

The Legal-Jurisprudential Challenges of the Mother's Agency in the Process of Down Syndrome Abortion Treatment based on the La Ḥaraj Rule

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Received: 30/08/2022

Acceptance: 01/01/2023

Abstract

Down syndrome is one of the chromosomal abnormalities that causes mental and physical defects of the fetus. This syndrome causes many spiritual and material problems for parents, especially mothers. The severity of these problems is such that according to international and Iranian law, this disease is considered one of the legal examples of abortion. According to Iran's medical abortion law and based on the La Ḥaraj rule, there is a possibility of abortion in the case of certainty and the opinion of three doctors. In this way, if keeping a malformed fetus causes Ḥaraj to the mother, she can have an abortion. While, based on the opinion of most jurists, taking care of a Down syndrome child does not fall under the rule of La Ḥaraj. Therefore, they have issued a fatwa against Down syndrome abortion. Due to the difference between the fatwa and the law, the mother is at the crossroads of abortion or keeping the fetus and faces challenges. One of the challenges that can be expressed is the mental and emotional pressure caused by the conflict between the permissibility of abortion and its sanctity, which causes mothers to be perplexed and confused. This article is examined the contrast between the fatwa and the law and concluded that morals, religion and customs rationally encourage mothers to preserve the fetus, Because the necessary conditions for Down syndrome abortion must be certain, and this prevents the easy application of the La Ḥaraj rule. but the outcome depends on the decision of the mothers. This article has been compiled in the library method and based on the latest fatwa of scholars in the special field of Down syndrome abortion.

Keywords: abortion, Down syndrome, Law, abnormal fetus, defective fetus mental and physical retardation.

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