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Abortion Perspectives of Shiah Islam

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Abstract

Islam comprises a set of doctrinal, jurisprudential and ethical beliefs and regulations, extrapolated from a number of legal sources that vary according to denomination. The Islamic sources of legislation from which Shiah jurists derive law and social policy include the Quran, traditions and reason.

In this paper, we shall first outline the method of extrapolating rulings – from the Shiah perspective – and then illustrate how different legal mechanisms are put into play when verdicts are issued in relation to different aspects of abortion. The main function of jurists lies in their understanding of the verses of the Quran and traditions. The two pivotal concepts extracted from the transmitted texts that constitute the driving force and rationale behind Shiah jurisprudential rulings are those of personhood and ensoulment.

KEYWORDS: Shiah jurisprudence, abortion, personhood, ensoulment

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1. Introduction

The Shiah population comprises about twenty per cent of the Islamic world. They are distributed in Iran, Iraq, Lebanon, Bahrain, Syria and to a lesser degree in countries like Saudi Arabia, Afghanistan and India. In Iran, however, in contrast to the aforementioned nations, the ruling government acts under a Shiah theocratic (or theo-democratic) constitution. Most of the current religious or jurisprudent authorities (*maraji' al-taqlid*) or Grand Ayatollahs, today, reside in Qum, Iran, the capital of the Shiah Islamic World. They number about twenty and it is up to the ordinary Shiah Muslims (around the world) to choose the most learned amongst them and follow him in relation to one's canonical duties (*al-waza'if al-shar'iyyah*), such as the ritual manner of praying, fasting and matters of a non-ritual nature such as economic transactions, marriage and medicine. It is the duty of the religious authorities' centres of propagation to reply to their followers by whatever means possible e.g. publishing religious treatises, responding to queries by person, post or e-mail. Following the instructions of a jurisprudent authority is only necessary assuming one has not acquired that required degree of knowledge for oneself. Whilst following a jurisprudent authority is permitted in relation to one's canonical duties, one is *not* however allowed to follow any authority vis-à-vis matters of doctrine, such as the belief in one God, Prophethoodⁱ and Resurrectionⁱⁱ. Doctrinal principles ought to be accepted rationally and by oneself rather than just because a given authority or person has said so; true, one may ask for guidance, but one must ultimately *acquire* faith and acceptance – irrespective of its degree – of the above three fundamental principles. The reason for this is that knowledge of the three doctrines are good and valuable *per se* whereas with the canonical duties it is the actions *per se* that count rather than the knowledge of them.

2. Hierarchical Order of Investigating Canonical Matters

On encountering a given canonical issue – in this case the permission to abort – the jurisprudent (*faqih*) must initially scrutinize and carefully peruse through the transmitted texts. In Shi'ism, the texts are tantamount to (i) the Quran (revelation, word of God) that exists today – to the word – as it did 1400 years ago, (ii) authentic traditions narrated from the Prophet Muhammad and (iii) in contrast to Sunni Muslims, authentic traditions narrated from the twelve consecutive

ⁱ Believing in all Prophets from Adam (the first Prophet) to Muhammad (the last or 'seal' of Prophets); Prophets are regarded infallible and so authentic traditions narrated from them are treated as 'revelation' in relation to legal extrapolation.

ⁱⁱ Believing in the Day of Judgement or Recompensation

successors (Imams) of the Prophet Muhammadⁱ. Assuming no reference to abortion is observed in either the Quran or traditions, Shiah legal reasoning (*usul*) dictates the principle of ‘prevalence of liberty’ – a form of libertarian-consequential reasoning i.e. from now on all things will be deemed permissible save those that (i) are acknowledged to bring about serious bodily, social or psychological side-effects and/or (ii) are regarded as being in contradiction to any of the texts’ canonical injunctions. The rationale behind the ‘prevalence of liberty’ or ‘principle of exemption’ (*asalah al-bara’ah*) comprises both rational and textual reasoning. Rationally speaking, God cannot punish His creatures, Man, with respect to those actions which he/she were not informed of in the first place; in other words, only those actions are punishable that are transmitted to Man by either revelation or traditions. Assuming a given issue has not been alluded to throughout the traditions and Quranic verses e.g. human cloning, the prevalence of liberty becomes the due course of action. Textually, there exist Quranic verses and traditions that exempt one from that which he/she had no knowledge:

