

## **An Analysis of the Opinions of Shia Jurisprudential Authorities Regarding Abortion**

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### **Abstract**

The objective of this research is to analyze the opinions of Shia jurisprudential authorities regarding the issue of abortion and its permissibility or prohibition during different stages of pregnancy. In turn, it was anticipated that this would reveal an array of various probable practical options for followers of these jurisprudential authorities to emulate given the situation in question. The research conducted in two stages in which the results derived from completing stage one constituted raw data to be processed in stage two. In this process, data was collected in stage one through direct and open-ended questions that were presented to the offices of Shia jurisprudential authorities in written format and in two separate phases. Subsequently, in stage two, the answers collected in stage one were furnished for analysis to a group of experts constituted of top university and seminary scholars. The group was presented by the researcher with questions that were answered in a collective interview setting. The end product of this entire process is that various practical solutions regarding abortion, in cases where the lives of the mother and the child depend on the performance of this said medical procedure, are made available for the followers of Shia jurisprudential authorities and doctors alike. It was discovered that abortion was unanimously considered permissible before the stage of “ensoulment” in all situations where the mother faced mortal or considerable risk. However, after the stage of “ensoulment”, its permissibility or prohibition depended on a series of conditions and considerations.

**Keywords:** Maternal–fetal conflict, Abortion, Islamic jurisprudence, Ensoulment

### **Introduction**

Abortion has a long history within human society and it remains a crucial point of contention with many societies today. It is estimated that 56 million abortions are conducted annually around the world. As such, one in every thirty women of fertile age (between 15 to 44 years) experiences this procedure every year (Sedgh, 2016).

Abortion is highly controversial and has led to fervent and widespread debate within various cultures, governments and religions. Islam is no exception to this phenomenon. Scholars and researchers of every religion and school of thought have studied and analyzed the jurisprudential and legal opinions of their peers and have, subsequently, strived to determine the correct ruling with reference to abortion in accordance to their respective creeds and ideologies. This ruling, in turn, has been presented by them to their societies in order to be incorporated into action wherever needed. The definition of “abortion” presented within these studies varies from scholar to scholar. However,

for the purpose of this current research, “abortion” is defined as “The induced termination of pregnancy before fetal viability”(Cunningham, et al, 2014).

Shia populations and societies are no exception with regards to this issue and, therefore, find themselves faced by similar challenges. In this present research, we have strived to analyze the rulings and opinions of Shia jurisprudential authorities concerning abortion. These opinions have been collected from their published legal works, as well as through discussions and direct interviews. Subsequently, the similarities and differences existing within these rulings were studied and, after focus group discussions with relevant experts, the precise edicts of the said jurisprudential authorities were derived so as to reveal the exact religious responsibility and obligation of Shia individuals within the context in question.

Ascribing precedence over the right of life between the mother and the child, in cases where one or both of their lives are at risk, constitutes the most important point of contention and debate amongst the Shia jurisprudential authorities when dealing with the issue of abortion. For this very purpose, the researcher has strived, through an acute analysis of the edicts and rulings of these jurisprudential authorities, to ascertain the exact religious obligation of Shia individuals within these same conditions. Therefore, the aim of this article is to discover a solution, in accordance to the rulings of Shia jurisprudential authorities, to the challenge of ascribing precedence to the right of life between the mother and the child when one or both face mortal or considerable risk during pregnancy.

Fervent debate and passionate disagreement has always existed between non-clerical experts and religious scholars. Sometimes, this disagreement is described as the “clash between rationality and religion”. Differences of opinion between religious scholars and medical experts upon topics of mutual concern are no exception to this principle. One of such important issues is the question regarding the permissibility or prohibition of abortion during various stages of pregnancy. Almost every other academic within this field of study has made comparative studies between the viewpoints of medical experts and religious scholars from various creeds and belief systems, and has critically analyzed these opinions. Islamic experts too have performed similar studies, presenting us with a host of results. One of the most challenging discussions regarding abortion is the debate that revolves around the permissibility or prohibition of the termination of pregnancy when the mother or the child, or both, are faced with mortal or considerable risk if the said pregnancy is allowed to continue. Even though there exist differences of opinion between medical experts and Islamic scholars regarding the permissibility of abortion before the stage of ensoulment, these differences are not critical in nature and can be reduced or completely resolved with relative ease. However, when dealing with the post-ensoulment stage of pregnancy, these differences become highly critical, especially when we study the rulings of Shia religious authorities. Given this fact, medical practitioners are regularly faced with clinical scenarios wherein the mother has already entered the 19<sup>th</sup> week of pregnancy and has, therefore, crossed the point of ensoulment, but any continuation of the natural pregnancy process proves to be either extremely difficult or utterly impossible and may even lead to dire consequences including death. In such cases, and if there exists a possibility of survival for the baby outside the mother’s womb, doctors prematurely remove the fetus and attempt to sustain it artificially under special and intensive care. Obviously, the mother too is placed under treatment to help her recover fully. Nevertheless, things become more complicated if the fetus is too underdeveloped for it to survive outside the mother’s womb. Herein, doctors are faced with a dilemma. Normally, in such circumstances doctors will opt to abort the fetus in order to safeguard the mother. On the other hand, the general ruling of the Shia jurisprudential authorities dictates that aborting the fetus after ensoulment is prohibited in the absolute sense and without exception.

