TO STUDY ABORTION AUTHORITY POSSIBILITIES IN THE ISLAMIC JURISPRUDENCE

IRAN

SOLEIMANI\textsuperscript{a1} AND MAHROUKH ALLAHYARIB

\textsuperscript{a} Ardabil Branch, Islamic Azad University, Ardabil, Iran
\textsuperscript{b} Masters the Islamic Jurisprudence and law-Humanistic Faculty–Islamic Azad University Ardabil

ABSTRACT

Abortion is one of social and legal problems in question in all human kind societies. Abortion in all developmental stages and evolution, from coagulation to the birth moment, is according to the holy Islamic canon definitely unlawful and this subject has been demonstrated by the four proofs (Quran, tradition, reason and consensus). In Iran’s law system whose laws and regulations have been extracted from Emamieh Jurisprudence, abortion is a crime and it is punishable in according to the Islamic penal code. Socio-economic factors are not good excuses for this. The general rule for abortion is that abortion is done before the spirit entrance if it doesn’t harm the pregnancy period or fetus. The great jurisprudents let abortion happen before the spirit entrance (when old it is 4 mont) if it is necessary to save mother’s life and defected fetus abortion is believed to be more faulty and hard according to the secondary commandment. Abortion is allowed in severe cases when the respect to the fetus is of importance. In the Islamic penal code, there is single article for abortion according to the above mentioned situations, abortion is authorized in this article and conductor physician has no responsibility for that.

KEYWORDS: Abortion, Spirit Entrance, Necessity, Fault and Hardship, Allowance

Prohibition of abortion is among the basic and definite principles of Islam that a generality of the book and Sunnah implies it explicitly. But this principle like any other primary principle is mutable when secondary topics appear and cause some changes in the issue of prohibition and consequently, there is possibility for abortion license (such as hardship and compulsion or under the title of legitimate defense and other titles. In order to prove the prohibition of abortion they have argued based on the four reasoning namely the book and Sunnah and consensus and wisdom:

REASONS FOR PROHIBITION OF ABORTION

Verses

There isn’t any specific verse in Quran about abortion and in order to prove its prohibition, scholars have cited two sets of the verses. The first set consists of verses [1] that generally refer to forbiddance of killing the innocent people and consider killing of an individual as the killing of all human beings and giving life to an individual as giving life to all human beings. Almighty Allah says: “...that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely...” [2] The second set consists of verses [3] that have considered manslaughter as forbidden whether it is a child or non- descendant; particularly, in many verses killing children has been considered forbidden and unlawful.

Almighty Allah says:

“And do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin” [4]

In an interpretation to (Sura Al-Mumtahina, verse 12,AllamahTabatabae writes: by “they shouldn’t kill their children” it is meant that they shouldn’t bury their kids alive and/or they shouldn't also kill them in another way such as abortion [5]. All this implies prohibition of child murder; and considering the all verses it is understood that prohibition of child murder is a general verdict whether a child or adult, daughter or son, deformed and mentally retarded or perfect created; because all of them have been created by God and He has not allowed anyone the act of killing other people.

Narratives

In order to prove the prohibition of abortion, jurists have cited four kinds of narratives. First class consists of narratives that prohibit women from taking drugs with intent to menstruate, at the time when their menstrual days have passed such as:

In chapter about Menstruation and the parturition GHOSL (WASH) Sheikh Sadoogh has said: “Whenever a

\textsuperscript{1}Corresponding author
woman does not menstruate for a month it isn’t allowed for her to take drugs for the purpose of being menstruation because whenever the sperm was placed inside the uterus it will be changed into coagulum, then into a piece of meat and then into what the One God wills and whenever the embryo was placed inside something rather than uterus then nothing is created from it. Thus, if a woman does not menstruate for a month and her menstrual period is gone, she shouldn’t take medicine [6].

The appearance of hadith shows that if blood stopping is due to the pregnancy of the woman and if it is not clear, then at least there is its possibility; and aborting the child is prohibited and even it is considered among the great sins, thus caution should be taken up [7].