We do not punish (any community) until We have sent it a Messenger
17:15¹

The verse illustrates that God only holds those people responsible for their actions who have received God’s message; otherwise, punishing an uninformed people would be tantamount to oppression or injustice, which is far from God’s attributes. Other texts, namely authentic traditions, that demonstrate the principle of exemption include:

The punishment of actions carried out in any of the following nine states has been exempted from the members of my community: actions arising as a result of error, forgetfulness, reluctance, ignorance, incapacity, emergency...²

All actions are deemed legitimate save those that are restricted by the Canon.³

As long as one has no knowledge in relation to one’s duty, he/she is free.⁴

3. Abortion in the Quran

No direct reference to abortion is observed in the Quran. However, infanticide – which was a common practice amongst Arab tribes – has been explicitly condemned in the Quran. Some scholars⁵ have analogized abortion to infanticide via the following reasoning:

Premise 1: personhood, in Islam, starts when the soul arises

Premise 2: infants have souls and so do foetuses at a certain age of gestation

ⁱ Note that the Shiahs have an extra 250 years of traditions from which they may extrapolate rulings. The 12 Imams are also regarded infallible.

Premise 3: infanticide is prohibited due to the killing of innocent ensouled entities

Conclusion: aborting ensouled foetuses is prohibited

The syllogism's conclusion, however, does not shed light upon the legitimacy of aborting foetuses that do not possess souls assuming, that is, they don't become infused at conception in accordance to Catholicism. This may be as much as one may extrapolate from the Quran alone. In contrast to abortion, the concept of ensoulment and when the foetus becomes ensouled – thus becoming a person – is referred to in verse 23:12-14:

Certainly...We made him from a drop of fluid (zygote) lodged in a secure abode (uterus). Then We created the drop of fluid as a leech-like structure (*alaqah*). Then We created the leech-like mass as a chewed lump (*mudghah*). Then We created the chewed lump as bones (*izaam*). Then We clothed the bones with flesh (*lahm*). Then We produced it as yet another creature.⁶

After the bones plus flesh stage (*lahm*), an entity arises that is essentially different to what had preceded it. According to most, if not all, Quranic exegeses⁷, the “another creature” corresponds to the newly ensouled foetus. The verse does not aim to provide a precise embryological account of the human organism but, rather, aims to demonstrate the gradual evolution of the foetus up to and including the stage of ensoulment and that all this occurs under God's laws of creation and providence.¹ So far, one can conclude that the verses of the Quran help us to form a logical syllogism together with some information in relation to ensoulment. The bulk of abortion's ‘theoretical’ debate, in Islam, is confined within the traditions. We shall mention a number of traditions and then explain how rulings in relation to abortion and ensoulment may be extrapolated from them. Note that traditions employed by Shiah jurists include those whose chain of reporters (who transmitted the tradition) may be *authentically* traced all the way back to either the Prophet of Islam or one of the 12 consecutive successors to the Prophet.

4. Abortion According to the Traditions

4.1. Tradition No.1⁸

A companion of the seventh Imam (or successor to the Prophet) had informed him that a lady fears the pregnancy process and so has decided to take medication in order to abort that which is lodged in her uterus. “No!” exclaimed Imam al-

¹ Islam never feels threatened by any of the reproductive and other technological advances witnessed as time goes by; all these advances are but manifestations of His Might and Glory. Converting lower life forms to higher ones or even inanimate entities to animate ones pose no problem with respect to Islamic doctrine. That which would however threaten Islamic beliefs – according to the author – is when Man acquires the ability to create something out of nothing?!

Kazim, thus rejecting the legitimacy of such a practice. “But it’s only a zygote at this stage!?” the companion wondered. Imam al-Kazim then stated that “the zygote is the first step in the process of creation [of persons]”.