Imagine a woman who has carried a baby within her womb for five months. However, her doctor tells her that due to medical complications e.g. the mother's cardiac condition any continuation of the said pregnancy may lead to her own death. This news in itself is traumatic enough. Unfortunately, the mother is also informed that she is obligated to refrain from abortion even if this costs her her very life. The mother is now faced with an excruciating dilemma: to save herself she must abort her beloved child, but in doing so she will face divine wrath in the afterlife. On the other hand, if she fails to abort, seeking divine pleasure and reward in the hereafter, she loses both her child and her own life.

All the while, the mother and her husband are obliged to follow the laws of Islam, but this becomes even more complicated when they find themselves faced with a difference of opinion between their medical advisors and their religious scholars. To make things even worse, they discover that the various jurisprudential authorities are also at odds with one another regarding the religious edict pertaining to this situation. For instance, the husband emulates a certain jurist while the doctor under advisement emulate another and this leads to a conflict of ideas. Similarly, the mother may emulate a jurist who believes that abortion is permissible within the said situation while the husband emulates a jurist who deems it prohibited. In this scenario, the husband may pressure the mother not to abort because he feels it to be sinful and believes himself to be the decision-maker (or *Wali*) vis-à-vis the child in question. On the other hand, the mother requires the husband's support and strength at this delicate moment and cannot pursue her own health and safety without his backing. Likewise, we may even imagine a scenario wherein the opposite comes to pass i.e. the mother emulates a jurist whose edict prohibits abortion under the said conditions. Herein, she will find herself shying away from abortion in order to avoid divine retribution, and shall have to place her trust in divine mercy while depending upon the essentially relative and non-absolute nature of medical science, hoping against hope that she and her child may somehow dodge the outcome being prophesized by her doctors.

Another aspect of the moral dilemma present in such a scenario can be seen if a doctor emulates a jurist who prohibits abortion. Here, the doctor will find himself or herself torn between the dictates of his or her religious obligations and those of his or her professional duties. Performing one professional duty, in this situation, leads to abhorrent sin and murder, while performing one's religious duty leads to the endangerment of one's patient and a vital breach of professional trust.

Given all this, we need to explore whether Shia jurisprudential authorities really deem abortion in the post-ensoulment stage to be prohibited in the absolute sense. Do they really believe it to be forbidden even if it may translate into the mother's death? Or do they allow exceptions to their general edicts in this regard?

These are the questions that we seek to answer in this research.

### **Theoretical Background of the Research**

Islam is a comprehensive religion that has a ruling for each and every human action. It prescribes laws to the most personal of individual actions, as well as all manners of social interactions, be they within the parameters of a family, or a community, or between a government and people it governs, or even between various governments. Hygiene and medical issues are one such field of life wherein Islam has particular laws and rulings. For this very reason, Islam plays a very active role in the daily life of Muslims and practically shapes the entirety of their lives. Therefore, it is only natural that Muslims find it important to look towards Islam when faced with the issue of abortion.

A study of historical records shows that abortion was not common place amongst the Arabs during the advent of Islam. However, they did engage in infanticide due to certain economic and

cultural reasons (Kan'an, 2001). Islam explicitly forbade such infanticide and declared, "Do not kill your children out of fear of destitution. We provide them sustenance and you as well" (The Holy Qur'an, 17: 31). Furthermore, Islam gave its followers clear directives in which it made them responsible for safeguarding the psychological and physical health of pregnant women and children, and in doing so, educated Muslims about the essential rights of women and children. Two examples of such teachings are seen in these directives: "Respect your children" (Al-Hurr al-'Amili, 1983) and "Your child is your master up until he or she reaches the age of seven" (Majlisi, 1983).

Similarly, Islam has paid special attention to the rights of people within society, and has even legislated rights for animals and the eco-system in general. As such, it has deemed it necessary for Muslims to compensate for even the slightest of damages, even if such damages were unintentional in nature (Khuyi, 1996). Given this extraordinary sensitivity towards preserving the rights of the individual, the society, and even nature itself, it is not strange that Islam deems the murder of one innocent person equivalent to the murder of humanity in its totality. Likewise, it is not astonishing that this same system of beliefs and laws teaches us that if we grant life to just one individual, we have indeed bestowed the gift of life upon all human beings (The Holy Qur'an, 05: 32).

Furthermore, Islam encourages people to have multiple children and deems it an honor (Majlisi, 1983). Following this same policy, Islam prohibits abortion and not only deems it to be a sin, carrying punishment in the afterlife, but also prescribes a financial penalty upon those who engage in this activity. This issue carries such grave importance that, in accordance to the rulings of a majority of Shia and Sunni religious authorities, a pregnant woman cannot artificially terminate her pregnancy even during the initial days after conception. According to these scholars, a woman who commits such an act will have to be punished and shall, as such, be obliged to pay a financial penalty called *Diyah*. It is even more interesting to note that the amount of this financial penalty rises in correspondence to the fetus's age. Thus, when a fetus enters the state of ensoulment (120 days after conception or approximately 19 weeks after the woman's last menstrual period – LMP)<sup>1</sup> the penalty levied is equal to the legal penalty applicable to cases of unintentional homicide (Khamenei, 2016). Therefore, the general and primary principle concerning abortion in Islam is prohibition. Have said this, there exists considerable disagreement amongst Islamic scholars with reference to this matter, especially amongst the Shia and Sunni religious authorities. What follows is a brief description of these various opinions.