Class II: Traditions that prevent pregnant women from taking drugs for the purpose of abortion

According to Ibn-e-Ammarishaq’s narrative which quotes from Musa-Ibin-e-Ja'far(AS): She is afraid of getting pregnant; she takes drugs and throws out what she has in her abdomen; what’s the verdict? Imam (AS) said: no, “This is not allowed.” Ammar says: “I told that she throws out of her abdomen is sperm.” Imam (AS) said, “Embryo is the beginning of creation [8].

This narrative clearly explains the beginning of human existence and its implication for prohibition of abortion when the embryo was placed inside the womb is clear [9].

The third class consists of the confirmed novelties that imply on the necessity of delay for the stoning of an adulteress who is pregnant until delivery time. And it should be noted that Imams (peace be upon them) have told that in implementing the Hodood (plural form of had “meaning a fixed and enjoined punishment as the right of Allah”) even an hour delay is not permitted. Among the third class narratives there is the extensive narrative of Ammar-e-Sabaati; which reads: “I asked Imam Sadegh (AS) about a married woman who committed adultery while she was pregnant. Imam (AS) told: she remains until the time when she gives birth to what she has into her abdomen and gives her baby milk and then gets stoned.” [10].

The fourth class: these are narratives that state whenever the mother causes her own abortion she should pay Diehs (blood money paid to the victim or next of kin) and she herself does not share that money. For example, in Abu-Obaydah’s Sahihah we read: “I asked Abuja’far (AS) about a woman who had drank medicine when she had been pregnant and her husband was not aware of this, consequently, she had aborted her child. Imam (AS) said: if her kid had been reached to the bone-phase and meat had been grown on it, she should pay the blood money to the kid’s father, and if the kid that had been aborted had had a clot or a piece of meat state, she should pay forty Dinars to its father. I said: doesn’t this woman inherit her kid’s blood money? Imam (AS) said: No, because she herself had killed it and she doesn’t inherit the money.” [11].

Consensus

By consensus, Muslim scholars have given verdicts on abortion prohibition. Furthermore, considering the caution in case of bloods also demands abortion to be prohibited as a primary verdict [12].

Wisdom

Intellect also verdicts that oppression is bad because ruthless tramples the right of the oppressed. If life is taken from an individual, his right will be destroyed … in fact everything that is inherently bad will be the cause for death and stripping down of another person and this will be an obstacle to human progress. And abortion also will be an obstacle for progress of people who have the rights to achieve progress and perfection. [13]

However, given the evidence of Quad Reasons, in relation to the prohibition of abortion, whether before or after the ghost’s entry and exit, there is no doubt concerning the first verdict.

Most Shiite scholars have raised the discussion on abortion in chapter about Diehs (blood money paid to the victim or next of kin) and their appendixes and have determined the amount of Dieh on gestation in different processes and have raised the title of “killer” to someone who attempts to do so and her exclusion from pregnancy blood money. Those scholars believe that after the soul was blown, human being’s embryo is like other human beings and It is forbidden to kill humans for various reasons. Because God says: “…And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right…” this verse implies the prohibition of abortion. Also, wisdom considers abortion as a cruelty, because abortion is trespass to someone who cannot defend him/herself. [14], and the principle of necessity for Dieh is the commenting that some scholars have expressed i.e. considering the Dieh on abortion at all of its processes in
narratives implies the prohibition of abortion, because the principle in necessity for Dieh is: “if necessity for Dieh is because of crime and the crime is intentional, then it is forbidden; therefore abortion in each of the growth stages will be forbidden. [15]

Studying the Permission for Abortion from the viewpoint of Shia (the secondary verdict concerning the abortion)

In this regard, therapeutic abortion law passed on May 31, 2005 and approved by Guardian Council on June 15, 2005 provides: “therapeutic abortion after diagnosis of three specialized physician and forensics verification which are indicatives of fetal disease – because of retardation or being deformed, is due to mother’s fault; or mother’s sickness coupled with threats to the mother's life is permissible before the soul’s entry and exit and steward physician will not be responsible for it.