Commentary: the tradition negates the idea that a zygote is either ensouled or is a person; however, it assigns the zygote a degree of sanctity due to its being the first in a series of evolutionary processes that eventually leads to the ensouled being. Hence, aborting *per se* at any stage according to the tradition is impermissible under normal circumstances.

4.2. Tradition No.2⁹

A companion of Imam al-Sadiq (sixth successor of the Prophet) had informed the Imam that he had provided medication to one of his wives, whose periods had been delayed by a month, and that this had precipitated her periods. He then asked the Imam whether it is permissible to act in such a manner when one is ignorant as to whether one’s wife’s periods are delayed as a result of pregnancy or otherwise. “Do not execute such actions!” the Imam said. “But if only a month were to pass and she was, in fact, pregnant, the entity (zygote) will be tantamount to sperm emitted during coitus interruptus, not having evolved to a higher life form such as the *alaqah* or *mudghah*” the companion continued. The Imam replied: “once the zygote is formed in the womb it acquires the potentiality and capacity to develop into a person; however, such a potentiality is passive when a sperm is located outside the uterus. Hence, assuming her menstruation has been delayed by a month, refrain from giving her such medication”.

Commentary: assuming pregnancy is a probable outcome, the tradition explicitly prohibits actions that may abort the formed zygote. This illustrates that the formed zygote does indeed possess some form of dignity otherwise killing it would not have been prohibited. The respect, sanctity and dignity assigned to it and not the sperm demonstrates an essential difference in nature between the two (all be neither persons) i.e. one having the active potential to become a person (albeit not one at present) whilst the other’s potentiality is merely passive. Once again, if aborting the zygote is prohibited then aborting later stages will *a fortiori* be considered likewise.

4.3. Tradition No.3¹⁰

Imam Sadiq was asked about a married woman who had entered an adulterous relationship and who subsequently became pregnant from the latter liaison. The Imam replied: “let her be until the child is born and she has breastfed him/her; only then should she be stoned”.

Commentary: Numerous traditions exist that specify that sentences ought not be delayed albeit for an hour. So why is the stoning penalty delayed here? The tradition illustrates the necessity not to abort the foetus – irrespective of whether it's a person or not; the preservation of human life temporarily over-rules the stoning order. Tradition no.3 demonstrates, therefore, the wrongness of abortion in absolute terms.

4.4. Tradition No.4¹¹

There are traditions that specify different fixed fines (blood money or *diyyah*) of gold dinars (1 dinar ≈ £50 sterling today) for aborting foetuses. The more developed and complex the foetus is, the more the fine (see figure below):

Foetal stage	Blood money (in gold Dinars)
Nutfah (zygote)	20
Alaqah: leech-like, clinging structure	40
Mudghah: chewed lump	60
Izaam: bones	80
Lahm: bones clothed in flesh/muscle	100
Ensoulment	1000

Blood money in Arabic is termed *diyyah*, that literally means ‘prohibiting’. In Islam, the *diyyah* system is employed as a deterrent in relation to any form of destruction of human (organism) life. Assuming one injures or destroys another’s eyes, hands, kidneys etc. or, as in our discussion, one’s foetus, they are liable to pay a required sum. As to who the recipient is, this depends on who actually carried out the abortion; assuming both parents consented to the abortion, the *diyyah* becomes allocated to the aborted entities brothers/sisters or those next of kin assuming no brothers/sisters exist. However, were the wife to abort without the husband’s consent, then the husband is entitled to the blood money and vice-versa were such a scenario possible. Naturally these fines were assigned after observing the aborted. Note that 1000 dinars is the complete sum in relation to persons, be they foetuses or post-birth persons. But how are ensouled foetuses differentiated?

5. Ensoulment According to the Traditions

As mentioned earlier, the Quran does indicate that personhood commences with, and one's personal identity consists in, the soul – ensoulment. However, the verses do not assist us in acknowledging when such a rational soul actually infuses the foetus; all we know – according to the Quran – is that ensoulment occurs after the *lahm* stage. The traditions, on the other hand, go a long way in alluding to specific signs as indicators of ensoulment having taken place:

5.1. Tradition A¹²

The fourth Imam (al-Sajjad) said: "...if a woman aborts her foetus by herself, assuming the foetus possesses bones and flesh and its limbs are distinguishable from one another and the rational soul has been infused, then she ought to pay the full blood money (1000 dinars)". One of Imam al-Sajjad's companions then asked: "would you say that the volitional movement carried out by the foetus is a result of its soul?" The Imam replied: "yes! But not the (vegetative) soul that had preceded the rational soul's infusion...if it weren't for the latter soul, no movement would have occurred..."