## **The Viewpoint of Sunni Jurists**

### ***1. Abortion Before Ensoulment***

Different writers have presented different classifications regarding the various opinions of Sunni scholars regarding pre-ensoulment abortion. For instance, Abdul Fattah Mehmud Idris (Professor of Comparative Jurisprudence at the AL-Azhar University) presents us with the following classification:

a. Prohibition of aborting the *Nutfah*: Some scholars within the Hanafi and Maliki schools of thought, along with Ghazali (who belonged to the Shafi'i school of thought) and Ibn Jozi (from the Hanbali school of thought).

b. Permissibility of abortion before the *Nutfah* period is completed: Some scholars from the Maliki school. Most of the Shafi'i school and some from amongst the Hanbali school.

<sup>1</sup> From the Islamic point of view, the developmental stages of a fetus are divided into three periods, each period having 40 days. The first is called *Nutfah*, the second is called *'Alaqah* and the third is called *Mudghah*. Collectively, these three stages add up to 120 days after conception (Al-Kulayni, 2010). Shia and Sunni scholars unanimously agree that upon reaching the 120 day benchmark, ensoulment occurs (Sachedina, 2009).

- c. Permissibility of abortion before completion of the *`Alaqah* period: A minority amongst the Shafi'i
- d. Permissibility of abortion until the period of *Mudghah* and before the formation of organs: Some scholars of the Hanafi school.
- e. Permissibility of abortion before ensoulment: A minority from amongst the Hanbali school (Idris, 1993).

However, Ali Mohiiddin Al-QarahDaghi (The Deputy Secretary General of the International Union of Islamic Scholars and Professor of Jurisprudence and Principles of Jurisprudence at the Qatar University) and Ali Yusuf Al-Muhammadi (Professor at the Jurisprudence and Law Department of the Qatar University) have presented the views of Sunni scholars about abortion in the following manner within their book titled *Fiqh al-Qadayah al-Tibiyah* (The Jurisprudence of Medical Issues):

- a. Most Sunni jurists prohibit abortion except for situations wherein the mother's life may be at risk. Almost all Hanafi jurists, a majority of Shafi'i jurists and several Hanbali jurists adhere to this opinion.

- b. However, some Hanafi jurists, some Shafi'i jurists, some Maliki jurists and one Hanbali jurist believe abortion to be permissible before the stage of ensoulment. Certain Maliki and Shafi'i scholars deem it permissible up until the 40<sup>th</sup> day of pregnancy, and prohibited thereafter. Some Hanafi jurists deem it permissible to perform abortion before the stage of ensoulment only if it is absolutely unavoidable. On the other hand, certain other Hanafi scholars rule that abortion is unconditionally permissible before this stage in pregnancy. Similarly, certain Shafi'i jurists declare that only illegitimate fetuses (conceived out of wedlock) may be unconditionally aborted before the stage of ensoulment (Al-QarahDaghi and Al-Muhammadi, 2006).

Abdulaziz Sachedina (Professor of Religious Studies at the University of Virginia) has presented yet another classification in his book titled "Islamic Biomedical Ethics". After having listed the said distribution of Sunni jurisprudential opinions, he summarizes its contents as follows:

"Generally speaking, this stage is recognized as the pre-enrolment stage, and majority of the jurists allow abortion at this stage only when necessary. Up until this stage these jurists do not think that the fetus has acquired individuality and personhood which God has forbidden to destroy"(Sachedina, 2009).

The General Presidency of Scholarly Research and Ifta (Saudi Arabia) made the following declaration about abortion during its 29<sup>th</sup> meeting in Riyadh in 1987:

"When is it permissible to abort a pregnancy?"

- 1- It is not permissible to abort a pregnancy at any stage except for a Shar`y (Islamically lawful) justification and within very tight limits.

- 2- If the pregnancy is in the first stage, which is forty days, and aborting it serves a Shar`y purpose or averts an excepted harm, then it is permissible.

- 3- It is not permissible to abort a pregnancy if it is *`Alaqah* (clot; a piece of coagulated blood) or *Mudghah* (a little lump of flesh).

However, if a trustworthy medical committee states that the continuance of the pregnancy will endanger the mother's life and may cause her to die, then it is permissible after using every possible means to avert these dangers" (The General Presidency of Scholarly Research and Ifta, 1987)

## 2. *Abortion After Ensoulment*

Adbul Fattah Mehmud Idris has listed instances from nine of the most credible source texts within Sunni jurisprudence and has concluded that there is no disagreement about the prohibition of



abortion after ensoulment has taken place. He does not mention any exceptions that may be taken into consideration (Idris, 1993).

