103423 - She aborted the foetus in the first month because she hates her husband

the question

My wife has a friend who is newly married. It was not written for this marriage to continue. After some time both husband and wife decided to have divorce. Before they separated they found out that the wife is one month pregnant. The wife, may Allah guide her, aborted the fetus intentionally saying that she does not want to have any form of relationship with her husband anymore. She does not suffer from any illness, and her husband is a moral man. When the husband found out what his wife did, he divorced her and told her that he is dissatisfied with what she did and he will never forgive her.
What is the ruling on what she did?
What is the expiation for it?
And what should be done with her?.

Detailed answer

Praise be to Allah.

The fuqaha' differed concerning the ruling on abortion before forty days of pregnancy and before the soul has been breathed into the foetus. A number of Hanafis and Shaafa'is, and some Hanbalis, are of the view that it is permissible. Ibn al-Humaam said in Fath al-Qadeer (3/401): Is it permissible to abort after becoming pregnant? It is permissible so long as it has not yet taken on a shape. Elsewhere they said: And that can only be after one hundred and twenty days, which implies that what they meant by taking on a shape was the breathing in of the soul, otherwise it is does not make sense, because the taking on a shape visibly occurs before that. End quote.

Al-Ramli said in Nihaayat al-Muhtaaj (8/443): The correct view is that it is haram after the soul has been breathed in in all cases, and it is permissible before that.

In Haashiyat al-Qalyoobi (4/160) it says: yes, it is permissible to abort it even by using medicine before the soul is breathed into it, contrary to the opinion of al-Ghazaali.

Al-Mardaawi said in al-Insaaf (1/386): It is permissible to take medicine to abort the nutfah. This was stated in al-Wajeez, and before that in al-Furoo'. Ibn al-Jawzi said in Ahkaam al-Nisa': It is haram. It says in al-Furoo': The apparent meaning of the words of Ibn 'Aqeel in al-Funoon is that it is permissible to abort it before the soul is breathed into it and he said: He has a point. End quote.

The Maalikis are of the view that it is not permissible at all, and this is the view of some of the Hanafis and some of the Shaafa'is and some of the Hanbalis. Al-Dardeer said in al-Sharh al-Kabeer (2/266): It is not permissible to expel maniy (semen) that has settled in the uterus even before forty days, and once the soul has been breathed into it, it is haram according to consensus.

This view was favoured by the Council of Senior Scholars. It says in a statement issued by the Council:

1-It is not permissible to abort pregnancy at any stage except for a legitimate shar'i reason within very strict limits.

2-If the pregnancy is in the first stage, which is forty days, and aborting it will serve a shar'i interest or 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 being unable to afford their maintenance and education, or because of fears concerning their future or because the couple feel that they have enough children, that is not permissible. End quote.

Secondly:

According to both views – that it is permissible or that it is haram – this wife has done something haram because she did that without her husband's permission or approval. So she has to repent to Allah and regret what she has done, but she does not have to offer any expiation.

And Allah knows best.