Commentary: two types of souls are spoken of; personhood is linked with the rational soul that, in turn, is associated with volitional movement. The vegetative soul – that doesn't constitute one's 'I' – does not promote volitional movement but is associated with other dimensions such as growth, respiration, circulation, reproduction and even reflex movements.

5.2. Tradition B¹³

Imam al-Sadiq said: "...assuming a given foetus has flesh, the *diyyah* is tantamount to 100 dinars; this amount will remain the same until the aborted foetus is observed crying. Crying requires the full *diyyah* to be paid"

Commentary: once again – in accordance with the Quran's verses, 23:12-14 – ensoulment occurs some time after the *lahm* stage. Moreover, another sign that indicates that ensoulment has actualized is the aborted foetus' cry on delivery. Unlike the last criterion, in tradition A, that is detectable within the mother's womb either by quickening or more modern means, crying is yet to be ascertained from the womb via today's technological instruments. The crying criterion was more of use 1400 years ago when the blood money was to be calculated post-abortions.

5.3. Tradition C¹⁴

There are traditions – narrated by both Shiah and Sunni sources – that regard four months gestation as the time limit after which abortion entails the full blood money. This however may be an upper limit guideline for laity. Assuming volitional movement is detected before four lunar months, this will suffice as proof for ensoulment; moreover, even if, at 4 months, no movement is detected, Islam prohibits such an abortion and endorses the full blood money. Interestingly, (a) there is a tradition¹⁵ claiming ensoulment to be associated with the passing of five, instead of four, lunar months and (b) there are Ayatollahs, today – albeit an extremely small minority – that endorse the Lex Talionis (life for a life) in relation to people who abort at this stage onwards¹⁶. This verdict is at odds with the vast and unanimous majority of both Sunni and Shiah clergy.

6. Secondary Principles in Islam

In Shiah legal analysis, there exist textually stipulated¹⁷ secondary principles that have the capacity to govern and over-rule primary canonical rulings such as acts of worship or, in our case, aborting the pre-ensouled foetus. These include (a) the principle of causing no harm and (b) the principle of causing no intolerable burden; one may extract, from these two general principles, particular conditions that are justified to over-rule the prohibition to abort in relation to pre-ensouled foetuses. These include (i) serious and intolerable physical health risks to the mother during or post-pregnancy, (ii) serious and intolerable psychological health risks to the mother (e.g. rape cases) and (iii) anticipated socio-economic burden upon parents after birth. The list is by no means exhaustive; with time, special applications specific to time, place and technology may arise and thus create extra justifications. The provision of these general secondary principles to laity is the function of the jurists; however, whether a given event (such as rape, excess economic strain, severe psychological disorders etc.) counts and fits in within these criteria – laid by the jurists – is a decision that ought to be taken by the duty-bound oneself i.e. the person affected and facing the problem. Hence, x difficulty may be an intolerable burden for some (justifying, therefore, abortion) but not for others (thus not justifying abortion). Assuming a jurist gives an opinion on whether x event counts as intolerable and burdensome or not, this would be outside his jurisdiction. Hence, one may sometimes read of conflicting verdicts unnecessarily. The jurist's function is solely to provide the general protocol and guidelines for the layman or duty-bound to act upon; the need for such a role will always remain constant. However, returning to the specific criterion of volitional movement and the general issue of four/five months (both general rulings extrapolated by authorities from the texts), here one

observes that were modern technology, one day, to be able to ascertain with certainty when a given foetus' *volitional* movement actually starts (albeit (i) before 4 or 5 months gestation and (ii) different from one foetus to another), then the decision-making process, for the layman, will become considerably less complicated e.g. assuming at three months, a mother contemplates an abortion (justified via secondary principles), acknowledging whether or not the foetus is undergoing volitional movement would assist her decision to justifiably abort.