However, The General Presidency of Scholarly Research and Ifta (Saudi Arabia) stated the following during their 29<sup>th</sup> meeting in 1987:

"It is not permissible to abort a pregnancy after the third stage (i.e. after the completion of four months of pregnancy) unless a group of trustworthy specialists in the field state that if the fetus remains in the mother's womb, it will cause her to die. This should be done only after using every possible means to maintain the survival of the fetus"(The General Presidency of Scholarly Research and Ifta ,1987).

Sachedina elaborates upon the Sunni jurisprudential position regarding post-ensoulment abortion in the following manner:

"There was overall agreement among the jurists that abortion after ensoulment is unlawful unless the mother's life is in danger." (Sachedina, 2009)

Nevertheless, Ali Mohiiddin Al-QarahDaghiand Ali Yusuf Al-Muhammadi mention that there exists a consensus amongst Sunni jurists regarding the impermissibility of abortion in the post-ensoulment stage. In the same book, titled *Fiqh al-Qadaya al-Tibiyah al-Mu'asirah* (The Jurisprudence of Contemporary Medical Issues), they go on to cite certain examples of classical Sunni jurists explicitly declaring such abortion to be prohibited even if the continuation of pregnancy may prove fatal for the mother. However, they explain these explicit declaration as follows:

"If we attain definitive knowledge, or it is seen to be highly probable, that the mother would die if the said pregnancy is allowed to continue, then certainly abortion is permitted. The explicit declaration of classical jurists prohibiting abortion under such a condition is simply a result of them not being able to conceive that such a danger actually existed" (Al-QarahDaghi and Al-Muhammadi,2006 ).

## **The Viewpoint of Shia Jurisprudential Authorities**

### **1. *Abortion in the Pre-Ensoulment Stage of Pregnancy***

In contrast to Sunni jurists, some of whom deemed abortion to be unconditionally permissible in the pre-ensoulment stage of pregnancy, the primary ruling of Shia jurisprudential authorities declares that abortion is prohibited right from the time of conception. However, they do mention a few of exceptions wherein this primary law may be ignored. For instance, if continuing the pregnancy exerts unbearable pressure and hardship upon the mother, or if it carries fatal risk, then abortion is permissible (Shirazi, 2016).

### **2. *Abortion in the Post-Ensoulment Stage of Pregnancy***

While Shia jurisprudential authorities have accepted "unbearable hardship" or "risk of death" as sufficient reason for a person to ignore the primary prohibition of abortion after conception and before ensoulment, they have either made no comment about post-ensoulment abortion in their books of religious edicts or have simply declared that post-ensoulment abortion is unconditionally prohibited (Shubairi and Sistani, 2016)

Given this situation, the researcher has strived to analyze the different scenarios possible for pregnancy after ensoulment so that a solution may be derived to the problem at hand.

## **Methods**

From the standpoint of its objective, this research is applicative and explorative in nature because its results are directly applicable in real life situations within society and it serves to increase the scope of the field of study to which it pertains. Likewise, since the methodology of data

collection employed within this study is qualitative in nature, the research is categorized as a qualitative investigation. Similarly, the research at hand is a multi-tier qualitative study since it was conducted in two stages, stage one dealing with attaining answers to jurisprudential questions from Shia jurists and classifying them and stage two dealing with the analysis of these answers within a focus group setting.

### **Stage One of the Research:**

In order to discover the exact academic ruling of Shia jurisprudential authorities regarding post-ensoulment abortion, we formed an advisory council of experts and thus framed the following questions. It was also kept in mind that the general and primary ruling of these jurists is that of prohibition.

The question posed: “Will abortion in the post-ensoulment stage become permissible if there is certainty that any continuation of pregnancy will lead to the mother’s death?”

The above query was presented to the offices of eleven of the Shia jurisprudential authorities. Like their Sunni counterparts, it was expected that their response would deem the given circumstance (i.e. fatal risk to the mother’s life) an exception to their primary prohibitory verdict about abortion in the post-ensoulment stage.

The answers of these Shia jurists regarding the permissibility or prohibition of abortion in the post-ensoulment stage, if a continuation of pregnancy bore fatal risk for the mother’s life, are listed as follows:

- a. Five from amongst the eleven jurists consulted deemed it permissible to abort the fetus even in its post-ensoulment stage if a continuation of pregnancy bore fatal risk for the mother.
- b. The remaining six jurists responded that they do not believe any such abortion to be lawful or permitted. From amongst these six jurisprudential authorities:
  - (i) Two jurists simply responded that given the circumstances mentioned in the question they did not deem it permissible to abort the fetus.
  - (ii) Two jurists replied that they believe it to be prohibited based on *Al-Ihtiyat Al-Wajibor* necessary religious precaution.
  - (iii) The remaining two answered, “Such an abortion is prohibited unless a continuation of the said pregnancy bore fatal risk for both the mother and the child. If fatal risk existed for both the mother and the child, and aborting the fetus was the only way of saving the mother while utterly no way existed to save the child, only then would such an abortion be deemed permissible”.

