also use Islamic traditions and jurisprudential principles, some of which are as follows:

- The mother is of primary concern, and the foetus, secondary. Therefore, when the lives of both are at risk, saving the mother's life takes precedence (al-Zurqa, 2003, 224).
- The mother's life has been established and certain, and therefore she has rights. However, the life of the foetus has not yet become established (Hasan 2008, 373).
- The persistence of the foetus's life is not certain if the mother's life is in danger as its life is dependent on her. Hence, it is obligatory to protect the mother's life: necessity overrides prohibition (Borno 2001, 85; Siyuti 2006, 84).
- The purpose of abortion is to avert harm. The prevention of greater harm leads to greater benefits. Thus, the decree of permissibility is due to necessity. Here, necessity refers to the protection of the mother's life throughout her pregnancy. The greater benefit that takes primary necessity is saving the mother's life. Therefore, in this case, abortion is permissible even after ensoulment ('Amrusi 2010, 206).
- If one must choose between two evils, then the greater evil is warded off by committing the lesser evil (Ibn Najim 1997, 9:80). When the mother's life is in danger and there is justification for ending the pregnancy (e.g. the treatment is harmful to the foetus), then the greater evil is prevented by abortion since there is less harm in it and less evil in it as opposed to the continuation of the pregnancy. In such cases, abortion is permissible even after the ensoulment of the unborn child. This is a clear example of the necessity to ward off the greater evil with the least amount of harm (Shafi'i 2005, 68).
- The greater evil/harm must be prevented by accepting the lesser (Kan'an 2006, 45). After ensoulment, if the mother's life is at risk and there is conflict between her benefit and that of the unborn child, then the benefit of protecting the mother's life takes precedence over protecting the foetus because the mother's benefit is more important. In this way, by accepting the lesser harm/evil (i.e. abortion), the greater harm (i.e. death of the mother) is prevented (Kan'an 2006, 285).
- Harm must be stopped (Ibn Najim 1997, 9:85). If protraction of the

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pregnancy corresponds with the high probability of the mother's death, then the harm directed at the mother may be stopped with abortion ('Amrusi 2010, 210).

- Matters shall be judged by intention (Siyuti 1982, 65). Every action has an intention which can be either good or evil. If a doctor performs an abortion after ensoulment with good intentions, the act is permissible ('Amrusi 2010, 211).
- If the mother's life is in danger, it is more important to save her life. This is the preference of the primary over the secondary. The mother's life is established and relatively independent, but the foetus does not have an established, independent life. It is unclear whether the unborn child will survive the death of the mother. Clearly, one cannot act upon uncertainty in preference to certainty.
- According to the Maliki view, abortion to save the mother's life is permissible (Dusuqi 1926, 474). Also, in the Hanbali view, when the mother's life is in danger and the existence of the foetus will lead to the mother's death, the unborn child must be sacrificed for the mother. This is because the foetus is secondary and the mother is primary, and there is a necessity to do so.

Shi'i Views

There are two Shi'i views about abortion after the first four months of pregnancy (i.e. after ensoulment).

1. Prohibition

According to this view, time must pass for the will of God to become clear. There is no religiously ordained priority between the mother and the unborn child since the lives of both are sacred. Accordingly, the termination of one to save the other is not permissible as there is no primacy between the two. Among classical jurists, the authors of *Jawahir* and *'Urwah* support this idea (Najafi 1981, 4:378; Yazdi 1994, 1:439)

Jurisprudential Evidence

Most contemporary Shi'i authorities and jurists believe that an unborn child has human life and there is no difference in the sanctity of human life, regardless of them being an adult, child, infant, or foetus. For this reason, the death of one cannot be decreed to save the other.

2. Permissibility

When the mother's life is endangered, and her survival depends on the termination of her pregnancy, abortion is permissible. In other words,

if it is necessary, the mother can have an abortion with the condition that it is the only way to save her life. If the mother knows that the foetus will cause her death, she can terminate the pregnancy using medication or other methods (Makarem Shirazi 2001, 506-7).

Some questions asked of Ayatollah Makarem in this regard are as follows:

If the presence of the foetus will lead to the death of the mother, is it permissible to end the pregnancy so that the mother remains alive and healthy? Is it permissible to do nothing such that the baby survives but the mother dies? If there is the possibility that doing nothing will lead to the death of both the mother and child, what must be done? Is there a difference in the ruling if the foetus has not yet been ensouled?

The response to the first question is that if the creation of the foetus is not complete, it is not a problem. Regarding the second question, if the unborn child has not yet become a complete human, the abortion of the foetus in order to save the mother's life is not a problem. In the case of the third question, if it is certain that one of them will survive, nothing should be done so that one of them survives without human interference. If, however, it is possible that either both will die or only the foetus will die, then the foetus can be aborted so that the mother survives (Makarem Shirazi 2008, 91).

Ayatollah Tabrizi states that if the existence of the foetus will lead to the death of the mother, she can abort the pregnancy either directly or by referring to a specialist who confirms the danger to her life (Tabrizi 1999, 1:477).

A woman less than four months pregnant is sick and will die if her pregnancy continues. The foetus cannot live outside the womb, and will die with the mother. Can the pregnancy be terminated to save the mother's life? In response to this question, Imam Khomeini replied that an abortion must be delayed until the last possible moment in order to save the mother. However, if the foetus is still not able to live outside the womb, the abortion of the foetus to save the mother is not a problem (Khomeini 2001, 3:286).