Violators of the provisions of this Act shall be sentenced to the penalty prescribed in the Islamic Penal Code. Abortion is performed due to various motivations such as:

Moral, social and economic reasons: Due to extensive relationships and freedom of women and men, girls and boys in different countries especially in developed and large ones percentage of sexual relationships and possibility of pregnancy are by far the most and these illegitimate relations may be due to the rape that she wants to free herself from this shame as soon as possible. In economical cases, such as a woman who provides for her family expenses in a hard manner and has many children, she considers the abortion as the only way to be freed from these difficulties [16]

Population Growth: another factor for intentional abortion is the abortion which takes place in order to prevent the growth of population and family planning; this is an unconventional way but this way has been experienced in some countries such as Japan [17]

Maintaining the Health of the Mother: this is one of the reasons for abortion that some countries absolutely and some others conditionally agree with it. [18]

Abortion due to Embryonic Abnormalities: part of abortions takes place because of maternal and embryonic diseases and abnormalities such as chromosomal and genetic defects, maternal diseases such as diabetes and internal infections due to syphilis and rubella diseases, aids and... that can be realized through sampling of the placenta in early pregnancy, ultrasound, and fetal fluid (fluid inside the amnion that fetus is floating in ...) and it is possible to know about embryonic abnormalities; and when mother knows about it, mental and sometimes special family difficulties come to existence so that the mother or husband and wife seek to end pregnancy [19] Now, the secondary verdict or abortion permits due to different aforementioned motivations is studied from the viewpoint of religious scholars.

Abortion to Preserve the Life of the Mother

Abortion before the entry of the soul

Imamiyah Scholars unanimously agree that whenever the mother’s life is subject to the abortion that the soul hasn’t been entered into it and it is still so undeveloped that cannot be considered as a human being, then its abortion is permissible because from the viewpoint of religious lawyer preserving the mother’s life is of importance; in addition, emergency state of the mother to preserve her own life causes the prohibition of abortion to be eliminated.

It should be mentioned that if continuation of pregnancy is coupled with the knowledge of fear of life-threatening to the mother, as well as to the embryo that the soul hasn’t been entered into it, then the issue is of the kind of the problem between the important problem and more important one. In order to resolve such problems, religious scholars have accepted the more important problem and consequently, in order to save the mother’s life they have issued the abortion license [20]. Ayatollah Saafi in response and judgment in relation to remaining the embryo in mother’s womb that leads to death of the mother says: “after entering the soul it is not allowed and before entering the soul if preserving the life of the mother is subject to abortion then the permit is justifiable [21].

Abortion after Entering the Soul into the Body

When the soul was blown into the body, embryo just as the pregnant woman is considered a perfect human being. In relation to abortion in this phase there are also different viewpoints: in discussion on abortion it was told that some scholars believe: according to some traditions, even in case of necessity, urgency and dissimulation abortion is not allowed to commit [22]. Because,
preserving human beings’ lives has been stated as a permit for dissimulation; and in killing of others dissimulation is not permissible [23]. Since our discussion is about abortion permit, regardless of the theory of opponents, we begin to deal with the viewpoints of proponents and the reasons for abortion permit.

The Reason for Abortion License

When the soul is blown in the fetus, if the situation is such that continuation of the pregnancy is life-threatening for pregnant women some have attributed the abortion license, because the subject is considered of the nature of disturbance and in this case preserving the mother’s life is of more importance and preferable [24], because mother is an actual human but embryo enjoys the potential human talents. Thus, if the mother's life is not more important, it can at least be argued that probably saving her live is more important than saving the life of embryo and this very preference, is enough to preserve the mother’s life. Also, proving the retribution in crime taken place for mother and proving the Dieh in crime taken place for embryo are in themselves the reason for the importance of mother’s life and preference of her life [25]. Also, after entering the soul if losing the lives is certain in case of both mother and embryo, and in assumption of the problem i.e. if mother remains at the same manner as she was, then both of them die, mother’s life can be saved by abortion [26]. Ayatollah Jannati also answered and issued a fatwa in this regard: “in all cases where presence of embryo causes risk and loss for mother and the two alternatives are choosing between preserving either mother’s life or the embryo’s life, and the assumption is of certain nature, then parents may consent for abortion therapy” [27].