At this point, the first four jurists who had ruled that such an abortion is prohibited were contacted a second time and presented with another question. This question was as such: “In the post-ensoulment stage of pregnancy, if a continuation of the said pregnancy bore fatal risk for the mother while the fetus in itself was still incapable of sustaining life independently outside the mother’s womb, meaning that if the mother were to die than the fetus would certainly die as well and, simultaneously, the only way of saving the mother’s life were to abort the mentioned fetus, would it be deemed permissible to perform the given abortion so that at least the mother’s life may be salvaged?”

The answers given by the above-mentioned four jurists to this second question are as follows:

- (i) One jurist replied that abortion in these particular circumstances is permissible.
- (ii) Three jurists replied that, based upon *Al-Ihtiyat Al-Wajibor* necessary religious precaution, they believed abortion to be prohibited even in these particular circumstances.

### Stage Two of the Research

By taking into consideration that there exists a conflict between preserving the life of the fetus with preserving the life of the mother during the post-ensoulment stage of pregnancy, and that five out of the eleven Shia jurists consulted upon this matter ruled that abortion under the given circumstances was permissible while six of them ruled that it was prohibited, it was decided that the difference of opinion between the Shia jurisprudential authorities in this matter warrants further study, analysis and thought. It was also hoped that through such additional analysis and study a path could be found by which the opinion of this latter group of jurists could be changed. Therefore, the following was decided:

- (i) The essential source and cause behind this edictal difference be found.
- (ii) The cause governing the prohibition levied by the last three jurists in question be specified.
- (iii) A probable path for changing the opinion of these three jurists be discovered.
- (iv) If effort towards changing the opinion of these three jurists were to fail, a path should be found to help their respective followers out of the said dilemma. In this manner, it is sought that a solution be provided for these said followers so that they may partake in the medical procedure necessary for preserving their health while not transgressing upon the restriction levied upon them by Islamic law and without having to carry the emotional and psychological burden of sin.

For this purpose, experts in jurisprudential law were invited so that the above questions may be pondered upon within a focus group discussion (FGD) setting. Thus, twelve experts in Islamic jurisprudential law, all of whom are engaged in academic activity within this field of study at the highest level of research within the Holy Seminary, were invited to join the discussion at hand. The subject of these discussions and all related and relevant contents had already been made available to these individuals in written format. After a period of ten days following the invitation, the first discussion session was conducted in which nine people participated. Five of these nine experts held academic qualifications from both seminary and university backgrounds. Three of the said persons held qualifications in medical sciences and their presence in these meetings furnished the group with a critical opportunity to be able to better understand the subject at hand and reach a conceptual consensus about what exactly was under deliberation. This, in turn, increased the possibility of providing a framework that could be beneficial in any effort aimed at changing the opinion of the above mentioned jurists.

The questions that were discussed within this focus group were as follows:

1. What do you believe to be the essential cause behind the ruling of jurists who have deemed abortion to be prohibited within the post-ensoulment stage of pregnancy?
2. What are the probable causes behind the ruling of the three jurists who have deemed abortion in the given circumstances to be prohibited?
3. What arguments or explanation may be provided to these three jurists in order to bridge the gap between their opinion and that of experts within medical science?
4. If efforts aimed at changing the opinion of these three jurists were to fail, does the mother in question, and the doctor under advisements, really have no option but to accept the inevitability of the mother's demise?

### Results

After thoroughly discussing all of the above questions and analyzing each of the said queries, the final opinion of the expert panel was as follows:

1. With reference to the difference of opinion between the Shia jurisprudential authorities, which is reflected in the disparity that exists within their respective edicts, the expert



panel declared that if the issue of “abortion” is examined on the primary level (wherein the procedure itself is taken into consideration barring all other externalities and periphery circumstances) then there exists a consensus amongst the Shia jurisprudential authorities regarding its prohibition. The differences of opinion and ruling arise when “abortion” is viewed, not within its normal context, but rather within circumstances that are extraordinary in nature like in pregnancies wherein a failure to abort the fetus poses mortal risk to the mother’s life. Islamic jurisprudence contains certain general principles that serve to exempt people from laws if such laws were deemed to assert extraordinarily severe pressure on the person in question or pose considerable or mortal risk to his or her well-being. The disagreement between the jurists in this and similar cases originates from their interpretation regarding the extent of the applicability of these said general principles as well as the extent of their strength when faced with the circumstances in question. Therefore, we see that all the Shia jurists come to the same ruling when dealing with the issue of abortion in its normal and ordinary context. This unanimity is due to the fact that they all use the same general principles. However, when dealing with abortion in its extraordinary context, wherein these general principles clash with and contradict the specific and primary laws regarding the case under consideration, we see that the same jurists begin to disagree with one another in their respective edicts. This disagreement is caused by their different interpretations and understandings regarding the extent of the applicability of these general principles and the magnitude of their strength when faced with contradictory primary laws. Likewise, it is also possible that different scholars derive differing conclusions when studying a singular religious text, which naturally leads to a disparity in verdicts.

