

Abortion: *Shi'ite* Perspective



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1 Introduction: *Shi'ite* Islam

Islam is a monotheistic religion that began in the seventh century by the Prophet of Islam, Muhammad (born in 570 CE). It has a common root with the other Abrahamic religions: Judaism and Christianity. The word “Islam,” which designates the last of the Abrahamic religions, literally means “submission to God’s will.” The Qur’an’s persistent injunctions of obedience to the Prophet endowed him with enormous personal prestige and power in shaping public order and the future course of comprehensive Muslim life. However, the dispute over the post-Muhammad leadership divided Muslims into two groups: *Sunni* and *Shi'ite*. The most powerful group supported the candidacy of Abu Bakr (d. 634), an elderly associate of the Prophet, as the successor to the Prophet’s political leadership (to be known as the *Sunni* or followers of the communal tradition). Another group who believed that the Prophet had actually appointed his cousin and son-in-law, Ali ibn Abi Talib (d. 660), as the leader of the community before his death in 632, formed the minority group, known as the *Shi'ite* (partisans of Ali) (Sachedina 2009). Today, almost eighty percent of the Muslims are *Sunnis*. However, the *Sunni* and *Shi'ite* both share the Qur’an and the Tradition (*Sunna*) of the Prophet as the authentic sources of Islamic *Shari'a*. The *Shi'ites*, however, also consider the Imams’ words and deeds as part of the Tradition.

Since the ninth century, as a tradition, Islamic scholars are affiliated with *Shi'ite* or one of the four *Sunni* schools of thought (*Hanafi*, *Maliki*, *Shafi'i*, and *Hanbali*). It is due to the validity given to such different interpretations of the Qur’an and the Tradition (*Sunna*) that allowed the establishment of these five different schools of the juridical practice in Islam. As a result of the absence of a central authority for all

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schools of thought in Islam, determination of valid religious practice especially in *Shi'ite* school of thought is left to a qualified scholar of Islamic *Shari'a* (*faqih*) (Bagheri 2011).

In Islamic jurisprudence, the issues and problems that emerge along with the progress of human knowledge and technology are considered “newly-emerging problems.” Islamic jurisprudence (*fiqh*) engages in the understanding and interpretation of the supernatural source of Islamic *Shari'a*, God’s revelation (Qur’an), in order to formulate new Islamic rules in all human activities. However, in dealing with some issues, there might be a lack of textual ordinance and explicit guidance in the primary sources of Islamic jurisprudence. Those issues are the matters that fall within the domain of legal discretion (*ijtihad*). In the *Shi'ite* school of thought, other juridical resources, such as the “Reason” (*aql*) and “Consensus” (*ijma*) among the companions of the Prophet or Islamic scholars, are considered in order to deal with issues which have not been mentioned in the Qur’an or *Sunna*. A review of contemporary juridical rulings (*fatwa*) issued by *Shi'ite* jurists, especially in the use of assisted reproductive technology, confirms the pragmatic approach adopted by the *Shi'ite* scholars who consider the elements of “time and place” in order to accommodate new technological advancements in biomedicine (Bagheri 2014b).

It is important to note that in *Shi'ite* jurisprudence as in other Islamic schools of thought, rulings on abortion are not based on a women’s rights approach (as seen in the West). In other words, they do not look at this issue as a conflict of rights between a pregnant mother and her fetus, but sanctity of life and human dignity.

2 Abortion: Juridical Rulings

Abortion is a very challenging and controversial issue in the Islamic world, as it is in other religious societies. In a questionnaire survey among Muslim bioethicists to identify the top ten bioethical challenges out of 20 bioethical issues, participants chose “abortion” as the number nine challenge in Islamic societies (Bagheri 2014a). For many Muslims, religious teachings are a major determinant in healthcare decision-making, including child bearing and abortion. The Qur’an, one of the major Islamic *Shari'a* sources, describes the different stages of biological development of the embryo. The Qur’an reads: “We created man of an extraction of clay, then we set him, a drop (*nutfā*) in a safe lodging, then we created of the drop a clot (*alaqa*), then we created of the clot a tissue (*mudgha*), then we created of the tissue bones, then we covered the bones in flesh; thereafter we produced it as another creature. So blessed be God, the best of creators” (23: 12–14). The Qur’an also consistently emphasizes the sanctity of human life. For instance, “If anyone slays a human being unless it be for murder or for spreading corruption on earth, it shall be as if he had slain the whole of humankind” (5:32). The issue of abortion has not been mentioned in the Qur’an explicitly even though in several verses the Qur’an prohibits and condemns homicide and the killing of human beings and children. The following Qur’anic verse, for example, forbids killing of children: “Slay not your

children for fear of poverty; we will provide for you and them. Surely the slaying of them is a grievous sin” (17:31).

