171943 - Ruling on Aborting a Foetus before Forty Days

the question

My wife is pregnant, in the early weeks of pregnancy, and we have two sons who are still small; one is eighteen months and the other is seven months. Is it permissible for my wife to have an abortion so as to space out having children, and until the two little ones get older, or not?

Summary of answer

Abortion before forty days of pregnancy is permissible if there is a need for that including the case of having three consecutive pregnancies within a short time. For more, please see the detailed answer.

Detailed answer

Praise be to Allah.

Views allowing abortion before forty days in Islam

The jurists differed concerning the ruling on abortion before forty days . A number of the Hanafis and Shafi'is, and some of the Hanbalis, are of the view that it is permissible.

Ibn al-Humam said in Fath al-Qadir (3/401):

"Is it permissible to abort a pregnancy ? It is permissible so long as it has not developed human features. Then they said: But that does not happen until after one hundred and twenty days. This implies that what they meant by developing human features is when the soul is breathed into it, otherwise it is wrong, because development of human features could be seen before that."

Ar-Ramli said in Nihayat al-Muhtaj (8/443):

“What is most likely to be correct is that it is prohibited after the soul is breathed into it in all cases, but it is permissible before that.”

In Hashiyat Qalyubi (4/160), it says:

“It is permissible to abort the pregnancy , even by use of medicine, before the soul is breathed into it, in contrast to the view of al-Ghazali.”

Al-Mirdawi said in al-Insaf (1/386):

“It is permissible to take medicine to abort a nutfah (lit., sperm-drop; embryo soon after conception). Ibn al-Jawzi said in Ahkam an-Nisa: It is haram. It says in al-Furu‘: The apparent meaning of the words of Ibn ‘Aqil in al-Funun is that it is permissible to abort it before the soul is breathed into it, and he said: There is an argument to support that.”

Views prohibiting abortion before forty days in Islam

The Malikis are of the view that abortion is not permissible in any case. This is also the view of some of the Hanafis, some of the Shaafi‘is and some of the Hanbalis. Ad-Dardir said in ash-Sharh al-Kabir (2/266): “It is not permissible to abort an embryo that has become settled in the womb, even before forty days; once the soul has been breathed into it, it is prohibited according to scholarly consensus.”

Abortion before forty days for a reason

However, some of the jurists limited the permissibility of abortion to cases where there is a reason. See: al-Mawsu‘ah al-Fiqhiyyah al-Kuwaitiyyah (2/57).

This is what was mentioned in a statement of the Council of Senior Scholars, the text of which is as follows:

1. It is not permissible to abort a pregnancy at any stage, except when there is a legitimate justification for doing so, within very narrow guidelines.

2. If the pregnancy is in the first stage, which is forty days, and aborting it will serve a legitimate shar'i purpose or will ward off harm, it is permissible to abort it. As for aborting it at this stage for fear of hardship in raising children, or for fear of not being able to afford the costs of raising and educating them, or for fear about their future, or because the couple think that they have enough children, that is not permissible. (al-Fatawa al-Jami'ah, 3/1055)

It says in Fatawa al-Lajnah ad-Daimah (21/450):

"The basic principle regarding a woman's pregnancy is that it is not permissible to abort it at any stage, unless there is a legitimate justification for that. If the pregnancy is still a nutfah ("sperm-drop"; embryo soon after conception), which is forty days or less, and aborting it will serve a legitimate purpose or ward off harm that is expected to befall the mother, then it is permissible to abort it in that case. That does not include fear of difficulty in raising the children or not being able to afford their expenses or education, or thinking that a certain number of children is enough, and other justifications that are unacceptable according to Islamic teachings.

But if the pregnancy has passed forty days, it is forbidden to abort it, because after forty days it becomes an 'alaqah, which is when it begins to develop human features, so it is not permissible to abort it after it reaches this stage, unless a trustworthy medical committee determines that continuing the pregnancy will pose a danger to the life of the mother, and there is the fear that she may die if the pregnancy continues."

What appears to be the case is that it is permissible to abort it before forty days, if there is a need for that, including the case of having three consecutive pregnancies within a short time, because having three pregnancies in rapid succession causes immense difficulty to the woman and weakens her physically, which may affect the foetus itself, and the mother may not be able to take care of the three children when they are so small.

And Allah knows best.