2. Following are the reasons why Shia jurisprudential authorities tend to avoid deeming it permissible to perform abortion in the post-ensoulment stage:

2-1. Within Islam’s teachings, a fetus in the post-ensoulment stage bears the same legal status as that of any other human being, and is dealt with in accordance to the same rules and laws which are applicable upon the latter. As such, killing a fetus in the post-ensoulment stage is considered willful homicide just as it would be deemed homicide for a person to kill a fully grown human being. Thus, aborting a fetus in this stage of the pregnancy is prohibited. To quote one of the experts in this field of jurisprudence, “Doctors may choose to call it abortion, but as far as we are concerned it is murder, simply because any fetus in the post-ensoulment stage is a human being”.

2-2. There exists an explicit narration attributed to Imam Jafar al-Sadiq (as) which says, “If a woman’s monthly menstruation period is delayed, do not give her medicine in order to induce the onset of the said period, for there is a possibility that she may be pregnant” (Al-Hurr al-‘Amili, 1983). According to this narration, it is forbidden to artificially induce menstruation which might result in aborting a newly conceived fetus even in the earliest possible stage of conception which normally manifests itself as a missed period. From here it is concluded that if abortion is categorically prohibited at this nascent stage of fetal developments, it must most definitely be forbidden in all latter stages of fetal growth including the post-ensoulment stage.

2-3. Islam prescribes several special rights to pregnant women. These special rights and legal privileges are designed to safeguard the child she carries. For instance, Islam prohibits any delay in the execution of criminal punishments, but if a pregnant woman were to be found guilty of a crime that carries a considerable physical penalty (e.g. adultery etc.), the execution of this said penalty is delayed until after the (two year) nursing period that follows the child’s birth. This demonstrates the importance ascribed by Islam to the child’s well-being. (Al-Hurr al-‘Amili, 1983)

2-4. There does not exist even one reliable narrated tradition or text that may indicate the permissibility of abortion. To quote one of the experts in this field of jurisprudential law, “All the existing texts and traditions that speak of abortion, speak of it in prohibitory terms”.

2-5. Firstly, a fetus is not considered a part of the mother's body like her other organs and, therefore, it is not permissible for the mother to do with it as she pleases. Secondly, even if the fetus were considered a part of the mother's body, still the mother would not have enjoyed any such right, since Islam does not deem us to be owners of our own bodies but rather see us as trustees entrusted with safeguarding this property which essentially belongs only to God.

2-6. The fact that the opinions and rulings of medical experts are based on statistical probability and do not represent absolute certitude. Furthermore, there always exists the probability of the doctor making an erroneous diagnosis or being overly cautious in his ruling. "It has been repeatedly observed that the diagnosis delivered by expert doctors was later proven to be wrong. Our case may not, therefore, differ from this trend". Similarly, it has been observed that "female medical experts quickly prescribe abortion even at the slightest sign of a problem, simply to stay on the safe side of things".

2-7. Another reason why Shia jurisprudential authorities tend to avoid giving edicts that allow abortion is that in numerous cases the circumstances leading to the medical prescription of abortion are not natural, but rather results of certain medical practices. For instance, the fetus in question may develop problems warranting an abortion simply because the mother consumed certain medicines that are harmful for fetal growth or due to undue exposure of the fetus to harmful x-rays etc. Given this overall environment, any ruling in favor of the permissibility of abortion is deemed an act that may facilitate certain mothers in unlawfully harming their own unwanted though healthy babies so that, once damaged, they would not face any legal or jurisprudential restriction or obstacle while aborting the said deformed fetuses.

3. The following are some of the possible arguments that, when presented to the said Shia jurisprudential authorities, may serve to change their opinions on the matter under consideration:

3-1. Self-preservation and self-defense: One of the self-evident and undeniable rights of any individual is the right to self-preservation and self-defense. Every individual has the right to defend him or herself when faced with a threat. Islam, too, recognizes and acknowledges this basic right. In our scenario, the mother in question is facing mortal danger and should be allowed to exercise her right to self-preservation and self-defense. As such, she should be able to opt for aborting her fetus if no other way towards self-preservation existed. In fact, it is irrational and unacceptable to demand that the mother embrace death so that her baby may live, let alone embrace death in a situation wherein her baby may die as well.

3-2. The mother's right to life hold precedence over the fetus's right to life: When faced with circumstances wherein we must choose who is to live and who must die between the mother and the child, it is self-evident that we must prefer the mother. This is because the mother is currently a fully-grown human being, whereas the fetus at this point is far from birth and needs to go through a long and dangerous process for it to be born. As such, it is better to abort the fetus, within the scenario being discussed, rather than allowing it to continue upon the risk of losing the mother.

3-3. Choosing a path that is less detrimental means that when faced with a situation wherein one must choose either between losing the fetus or losing both the fetus and the mother, one must only choose an option that bears the least degree of possible harm. To quote one of the experts present during the discussion being cited, "Safeguarding the life of half a person (i.e. a person not yet fully formed) should not be used as an excuse for us to kill a fully formed human being".

3-4. One of the arguments presented during the discussion in question pertained to two general principles existing within Islamic jurisprudence, namely "The Principle of Extraordinary Severity" (*Al-usrwa Al-haraj*) and "The Principle of Unavoidable Necessity" (*Al-Iztirar*). However, this argument failed to win the favor of several of the participants involved in our focus group. Thus,

this argument was rejected because these two general principles are manifestations of divine clemency wherein God intends to remove unbearable pressure from the shoulders of a person faced with such extraordinarily strenuous circumstances, not shift the said pressure from the person in question to another individual. Application of the given principles to our case would prove advantageous for the mother but would invariably lead to harming the fetus and, therefore, will represent an instance of shifting intolerable pressure from one person to another, especially since we consider the fetus a complete person. Thus, the said principles are not relevant to our discussion.