7. Aborting Pre-Ensouled Foetuses

7.1. For Reasons of Serious/Intolerable Physical/Psychological Health Risks to the Mother during or Post-Pregnancy

Assuming the mother's life is threatened or rationally feared to be threatened, by experts, Shiah jurists¹⁸ regard the life of the mother as possessing priority over the life of a vegetative soul. According to them, the principle of no harm/burden negates the prohibition to abort. Ultimately, the rational soul is more precious than the vegetative. Such a stance may be characterized as "*rational soulism*". Assuming the mother's life is not threatened but rather her health condition is exposed to deterioration were the pregnancy to continue, here, like above, aborting the foetus has been endorsed by jurists as long as (a) excess harm/burden is laid upon the mother and (b) delaying the mother's treatment was no longer a possibility. The rights of the rational soul and interests-possessing mother far outweigh the continuation of the life of the vegetative foetus. Hence, were cancer or AIDS treatments to terminate the lives of pre-ensouled foetuses this will pose no legal problem for most Shiah jurists.

Some jurists regard terminating pregnancies resulting from rape as exactly the same as pregnancies resulting from non-rape cases. They then add that were the women to suffer intolerable psychological pain or contemplate suicide, aborting the foetus is permissible¹⁹. Here, one must note that there can't, plausibly, be a scenario where a raped woman or girl does not suffer intolerable consequences in relation to their forced conception. True, it is theoretically possible and was this to be the case, aborting such a foetus will not be permissible. However, we are dealing with a minute minority of cases. Jurists must be careful not to get drowned too much by the letter of the law; rather, they must attune their verdicts according to the social realities facing laity especially today in the twenty-first century.

7.2. For Reasons of Foetal Malformations, Deformities, Diseases

Some jurists believe that aborting fetuses with severe deformities - irrespective of whether they are incompatible with life or not - is permissible as long as it is substantiated by the parents that such a delivery will lead to intolerable psychological/socio-economic side-effects²⁰. Some even suggest the possibility of a burden upon society. Note that these are just possibilities; whether such conditions are actualized or not is not the point; the point is, I suggest, that assuming such theoretical abysmally poor conditions and environments were to exist and that such fetuses were to lay a huge burden either upon parents or society - anywhere in the world - then aborting becomes a legitimate option. The reason for this being that a vegetative being is destroyed in order to prevent human catastrophe of whatever nature.

7.3. For Reasons of Birth Control or Controlling Population Growth

In contrast to Sunni jurists²¹, no Shiah jurist has approved of abortion for reasons of birth control or controlling population growth. However, once again, this does not mean that a situation cannot arise whereby aborting for reasons of population control may be decreed. Assuming such a wretched state of affairs was to be realized, there does exist legal methodological tools within Shiah jurisprudence that would justify such cases of abortion. There may exist many things that are allowed in Islamic law but that does not mean the jurist must mention them willy-nilly; some permissible actions are best left undisclosed by jurists due to the potentially negative impressions it may leave upon people, society and the world at large. The primary duty of jurists, in Islam, is to provide that Islamic framework and protocol - in all walks of life - that accords best with the needs of society and mankind. For this to occur, socio-political awareness on behalf of the jurist is regarded as pivotal.

8. Aborting Ensouled Fetuses

8.1. For Reasons of Serious/Intolerable Physical/Psychological Health Risks To The Mother during or Post-Pregnancy

After the fetus is ensouled, however, over-ruling the illegitimacy to abort is an area of controversy amongst Shiah jurists. After all, we are now dealing with a two-person conflict. Two positions prevail:

- (1) The Absolutists: according to whom two persons exist and that the life of neither outweighs the other.

- (2) The Relativists: according to whom the mother's life outweighs that of the spirited foetus.