Therefore, based on these Qur’anic rulings regarding the sanctity of life as well as prohibition of killing, the juridical rulings on abortion mostly reference the Tradition (*Sunna*), the narrated opinions (*hadith*) from the Prophet, his companions, or Imams (in the *Shi'ite* school). The tradition that has provided the most significant religious grounds for the legal recognition of the fetus’ inviolability has been reported in both the *Sunni* and *Shi'ite* compilations (Sachedina 2009). The reported traditions provide the ontological interpretation of biological development in forming judgments about when the embryo attains human status and the time of ensoulment.

Regarding abortion, there are two major issues in Islamic jurisprudence. First is establishing the onset of ensoulment, that is, the time in which the spirit joins the body during fetal development. The second issue is determining whether the mother’s life is in danger due to pregnancy and its continuation. In general, the main ruling on abortion asserts that abortion is not permitted, except if the mother’s life is in danger and the fetus is in the pre-ensoulment stage (Bagheri and Afshar 2011). The concept of ensoulment defines the moment at which the soul is first united to the body and thus presupposes the existence of a body. Concerning the connection between ensoulment and personhood, it has been argued that ensoulment is necessary and sufficient for personhood: the fetus becomes a person (with moral status) at that moment when it becomes a composite of the body and soul. Prior to this moment, the fetus is simply a material object and hence not a person, though it surely deserves some respect (Himma 2005).

The Qur’anic verse which was mentioned earlier elaborates on the developmental stages of the human embryo and finishes by “... thereafter we produced it as another creature. So blessed be God, the best of creators” (23: 12–14). Many Islamic jurists have referenced this verse when referring to the ensoulment. The late Ayatollah Hossein Tabatabaei, one of the most prominent philosophers and Islamic jurists in contemporary *Shi'ite* Islam, says that this verse implies the qualities and the essence of the fetus in this stage (i.e., after ensoulment) which is not the same as the previous stages. In other words, in this stage, God has endowed the fetus knowledge, power, and life. Therefore, something has been created which was not present in the former stages (Tabatabaee 2000). However, there has been a great deal of disagreement about when ensoulment occurs among Islamic scholars as among Jewish and Christian scholars. Most Muslim scholars including the *Shi'ite* jurists believe that ensoulment occurs at about 120 days after conception (Majlesi 1983). It has been suggested that the cutoff point of 120 days is to provide a practical guideline for settling the cases in which parents or medical staff need to make a decision (Shomali 2008). In Iran, that *Shi'ite* school of Islam governs reproductive health and rulings on abortion; accordingly, it is permissible to abort a fetus before ensoulment, if there exist certain medical conditions: if the mother’s life is in danger or there is fetal abnormality which causes hardship to parents in having such a baby (Therapeutic Abortion Act 2005).

2.1 *Abortion Before Ensoulment*

Most Muslim scholars including *Shi'ite* jurists believe that ensoulment occurs at about 120 days after conception (Majlesi 1983). Muslim jurists treat the fetus before ensoulment as a biological entity and not a legal-moral one, albeit the fetus deserves some respect by virtue of being a human body that is an essential component of personhood. However, there is no blanket permission to abort a fetus before ensoulment without a legitimate reason. Based on a *hadith*, Imam Al-Kazim the seventh *Shi'ite* Imam, in reply to a question by Ishaq b. Ammar whether it is permissible for a woman who fears pregnancy to drink some liquid to abort what is in her uterus or not, replied, no. Ishaq said, "That is the zygote (*nutfa*).” Imam replied, "Verily the first thing to be created is the zygote" (Hurr Amili 1994).

None of the *Shi'ite* jurists allow abortion before ensoulment in the absence of a legitimate reason (Arabian 2010). However, if continuation of pregnancy may cause harm to a mother's life or causes a direct threat to her life, the majority of *Shi'ite* jurists permit abortion before ensoulment. According to a *fatwa* issued by *Shi'ite* jurists, the late Ayatollah Khomeini, Ayatollah Khamenei, Ayatollah Lankarani, and Ayatollah Sistani, it is permissible to abort a fetus to save the mother's life before the ensoulment (Rouhani and Nughani 1987). It should be noted that before ensoulment, the fetus is considered alive, but the quality of life is different from the subsequent stage. Therefore, in the case of any harm done to the fetus before ensoulment (e.g., abortion), compensation or blood money (*diya*) should be paid, and the amount will vary based on the different stages of the fetus' life. It should be noted that in Iran, as a *Shi'ite* country, the applicable laws allow abortion only before ensoulment (120 days after conception), under certain conditions. According to the Therapeutic Abortion Act passed by the Iranian Parliament in 2005, abortion before ensoulment is allowed if there is one of 51 maternal and fetal critical medical conditions (22 maternal disorders and 21 fetal disorders) with a definite diagnosis by three specialist physicians and the approval of the Legal Medicine Organization.