4. In terms of suggesting solutions for mothers or doctors faced with situations wherein the mother in question faces mortal risk, the participants of our focus group came forth with the following options:

4-1. The first option presented after a thorough analysis of the various rulings on abortion by Shia jurisprudential authorities was endorsed by the entire team of experts. This solution explained that the Shia jurists who have deemed post-ensoulment abortion to be prohibited, even in cases where both the mother's life and that of the fetus's is equally in danger, have done so based upon the jurisprudential doctrine of necessary precaution (or *Ihtiyat*). Rulings made due to the application of this particular doctrine, in contrast to edicts formed independently of this doctrine, are such that the followers of the jurist involved are allowed the freedom to refer to another juristic authority who holds a different verdict on the matter under consideration and emulate his ruling instead of that held by the first. As such, followers of the three Shia jurisprudential authorities who believe abortion to be prohibited even in the special circumstances explained above can freely revert to and emulate the opinion of any of the other Shia jurisprudential authorities who have allowed abortion within the scenarios discussed herein. As a result, there no longer exists any jurisprudential obstacle barring abortion during the post-ensoulment stage in cases where continuing the pregnancy endangers both the mother's and the fetus's lives, while saving the mother, in contrast to the fetus, is deemed to be the only available and possible option.

4-2. The second option that may resolve the dilemma in question is an over-ruling proclamation (or *Hukm*) issued by a legitimate Islamic ruler (or *Hakim Al-Shar'*) declaring abortion in such cases permissible. According to Islamic jurisprudence, such a proclamation hold precedence over all other edicts issued by individual Shia jurisprudential authorities and must, therefore, be followed by all people regardless of whom the emulate in other issues of juristic importance.

### Discussion

Thorough research and analysis showed that the Shia jurisprudential authorities are unanimous in prohibiting pre-ensoulment abortion because of the availability of explicit narrations within reliable religious source texts declaring abortion to be impermissible. However, most of these jurists also believe that this primary law can be ignored within exceptional circumstances wherein the continuation of pregnancy exerts extraordinarily severe pressure upon the mother concerned or causes an unacceptable degree of harm to her. On the other hand, a few Shia jurisprudential authorities deemed the primary prohibition revocable only in cases where the mother faced mortal danger and a clear risk to her life. However, both these groups of Shia jurists are unanimous in believing that a fetus within the pre-ensoulment stage is inferior in worth to be a fetus in the post-ensoulment stage. The difference between their respective verdicts is a reflection of whether or not they hold the presence of significant harm or danger, regardless of it being fatal or not, to be the deciding factor that renders the primary prohibition of abortion in the pre-ensoulment stage annulled in favor of secondary permissibility. The reason behind this difference is disparity between their individual understandings of religious source texts, as well as their differing interpretations regarding the scope and strength of general jurisprudential principles.

Nevertheless, quite a few of the Shia jurisprudential authorities prohibit abortion in the post-ensoulment stage even in circumstances where continuing the said pregnancy may result in the mother's death. The reason behind this absolute prohibition is that in the post-ensoulment stage they believe the fetus to have development into a legitimate person, endowed with a human spirit that causes it to command religiously sanctioned sanctity and the right to life, a sanctity and right that mirrors those enjoyed by the mother herself. Therefore, there is no reason, in their opinion, to strip the child of its sanctity and right to life in order to preserve the sanctity and right to life of the mother.

Similarly arguments proposing that we ascribe precedence to the mother's right to life over the child's right in this same regard because the mother is currently a full human while the fetus is only potentially so, or because the mother bears primary status in this relationship since the child is dependent upon her for its very existence while the child is merely a peripheral entity, or because we need to avert the loss of a crucial matter (i.e. the mother's life) by sacrificing matter that is important (i.e. the child) but not as important as the first, or because there exists a possibility of rendering several children motherless if the mother in question were to die, or because the mother can compensate for the lost fetus by bearing more children in the future if she manages to survive this dangerous pregnancy by way of the abortion involved, are all arguments that are categorically rejected by the Shia jurists at hand. The Shia jurisprudential authorities do not believe these arguments to be sufficient in proving the religious permissibility of abortion in the post-ensoulment stage. This rejection is further bolstered by the fact that there does not exist even a single reliable narration within Islamic source texts that may serve to indicate the permissibility of abortion.

Apart from all this, God is definitely the Master and Lord of all human-beings and it is He who controls life and death. He commands how destinies are formed and may change them as He wills. Thus, His commandments are to be accepted and followed, and we must submit to His divine will with regards to the path that He has forged for us, especially when we see that He has promised great rewards in the hereafter for women who suffer any form of harm during pregnancy (Al-Hurr al-'Amili, 1983).