Reason-related Necessity Rule for Abortion Permit

Some religious scholars rely on the verse 3 of Sura Al-Ma’ida which says: “But as for him who is forced by severe hunger, with no inclination to sin (such can eat these above mentioned meats, then surely, Allah is Off-Forgiving, Most Merciful.”

Also, by virtue of a phrase from prophetic Hadith (a record of the words and deeds of the Prophet of Islam) which says: “and nine things are permissible for my people which are … and something that they are in need for it…”, they have argued that requirement of this reasoning is elimination of prohibition of abortion at emergency times just like the case where scholars in general, have acted based on the ‘necessity reasoning’ for eating the corpse, also in the issue of abortion this reasoning is grasped and since there is possibility to save only one person’s life, mother saves her life helplessly with abortion and according to her act in this manner and according to the aforementioned evidence this practice is not unlawful and prohibited [28]. It should be mentioned that emergency rule overrides the actual sentence, because counterfeiting the apparent sentence, including the apparent causality, getting help from the rule, takes place where actual sentence is suspected and in emergency cases the actual sentence is clear and Mokallaf (the person to whom doing the work has been assigned)is in no doubt about it. Apparently, the emergency that has been the subject of something, is not the same in all instances, perhaps it can be said that criterion is in personal and not in typical emergency, because compulsive evidence governs other reasons; and the rule means that in any instances and in case of anyone that the constraint is true, its sentence has been removed. Thus it is possible for constraint to be true about a person and false about another one.

Legitimate Defense for Permissibility of Abortion

The next reasons are narratives that have been expressed in relation to legitimate defense including the valid narration of Abi Basir from Imam Saadegh AS which says: “I asked Imam Saadegh AS about someone who was riding a horse and it was probable for it to run over a wayfarer. The wayfarer scared the horse and consequently the man fell on the ground and was wounded or killed. In such a case is the wayfarer responsible? Imam AS said: “the wayfarer is not responsible, because he has done so in order to defend himself” [29]. Apparently, it can be argued from this narrative and alike on the case where continuation of pregnancy is accompanied by threatening the life for mother because the mother attempts to abort for the purpose of defending her life, and in the defense issue it makes no difference for invasion to be from the outer side or inner side.

Presumption of Innocence the Reason for Abortion Permit

One of the reasons that permit abortion at this stage, is the innocence principle, since the reason for prohibition of abortion is in conflict with necessity reason for preserving the mother’s life, both are thus void and the assumption of innocent comes into practice i.e. mother
can resort to the innocent principle and commit abortion in order to preserve her own life, because in this case prohibition of murder is removed(30) Thus, for the purpose of preserving the mother’s life, and before the soul is blown, according to consensus of jurists abortion is allowable and after that, it is voidable according to some fundamentals; and their reasoning is mostly based on rational views.

**Abortion for preserving mental and physical health of the mother**

In cases where the physical or mental health of the mother is threatened, proponents issue abortion license. In accordance with the secondary verdict, Ayatollah Makarem-e-Shirazi and some other jurists have considered giving an end to pregnancy permissible before soul inspiration. They have considered it as voidable in case of fault and the necessity such as severe disease of the mother [31]. In case of the issue that, defect or severe illness of the embryo may be considered as a permit for abortion, contemporary jurists are of two classes in this regard. Some believe: If there is obvious deformity in the fetus so that it causes the plight of parents and severe hardship, its abortion is not unlikely to be permissible [32]. Also, if structural abnormalities of the fetus are such that it has not a human face, then it can be aborted because there isn’t any reason for lack of permit for wasting the non-human embryo [33]. Some jurists have allowed the practice of abortion when fetal disease has certainly been determined before the soul inspiration and some others don’t consider the fetal disease as a permit for abortion rather they consider it as a trial and error for fetus and its parents, because according to Islamic insight, trial and error is one of the programs that the Lord does on His servants (34).