2.2 *Abortion After Ensoulment*

The ensoulment marks an important change in the status of the fetus. As mentioned about compensation for aborted fetuses, compensation after ensoulment when the fetus is aborted intentionally will be the same blood money as for a full human being (Bahrani 1999). Abortion after ensoulment is not permitted in major Islamic jurisprudence, *Sunni* as well as *Shi'ite*. However, there is a minority opinion that permits abortion regardless of the date of pregnancy, even after ensoulment, if the pregnant woman's life is in danger and saving the mother's life is possible only by aborting her fetus.

In *Shi'ite* school of thought, abortion after ensoulment has caused a great deal of discussions. Among *Shi'ite* jurists, a few jurists permit termination of pregnancy

even after ensoulment, in certain very restricted conditions. Based on the “legitimate defense theory,” a pregnant woman has a legitimate right to defend herself against any life-threatening situation caused by her fetus. Accordingly, the pregnant woman has the right to abort her fetus to save her own life. For instance, Ayatollah Khoie permits abortion of an ensouled fetus if, based on opinions by expert physicians, it is the only way to save the mother’s life (Arabian 2010). In his view, however, *diya* should be paid for every abortion. The same *fatwa* has been issued by Ayatollah Tabrizi, but he believes that there is no need to pay *diya* (Tabrizi 1995). It should be noted that based on the legitimate defense theory, only a pregnant woman has the right to abort (kill) the fetus, which raises the question whether or not a physician can help the pregnant woman. However, it has been accepted that in this case, physicians can help the pregnant mother to save her life (Arabian 2010). Another question has been raised, asking why a fetus who has no intention in threatening (attacking) her mother’s life should be aborted. In response, it has been argued that in the application of the legitimate defense theory, the element of “intention” is irrelevant and does not change the ruling. To prove this, a *hadith* has been reported from Imam Baqir the fifth *Shi'ite* Imam; when asked about the ruling of someone who killed a person with an intellectual disability, he said that “if to defend his life he killed that mentally retarded person because that person attacked to kill him to save his own life, then there is no need for punishment or *Diya*.” It has been argued that abortion of an ensouled fetus is allowed only if the level of threat targets the mother’s life. However, if a mother’s health is in danger (as opposed to her life), then in that case abortion is not permitted (Fyyaz 1999). It should be noted that although there are *fatwa* issued by several Grand Ayatollahs to permit abortion after ensoulment, currently the applicable laws in *Shi'ite*-majority countries such as Iran do not approve abortion after ensoulment.

3 Abortion in Iran: A Majority *Shi'ite* Country

In Iran, as an Islamic country with a *Shi'ite* majority, *Shari'a* laws based on the *Shi'ite* school govern reproductive health and rulings on abortion. Since the 1979 Islamic revolution in Iran, the rulings on abortion have been reexamined three times. Firstly, based on the Islamic Punishment Act (1983), abortion was limited to the situation in which the mother’s life was in danger and only if the fetus was less than 120 days old (based on the onset of ensoulment which is considered 120 days from conception). Whatever the cause of abortion, the law insisted that the payment of blood money (*diya*) is required (Eslami 2005). However, after the time of ensoulment (120 days), termination of pregnancy was prohibited (*harām*) in all cases, even if there is a life-threatening medical condition for the pregnant woman. Secondly, in 2003, the Iranian Legal Medicine Organization developed an official protocol for therapeutic abortion which was approved by the head of the judiciary system. Accordingly, therapeutic abortion was permitted in cases where there was one of 51 maternal and fetal medical conditions and fetus was in pre-ensoulment stage. These

conditions included 22 maternal disorders, such as severe cardiopulmonary disease, esophageal varices, autoimmune hepatitis, renal failure, uncontrollable hypertension, AIDS, uncontrollable autoimmune diseases which involved major organs, central nervous system tumors, severe dermatological diseases, and epilepsy resistant to treatment. The list continued with 29 fetal conditions, which are profoundly debilitating or incompatible with fetus life, such as hematological disease (thalassemia major), estrogenic disorders (osteogenesis imperfecta), genetic anomalies, renal agenesis, and CNS malformations.

Thirdly, in 2005, the Iranian Parliament ratified the “Therapeutic Abortion Act,” which has been approved by the Guardian Council (an expert panel of Islamic jurists and lawyers monitoring all laws passed by the Parliament). Later in 2008, the Iranian Legal Medicine Organization developed its bylaws and protocol. According to the Act, abortion before 16 weeks (120 days) of gestation is permitted under certain conditions. The Act reads as follows:

Abortion is permissible with definite diagnosis of three specialist physicians and approval of the Legal Medicine Organization for cases in which fetus suffers from anomalies or (mental) retardations that causes hardship to mother and also for cases in which mother suffers from a life threatening disease, before ensoulment (four months of pregnancy) with consent of mother and there is no penalty for consulting physician. Violators of this act would be punished based on Islamic Punishment Act (The Therapeutic Abortion Act 2005).