As far as medical science and the diagnosis derived from it is concerned, the fact that it depends on statistical probability and does not base its rulings on absolute certainty does not mean that its verdicts are worthless and unreliable. Similarly, it is incorrect to reject such diagnoses simply by declaring that certain doctors are overly cautious. In fact, being overly cautious in matters dealing with great threats such as the eminent possibility of death represents rational decision-making and, therefore, cannot be condemned as an instance of irrationality. Furthermore, ignoring such risks is definitely illogical in nature. When we study our own religious ideology, we find that according to the teachings of our religious apostles and sages the Islamic belief in God's omnipotence and His absolute control over life and death is not deemed contradictory to human free-will and action. We are taught that God works according to particular principles and laws and, therefore, we must not sit idly aside waiting for miracles to happen. It is said, "God has refused to do things except by way of their proper means" (Al-Hurr al-'Amili, 1983). Similarly, the Holy Prophet's (P.B.U.H.) directive wherein he says, "Bind the camels knees and then trust in God" demonstrates that we must act in accordance to knowledge and wisdom as far as our capabilities allow (Majlisi, 1983). However, whether our effort bear fruit or not is a matter that lies in God's hands and we must request Him to grant us His favor so that our efforts may produce the desired results. Therefore, when medical science declares that a certain pregnancy bears mortal risk for the mother and the baby, and that the possibility of their survival is miniscule, we cannot simply ignore this knowledge and choose instead to sit and wait for a miraculous outcome.

When some Shia jurisprudential authorities reject these arguments, their followers end up facing a complicated dilemma if they ever find themselves in a situation where a mother bears a viable fetus in the post-ensoulment stage but continuing the said pregnancy can prove fatal to her. The only way out of this dilemma is to ignore the verdict of the Shia jurisprudential authority they follow and to refer instead to another jurist who deems such abortions permissible. However, choosing a Shia jurisprudential authority for emulation is only legitimate after a person has researched the academic standings of all of the top-most jurists of his time and, as a result of this research, has reached the conclusion that the jurist in question is definitively the foremost expert in Islamic law amongst all his peers. As such, referring to another jurist after having reached the above conclusion can only take place if this other jurist were found to be higher, or at least equal to, the originally chosen juristic authority with reference to his academic expertise and knowledge. This, in turn, creates another problem, since it reveals that the original conclusion and choice was essentially flawed.

Given the problem at hand, the opinion of Sunni jurists contrasts with the verdict of their Shia counterparts because they have accepted arguments such as those listed earlier, namely the precedence of the mother compared to the child in cases where their respective rights to life are in contradiction.

However, in cases where the continuation of pregnancy in the post-ensoulment stage endangers the mother's life, given that the fetus itself is no more deemed viable, eight out of the eleven Shia juris-consults ruled abortion to be permissible, while three of them ruled it to be prohibited even in these circumstances basing their verdict on the doctrine of "necessary precaution". The fact that this latter group has based its verdict upon the doctrine of "necessary precaution" leads us to believe that these Shia jurisprudential authorities are fully aware of the importance of abortion within the given situation, but are shying away from declaring it permissible because they wish to avoid shouldering the responsibility of allowing the killing a legitimate person that enjoys religiously sanctioned sanctity (i.e. the fetus in our case). If this were not so, they would have declared the performance of abortion in our given circumstances to be prohibited in much more explicit terms and without depending upon the doctrine of "necessary precaution", similar to their earlier verdicts regarding other forms of abortion. As such, their ruling would not have differed based upon the viability of the fetus involved, but would have been the same regardless of whether the fetus were viable or not.

The end product of the opinions of all experts involved was seen to be thus: In cases where the continuation of pregnancy after the post-ensoulment stage threatens the life of the mother, and the fetus itself is also deemed to be unviable, and abortion is considered the only way to save the mother's life, none of the followers of the Shia jurisprudential authorities consulted in our research are faced with any significant religious obstacle in their path towards the performance of the said abortion. As such, there no longer exists any need for the issuance of an "over-ruling jurisprudential proclamation" (or *Hukm*) by a legitimate Islamic ruler (or *Hakim Al-Shar'*) in order to resolve the issue at hand, simply because such proclamations are reserved for situations where a dead-end has been confronted and no other solution exists.

### **Suggestions**

It was discovered through the course of this study that, given the current circumstances, no real religious obstacle exists in the path of aborting a fetus in situations where a continuation of pregnancy threaten the lives of both the mother and the child. However, the problem surfaces when we face situations where saving the mother's life clashes with saving the child's life. Here, medical



experts need to present us with stronger and more convincing arguments such as those based on the mother's right to self-preservation and self-defence, or the argument centered around the mother being a fully realized human entity while the child is still merely a potential human being. At the same time, there is a need for Shia jurisprudential authorities to complement the efforts of medical efforts in this regards and, thus, issue clearer and more definitive verdicts with reference to the problems at hand. Similarly, research for ascertaining the accurate time of ensoulment can help in reducing unnecessary religious precaution in these matters. These points can be particularly advantageous in societies where the laws are in line with Islamic principle, particularly the verdicts of Shia juristic authorities. The results of any and all such researches will have great and direct effects on the laws and regulations governing current medical practices and will serve to greatly reduce the problems faced by the followers of Shia jurisprudential authorities.

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