**Illegal Abortion**

Jurists do not differentiate among the abortions due to legal marriage, Taraaazi (being pleased with each other), Onf (being violent with someone) and Mahaarem (deemed prohibited) because according to the generalities of evidences, abortion at all of its process- from the time when sperm is formed to the time of childbirth- is forbidden. However, some of them – if the mother’s individual mental status and social status is in so that continuation of pregnancy resulting from sexual immorality is not at all tolerable – only if the fetus is not blown soul and this is the origin of sin – consider the abortion as permitted. Faazel-e-Lankarni believes: it is not permissible for a woman who has become pregnant as a result of sexual immortality to abort her child, however, if she aborts before four months of age to avoid wastage of reputation, it cannot be said that it is forbidden, rather, in order to solve the problem of sin and wastage of dignity, especially assuming repent and paying blood money it is permissible [35]. The late Seiyed AbdolaliSazavaris believes: “in such cases the important problem and more important one should be considered”. He has accepted the permissibility of abortion [36]. However, from the viewpoint of Grand Ayatollahs Khamenei [37] and Makarem-e-Shirazi [38] abortion is prohibited, although the embryo has been formed through sexual immorality.

**Abortion for the purpose of population control**

From the perspective of jurists, although before soul inspiration, embryo is not considered a perfect human being, its abortion is permissible when a necessity has arisen and assuming the fulfillment of necessity, population control cannot be as a permit for abortion because, there are several ways to prevent pregnancy and it is not unique to abortion. However, after the inspiration of spirit, the population problem at any level and quality and considering the priority cannot be a permit for abortion because the abovementioned problems are not enough to legitimize the murder [39]. However, if experts and religious specialists recognize the control issue and limiting the birthrate as a social necessity, religiously it can temporarily be agreed, and/or if necessary it can consciously be propagated. It should be noted that in cases where according to the diagnosis of dedicated experts population control is necessary, you must use legitimate means, and not illegal items such as abortion and the like [40].

**Abortion because of economic problems**

From the viewpoint of the Imami jurists before the soul inspiration, just due to strong and solid reason judgment can be made to permit abortion, a reason with such a good intention that overcomes the prohibition of eliminating a creature that after its evolution is to reach a stage in which it obtains human soul.

In answer to the question “Is abortion permissible due to economic problems?” supreme leader stated: “Abortion is not permitted only due to economic difficulties.”[41]. According to the strong evidences in Quran[42], and other arguments raised for the prohibition of abortion, the abovementioned sixth problem for
abortion poverty and economic problems cannot permit abortion. Thus, the assumption of permit in this case is rejected.

CONCLUSION

1. There is no specific verse in the Holy Quran about abortion and jurists deduce its prohibition from verses that have denounced child suicide. From the general verses it can be understood that the prohibition of child murder is a general verdict whether a child or adult, daughter or son, deformed and mentally retarded or perfect created because all of them have been created by God and He has not allowed anyone the act of killing other people.

2. The general opinion Shia Fighh according to the book, Sunnah, consensus and wisdom is prohibition of abortion at all stages of embryonic development and evolution, because Shia scholars believe that human beings developments begin since the establishment of embryo in the womb and that, considering the task warrant there is no distinction between embryo state and the next steps i.e. Prohibition of abortion is not of distinctive nature although there are some differences in terms of situation and the amount of blood money.

3. In Islam, the primary verdict on abortion is its prohibition, however, according to the secondary verdict in cases where hardship or emergency appears the prohibition of abortion before the soul inspiration changes into its being permissible.

4. With the approval of therapeutic abortion law a significant number of illegal abortions will be dropped and it will be done legally; this has a considerable impact improving the health of pregnant women.

The followings are raised in prohibition or permissibility of abortion

A. According to most scholars abortion of deformed fetus is permissible before the soul inspiration (four-months old) if it causes severe hardship.

B. Abortion for the purpose of pity to the deformed fetus or mother or society is not permissible.

C. Abortion of an embryo which has come into existence due to adultery is forbidden and is not permissible in any case, however, according to some of the great scholars it is permissible before the soul inspiration when it causes loss of credibility.

D. Social and economic factors are not considered as justifiable reasons for abortion. Abortion is permissible only before the soul inspiration and when it is dangerous for the mother and embryo itself. instruction

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