Elsewhere, with regards to therapeutic abortion for women who are less than four months pregnant and have life-threatening diseases, Imam Khomeini (2001, 3:288) states that if a reliable medical specialist determines that there is a danger to the mother's life, abortion is permissible prior to the ensoulment of the foetus. According to Allamah Sayyid Muhammad Husayn Fadlallah (1996, 2:440), if the continuation of a pregnancy after ensoulment endangers the lives of both the mother and the foetus, and saving the foetus is not

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a possibility, and it is possible to save the mother through abortion, then it is permissible to terminate the pregnancy. Ayatollah Khu'i also believes that if the existence of the foetus will lead to the death of the mother, it is permissible to end the pregnancy even after ensoulment ('Amili 2005, 2:324). If medical specialists confirm that if the pregnant woman does not perform curettage, both she and the child will die, curettage is permissible (Lankarani n.d., 113). Ayatollah Tabrizi (1999, 1:477) has ruled the same.

Jurisprudential Evidence

According to 'Amili (2005, 2:565), since the life of the mother is more important than that of the foetus, the mother's life is given priority, and she can have an abortion to save her own life.

It is, however, difficult for most jurists to prioritise one over the other. Accordingly, taking the life of one to save the other (i.e. aborting the foetus to save the mother) is not considered permissible. One reason that might exist to indicate such a preference may be the ruling regarding blood money. Blood money would be relevant to the mother, but not to the unborn child, even though both equally have human souls. Preventing difficulty on the parents is another reason propounded on for the permissibility of abortion (Qa'ini 2003, 1:251).

Conclusion

Today with the advancement of science and technology, it is possible to determine genetic defects and foetal abnormalities as well as the harm that will ensue with the continuation of pregnancies. It is for this reason that abortion has gained special importance in Islamic jurisprudence and has entailed so much controversy.

In ordinary situations, prior to ensoulment (*nafkh ruh*), Sunni jurists have three different verdicts, namely permissibility, detestability, and prohibition. Among classical Sunni jurists, some Hanafi, Maliki, Shafi'i, and Hanbali specialists consider abortion permissible prior to four months of pregnancy. However, all Sunni jurists maintain that abortion without due reason is forbidden after ensoulment. On the other hand, Shi'i jurists contend that in ordinary circumstances, abortion is forbidden in all stages of pregnancy.

When the life of the mother is in danger prior to ensoulment, some Sunni scholars (like Hanafis) claim that it is forbidden to terminate the pregnancy, while others argue that it is permissible. Shi'i jurists consider two aspects to this issue: danger to the mother's life and danger to her health. In the case of danger to the mother's life, prior to

the foetus' ensoulment, they rule that abortion is permissible. If the mother's health is endangered in this stage, some jurists consider it permissible to end the pregnancy due to various Islamic juristic principles including the preference of the most important, negation of harm, negation of difficulty, and legitimate defence.

Regarding the threat to a mother's life after ensoulment, Shi'is have two views. Some hold that this act is forbidden since neither has priority over the other in terms of life (as the foetus has become fully human). Others state that since saving the mother's life is more important than saving the foetus, and that ending hardship to the parents is necessary, abortion is permissible.

Terms without Diacritics	Terms in Arabic	Terms with Diacritics
siqt	سقط	siqt
janin	جنين	Janīn
nafkh ruh	نفخ روح	nafkh rūḥ
nutfah	نطفه	nuṭfah
'alaqah	علقه	'alaqah
mudghah	مضعه	mudḡhah
walad	ولد	Walad
jayiz	جائز	Jā'iz
makruh	مكروه	makrūh
ihram	احرام	iḥrām
hukm thanawi	حكم ثانوی	ḥukm thānawī
hukm awwali	حكم اولی	ḥukm awwalī

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سقط درمانی جهت حفظ جان و سلامت جسمی و روحی مادر مطابق با نظرات فقهای اسلام

مجتبی الهیان*

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سقط جنین عبارت است از انجام هرگونه اعمال عمدی یا غیر عمدی بر روی زن باردار، که موجب متوقف شدن دوران تکامل و مراحل جنینی شود یا به سلب حیات از حاملی که قابل زیستن است، بینجامد؛ به نحوی که حمل، خارج از بطن مادر، زنده نبوده و یا فاقد قابلیت زندگی کردن باشد. دیدگاه اولیه و حکم مطلق فقها در مورد سقط در دوران قبل از چهار ماهگی متفاوت است. آیا در شرایط اضطراری و آن جایی که جان یا سلامت مادر در خطر است سقط جنین جایز است؟ آیا در جایی که زن معصومی مورد تجاوز به عنف قرار گرفته و باردار شده است می‌تواند جنین خود را سقط کند؟ یا باید این حرج عظیم را تحمل کند و فرزند نامشروعی را بزرگ کند که جایگاهی نه در اجتماع و نه در خانواده دارد. بیشتر فقهای اسلام سقط جنین را قبل از چها ماهگی، در صورت وجود خطر برای جان مادر، حفظ سلامت جسمی و روانی وی، انعقاد نطفه جنین ناشی از تجاوز به عنف که موجب بیماری جسمی یا روحی برای مادر گردد را پذیرفته اند. عده ای دیگر از فقها سقط جنین درمانی به هر سه منظور را بعد از ولوج روح پذیرفته‌اند و عده ای نپذیرفته‌اند.

واژگان کلیدی: سقط جنین، نفخ روح، جواز، حرمت.

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