8.1.1. Absolutists versus Relativists

The absolutists regard abortion essentially the same as infanticide. In both cases, the being in question shares the ultimate criterion i.e. the soul. Assuming a mother is justified to abort her spirited foetus – who is a person – then what would make it wrong for her to kill her 1-year old *were* similar circumstances to arise? Relativists have argued that the foetus is ‘threatening’ to kill the mother in times of mother-foetal conflicts. Absolutists reply that (a) to threaten requires intention that isn't yet possessed by the foetus, (b) the foetus is innocent with no ill intent, (c) the mother chose to procreate the foetus and so should accept more responsibility (killing isn't a first option), (d) destiny should decide whose life ought to be saved and (e) the vulnerable foetus has a guardian, other than the mother, to protect it. Hence, in relation to Thomson's ‘violinist’ scenario, the absolutist camp will by no means accept the *murder* of the violinist²². Personhood is the most dignifying and sacred of concepts, not to be compromised with...at least as a first option, but may – if extraordinary conditions dictate – arise as a last option. By way of example, if a scenario arises whereby both mother and foetus will die if the mother is not saved immediately, preferring the mother's life is justified – one life is more precious than none. Absolutists, like Catholics, approve of the double-effect rule. Hence, they wouldn't deem it unethical for a woman, five months into gestation, to cure her cancer albeit to the detriment of the ensouled foetus. Another imaginary scenario is where a mother and infant are on a boat and assuming one of them is not thrown into sea, both will die. Here we have a mother who is responsible for bringing an infant into sea and the innocent infant. Absolutists – according to the author – will only settle for the toss of a coin. Because if one claims the mother has priority due to x reason, one will say the same if the conflict is between a mother (one person) and triplets (three persons) – what's there to stop her killing the three! No other way, therefore, can settle how to choose and give preference to one person over another person. Although the above is an effort, on my behalf, to interpret their stance, I shall now refer to statements made by contemporary absolutists in the Shiah world:

Qn: Is therapeutic abortion a permissible option if (a) the foetus is greater than four months of age and (b) the mother's life is in serious danger were the pregnancy to continue? Answer: assuming ensoulment has occurred, therapeutic abortion is not permissible²³.

This response that belongs to Khomeini has also been given by jurists such as Araki, Golpaygani and Lankarani as well as several others²⁴. The latter four absolutists have all passed away during the last two decades. Following their line

of reasoning, today, are Khamenei, Sistani, Makarem, Safi and Muntazeri and others. Their main source of backing is a tradition (let's call it the 'saving' tradition²⁵) that states that in order to save one's life – in indirect circumstances i.e. where one's life is not directly under attack by another party – one is justified to carry out normally stipulated prohibited actions, such as lying (e.g. providing false identity in order not to be killed) or stealing (in order not to starve to death) and so forth *with the exception of killing an innocent party*. Khamenei, Iran's Supreme Jurisprudent Guardian and Leader, states:

...Should the spirit enter the fetus, it is not possible to abort it, even if the pregnancy spells danger to the mother's life, except in the event where carrying on with the pregnancy could prove fatal to both the fetus and the mother, and there is no way to save the baby's life but it is possible to save the mother's life through abortion.²⁶

Here, once again, the 'one life is greater than no life' principle is employed; aborting in such cases has also been referred to as the rational principle of the 'lesser of two evils'. Makarem, one of today's major figures in Shiah jurisprudence writes:

Assuming it is acknowledged that one of the two will definitely be saved, they must be left alone and nature must decide which one is to survive without any human interference; and if only two options arise i.e. either both will die or only the foetus will pass away, here it is permissible to abort the foetus in order to save the mother's life.²⁷

The relativists – who include jurists such as the late jurists Khui, al-Shirazi and a small number of Shiah religious authorities – however do justify the abortion of the spirited foetus. Their line of reasoning may be classified as follows²⁸:

- i. By means of self-defence: they analogize such mother-spirited foetus conflicts to situations where a thief is attacking someone or where one is at war. They claim that killing is typically justified if one's life is directly threatened. Absolutists respond that the foetus here is innocent and has no intention to threaten (see above). Some relativists²⁹ have replied that killing other classes of non-intending persons is justified such as mentally insane or drunk people who attack one with a knife.
- ii. Conflict of canonical duty: in Islam, it is (a) obligatory to save oneself from death and so suicide or living unhealthily are prohibited and (b) prohibited to kill another person. In mother-foetus conflicts, where two persons are involved, the mother is faced with a conflict of duty. Relativists claim that Islamic legal methodology dictates that one is free and has the option of legitimately choosing either way. Absolutists however respond by reminding them that they ought to pay more heed to the 'saving' tradition before reverting to legal methodological tools.