It should be noted that according to Article 624 of the Islamic Punishment Law, “Any clinician, midwife or pharmacist and other relevant medical professions provide abortion tools or contribute to the procedures would be punished 2–5 years in prison and they have to pay the blood money (*diyah*) based on the related laws.”

However, concerns have been raised about the possibility of medical errors and delays in obtaining therapeutic abortions due to the amount of time needed for three specialists to provide definite diagnoses, budget constraints affecting availability of hospital beds, locating the necessary sophisticated equipment, and obtaining the approval of the Iranian Legal Medicine Organization (Akrami et al 2010). It should be noted that before the Act was ratified, because of the high prevalence of thalassemia in Iran, a group of physicians requested religious authority to issue a *fatwa* permitting abortion in cases of genetic anomalies such as thalassemia major. Following that request, religious permission (*fatwa*) was issued by Grand Ayatollah Ali Khamenei, which approved abortion for such anomalies before ensoulment, if the growing fetus or birth of the child caused unbearable hardship (*haraj*) for the parents (Khamenei 2008).

4 Abortion in Specific Situations

4.1 Family Planning

Islam highly recommends people to get married and establish family ties and have children. In fact, the preservation of the lineage has been emphasized by Islamic *Shari'a*; therefore, preventing conception permanently is a violation of one of the

five ends of *Shari'a* to protect lineage (*nasl*). Muslim legal scholars have considered the subject of birth control in great detail, and a consensus has emerged regarding its permissibility as a means of population control. However, abortion as a method of population control has not been recognized by *Shi'ite* scholars. The resolution passed by the Islamic Juridical Council of the Organization of Islamic Cooperation regarding family planning states "It is permissible to decide temporarily to postpone having children for the sake of putting distance between pregnancies or preventing conception for a short period if there is a valid reason recognized in the revealed texts of Islam, as long as there is an agreement between the spouses on the matter following consultation, and provided there is no harm in doing so" (Organization for Islamic Cooperation 1998).

Accordingly, family planning in itself is not forbidden; however, some family planning methods might not be allowed in some jurists' perspectives. For instance, irreversible methods of birth control are not allowed.

4.2 *Abortion of Defective Fetus*

In the Islamic tradition, there is no blanket permission to abort a defective fetus, and any consideration regarding the fetus's health raises serious questions as to what constitutes a sufficient defect to warrant abortion (Sachedina 2009, p; 125). However, there are different views regarding therapeutic abortion for fetal genetic disorders. In response to a question requesting a *fatwa* regarding therapeutic abortion, Grand Ayatollah Ali Khamenei responded that "If diagnosis of a disorder is definite in a fetus and having such baby is considered a hardship and huge problem (*haraj*) for parents, therapeutic abortion is permitted before ensoulment but they have to pay blood money (*diyah*) based on some cautions (*ihhtiat*)" (Khamenei 2011). In another question whether it is permissible to abort a fetus with intellectual or physical disabilities, Ayatollah Sistani responded that therapeutic abortion is not permitted unless it causes maleficence and/or an unbearable hardship (*haraj*) for the mother and only if it is before the ensoulment (Hosseini Sistani 2011). However, abortion of those fetuses is not permitted by some other Islamic jurists such as Ayatollah Lotfollah Safi Golpaygani and Hossein Noori-Hamedani. It should be noted that abortion because of poverty, unwanted pregnancy, sex selection, or rape is not permitted based on the common views of Islamic scholars (Akrami and Ghafouri-Fard 2014).

4.3 *Abortion in the Case of Rape*

In Islamic jurisprudence, the term *Zina* indicates the sexual intercourse outside the marriage contract, either based on both parties' consent or by force (rape). The general prohibition of abortion applies in cases of adultery and rape. In this regard, the

jurists indicate that the wrong act of the adults should not be imposed on the fetus (to be aborted). However, some jurists in this regard permit the abortion if the pregnancy and childbearing impose unbearable hardship (*haraj*) to the mother. To justify this permission, some jurists extend the definition of the mother's health to her psychological health, and other jurists include hardship for women in case of pregnancy due to rape. In this regard, Ayatollah Sistani indicates that abortion in the case of rape is not permitted except if it causes unbearable hardship for the woman and if the fetus has not reached ensoulment. Furthermore, based on a *fatwa* issued by the late Grand Ayatollah Khomeini, abortion in case of pregnancy due to rape is not permitted (Khomeini 1972, *fatwa* no. 24). The same *fatwa* was also issued by Grand Ayatollah Khamenei (2008).

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