- iii. Out of necessity: there are traditions that legitimize normally prohibited actions when one is under severe constraint e.g. eating pork or not fasting out of fearing for one's life... Absolutists endorse these traditions but regard the 'saving' tradition's exception of not taking another's life as priority.

To try and summarize the differences between the absolutists and relativists, four scenarios of conflict have been imagined; in all cases, assuming the pregnancy is to continue, either:

1. the mother knows that either she or the foetus will die, or
2. the mother fears that either she or the foetus will die, or
3. the mother knows she will die and fears that the foetus will die, or
4. the mother knows foetus will die and fears that she will die

According to the absolutist camp, abortion is prohibited in all scenarios. However, with the relativists, the decision to abort lies with the mother in 1 and 2. In 3, there's less of a conflict because the mother knows she will die whilst the foetus' death is only a probability and so, abortion will be deemed legitimate. In 4, however, the woman's death is only speculative and so abortion will not *yet* be endorsed. Finally, in relation to rape victims, the absolutists would never endorse the abortion of such fetuses after ensoulment has occurred. They may conceive of scenarios where abortion would be acceptable pre-ensoulment but not after ensoulment. However, some jurists with relativist tendencies have justified abortions at this level describing scenarios where a rape victim seriously contemplates suicide³⁰.

8.2. For Reasons of Foetal Malformations, Deformities, Diseases

Once ensoulment is actualized, there is no room for compromise and the ensouled foetus may no longer be aborted. It is now a person and must be treated like one. This remains the unanimous opinion amongst the Shiah jurists³¹. However, there may develop malformations that entail the foetus never becoming ensouled in the first place, such as with anencephalics. Although the sufficient condition for personal identity, in Islam, is the rational soul, a necessary condition for the soul's beginning is the formation of the cerebral cortex. Hence, anencephalics – who never 'quicken' – may be aborted even after four months (which is assigned as the upper limit for abortions) because ensoulment will not have been realized in such fetuses.

8.3. For Reasons of Birth Control or Controlling Population Growth

No one – irrespective of whatever jurisprudential orientation one possesses – has dared cite and argue this as a credible justification.

9. Conclusion

After perusing through the multiplicity of differing perspectives, one may speculate, and rightly so, as to whether or not such a vast array would lead to confusion. However, as discussed in the introduction, the layman must only follow that authority that he/she believes to be the most learned – each to their own i.e. there's no need for him/her to get oneself involved in between the theoretical bedlam of the religious authorities. One may compare this scenario to patients with Diabetes who ought to follow the Diabetes specialist's instructions instead of worrying about the different protocols and regimes offered to such patients throughout the world. The abortion debate in Shi'ism is dominated by two key concepts, namely those of personhood and ensoulment, both of which are delineated mainly by the traditions of the infallible Prophet and Imams. One's personal identity, in Islamic terms, is tantamount to one's rational immaterial soul. General guidelines with respect to the onset of ensoulment have been stipulated by the texts; modern technology however may, in the future, provide us with more specific indicators than quickening or the completion of four lunar months as long as volitional movement is established.

Endnotes

¹ The Quran. Chapter Isra' (seventeenth), verse 15.

² **Wila'i I.** *Farhang Tashrihi Istilahat Usul (Descriptive Dictionary of Terms in Legal Reasoning)*. Tehran: Nashreney Publications 2004: 79.

³ Ibid.;

⁴ Ibid.;

⁵ **Rahbari H.** Islam and Population Control. *Fiqh (Islamic Jurisprudence)* 2002; 33:72-3

⁶ The Quran. Chapter Mu'minoon (twenty-third), verses 12-14

⁷ **Makarem N.** *Tafsir Nimuneh (Exemplar Exegesis of the Quran - volume 17)*. Tehran: Dar al-Kutub al-Islami Publications 1997: 127.

⁸ **Al-Hur Al-Amili M.** *Wasa'il al-Shiah (Shiah Compendium of Traditions – volume 29)*. Beirut: Aal al-Bayt Publications 1993:25-26.

- ⁹ **Al-Hur Al-Amili M.** *Wasa'il al-Shiah (Shiah Compendium of Traditions – volume 2)*. Beirut: Aal al-Bayt Publications 1993:338.
- ¹⁰ **Al-Hur Al-Amili M.** *Wasa'il al-Shiah (Shiah Compendium of Traditions – volume 28)*. Beirut: Aal al-Bayt Publications 1993:106-107.
- ¹¹ **Al-Hur Al-Amili M.** *Wasa'il al-Shiah (Shiah Compendium of Traditions – volume 29)*. Beirut: Aal al-Bayt Publications 1993:229.
- ¹² **Al-Hur Al-Amili M.** *Wasa'il al-Shiah (Shiah Compendium of Traditions – volume 29)*. Beirut: Aal al-Bayt Publications 1993:316.
- ¹³ **Al-Hur Al-Amili M.** *Wasa'il al-Shiah (Shiah Compendium of Traditions – volume 29)*. Beirut: Aal al-Bayt Publications 1993:313.
- ¹⁴ **Bukhari M.** *Sahih al-Bukhari (Sunni Compendium of Prophetic Traditions volume 4 [Arabic-English version])*. Riyadh: Darussalam Publishers 1997: 276.
- ¹⁵ **Al-Hur Al-Amili M.** *Wasa'il al-Shiah (Shiah Compendium of Traditions – volume 29)*. Beirut: Aal al-Bayt Publications 1993:315.
- ¹⁶ **Imami M.** Enforcing the Lex Talionis in relation to Abortions. *Fiqh (Islamic Jurisprudence)* 2007; 53: 60.
- ¹⁷ The Quran. Chapter Hajj (twenty-second), verse 78; chapter Ma'idah (fifth), verse 6; **Wila'i I.** *Farhang Tashrihi Istilahat Usul (Descriptive Dictionary of Terms in Legal Reasoning)*. Tehran: Nashreney Publications 2004: 253.
- ¹⁸ **Talati MH.** *Roshd Jam'iyat, Tanzim Khanevade va Seqt Janin (Population Growth, Birth Control and Abortions)*. Qum: Bustan Ketab Publications 2004: 314-6.
- ¹⁹ **Raja'i MR.** *Masa'il Mustahdasah (Novel Issues in Medicine volume 1)* Qum: Bustan Ketab Publications 2005:243-4. **Rahbari H.** Islam and Population Control. *Fiqh (Islamic Jurisprudence)* 2002; 33:86.
- ²⁰ Ibid., 324-6.
- ²¹ Ibid., 311-2

²² In Thomson's thought experiment, an otherwise dying unconscious violinist is hooked up into you whilst you're asleep. Unhooking him, will lead to his death. Thomson claims, via this scenario, that the right not to be killed, within abortion debates, means the right not to be killed unjustly. Hence, killing the violinist and foetuses for that matter, may not qualify as unjust killing.

²³ **Roohani M, Noghani R**, eds. *Ahkam Pizishki (Medical Jurisprudence)*. Tehran: Taymurzadeh Cultural Publications 1999: 80.

²⁴ *Ibid.*, 81-88

²⁵ **Kharazi M**. Population Control and Sterilization. *Fiqh Ahl al-Bayt (Ahl al-Bayt's Jurisprudence Journal)* 2000; 22: 35.

²⁶ **Khamenei A**. *Practical Laws of Islam*. Tehran: Alhoda Publications 2005: 299.

²⁷ **Makarem N**. *Istifta'at Jadeed (New Canonical Enquiries – volume 1)*. Qum: Amiralmomenin Publications 2005: 453.

²⁸ **Talati MH**. *Roshd Jam'iyat, Tanzim Khanevade va Seqt Janin (Population Growth, Birth Control and Abortions)*. Qum: Bustan Ketab Publications 2004: 319-22.

²⁹ *Ibid.*, 319.

³⁰ *Ibid.*, 328.

³¹ *Ibid.*, 327.