



## Conceptual Coordinates of (Mother's Threat and Danger of Life) in Therapeutic Abortion Laws (Single Article Correspondence of Therapeutic Abortion 1384 and the Article Note 718)

Taha Zargarian<sup>\*1</sup>; Mohammad Jafar Sadegh Pour<sup>2</sup>; Meysam Khazaei<sup>3</sup>

1- Assistant Professor of Law, Ayatollah Boroujerdi University, Researcher, Center for the Study of Forensic Medicine.

2- Assistant Professor of Jurisprudence and Law, Shahrekord University, Shahrekord, Iran

3- Assistant Professor of Law, Ayatollah Boroujerdi University, Boroujerd, Iran.

### ARTICLE INFO

Received: 18 March 2020

Accepted: 19 December 2020

Article Type

**Research Article**

#### Keywords:

Mother, Therapeutic Abortion, Danger of Life, Threat of Life, Benefits

### ABSTRACT

Legislator with the legislation of the single article of therapeutic abortion 1384 and also the article note 718 to a large extent, can change the conflict of votes regarding the abortion license to the unity of the vote. However, the literature of these two articles and their correspondence with each other has led to an ambiguous reading for medical and judicial experts. To the point that the concept of the abrogation of the single article 84 is strengthened by Article 718. The first ambiguity is the mention of the words "threat" and "danger" in the legal materials. Article 84 states that if the mother is threatened with death, it is possible to abort the fetus by considering some conditions. The article note 718 issues the same license with the phrase "a danger to mother's life". Why does the legislator have two different interpretations? Do any of the words "threat" and "danger" indicate a particular issue that the legislature has deliberately mentioned? The second ambiguity is about the possibility of developing the concept of a condition of threat or danger to life; Is the legislator's purpose of the condition of "threat or danger to life" exclusive to death or does it include the failure and loss of organs? This paper adopts descriptive-analytical method based on medical and jurisprudential data and concludes that there is a substantial difference between the words "threat" and "danger" in the legislative language. This difference prevents the abrogation of article note 84. It can also be concluded that in the case of the possibility of developing the concept of danger to life to the deterioration of organs and benefits, there should be a difference between before and after the soul is blown.

**Citation:** Zargarian, T., Sadegh Pour, M., Khazaei, M. (2021). Conceptual Coordinates of "Mother Life Threat and Risk" in Therapeutic Abortion Laws. *Journal of Woman and Family Studies*, 8(4), -. doi: 10.22051/jwfs.2020.30736.2382

<sup>1</sup>Correspondence\*: tahazargariyan93@abru.ac.ir

## Introduction

Is it allowed to have abortion basically and fundamentally? And is the license for abortion related to before or after blowing the soul? These are the issues that researchers in the field of jurisprudence and law have discussed in details. The problem of the present study is different from the above topics; this study determines the coordinates of a concept. Whenever information is obtained by the legislator and is included in the law book, all sections of society are required to observe it, whether they criticize or do not criticize it. Yes, it is the requirement of social order that people must be required to obey the law. However, the ambiguity or ambiguous reading of the law destroys this same social order. Moreover, the institution establishes the multiplicity of judicial votes. The phrases "mortal danger" and "threat to life" are visible in the note of Article 718 of the Islamic Penal Code of 1392 and the single article adopted in 1384 as a condition for the abortion license. Article 1384 states: "Therapeutic abortion with the definitive diagnosis of three specialist and forensic medicine approval of the fetus disease, which causes difficulties for mothers due to retardation or deformity, and also the mother's illness, which is associated with the threat to the mother's life, is permitted with the consent of the woman before the soul is blown (at the age of four months) and the punishment and responsibility will not be imposed on the managing physician...." Note of Article 718 of the Islamic Republic of Iran: "Whenever a fetus with a life-threatening survival is aborted in order to protect the mother's life, wergild is not proved."

The laws state that if the mother's life is endangered during pregnancy and as a result of pregnancy or from a fetal illness, the mother is allowed to get rid of the fetus as a therapeutic abortion. The question is that why the legislator in Article 84 states the condition of the abortion license with the phrase "threat to life", while the same abortion license is expressed in the note of Article 718 of the Islamic Republic of Iran with the phrase "danger to life"? It is also a question that the license for abortion in the assumption of the threat to the mother's life in article 84 is subjected before the soul is blown, while the abortion license is absolutely permitted in the assumption of the danger of the

mother's life in the note of Article 718 of the Islamic Republic of Iran. Whether it is expressed before or after the soul is blown, whether the note of Article 718 is the abolishing of article 84 or the same verbal difference of "threat" and "danger" in the legal articles, it prevents the abolishing of the single article 1384. However, until the exact conceptualization of the words "threat" and "danger" is not carried out, the legal materials of therapeutic abortion face serious ambiguities such as abolishing or interpretation to the verdict. Another question that shakes the concept of therapeutic abortion license is the possibility of developing the concept of the word "life" in terms of threat and danger to life; Is it possible to develop the legislator's purpose of the word "life" in the sense of organ deterioration and benefits, and the deterioration of organs and benefits in the circle of therapeutic abortions, or is the legislator's purpose in the term "life" unique in the expressions of danger and threat to life in the occurrence of death?

### **The Importance of Discussion**

A group of legal and medical experts believe that the concept and meaning of "threat" and "danger" are the same. In this sense, like many legal vocabularies, such as trauma, injury, damage, which have similar meanings but a few words are used to refer to them, the legislator has also used such a method for the words threat and danger. Accordingly, the two words are not essentially different. The result of such a thinking is nothing but the implicit abolishing of Article 84, because if it is said that the words "threat" and "danger" have no difference in meaning then the use of article 718 of article 1392 governs the single article 1384 and makes it possible to license therapeutic abortion before and after the soul is blown. If an essential difference between the two words "threat" and "danger" can be imagined, the single article 84 is not abolished implicitly and therapeutic abortion will not be allowed in the fetus, both before and after blowing the soul. Another

importance of the discussion is the possibility of developing the concept of the word "life" in terms of threats and dangers of life. The possibility of developing the concept of the word "life" in the intended phrases can develop or weaken the circle of legal abortion. If the concept of danger and threat to life can be developed to organ deterioration and benefits, at least before the soul is blown, then the license for therapeutic abortion will be widely used.

## **Discussion Background**

The issue of abortion is generally visible in jurisprudential, legal, and medical works from the past to the present. By searching valid scientific papers, it is revealed that capable researchers have examined the issue of abortion because of its application and have written important articles in this field. In this regard, it is known that these works often struggle on the basis of abortion permits in the stages of fetus growth steps. In addition, finding the examples of difficulties and problems in therapeutic abortion, defects, and diseases of mother and fetus are among the issues that numerous respectful researchers have written about. In the present study, indeed such issues, which are often specified by the legislator, are skipped. However, we seek to find the exact coordinates of the "danger and threat to life" condition which exist in the legal provisions and texts. This is a problem that even prolific authors have not yet found credible research works on it.

## **Historical Course of Discussion**

Human history admits that all human societies have been challenged by the issue of abortion in early stages of life for a fetus (Devereux,1954, 350). According to Goldman and Hatch (2000), it can be said that the first written laws of abortion are observed in the laws of Hamurabi (p. 160). Ancient Iran, ancient Egypt, and the Chinese Empire have a long history of scientific and practical aspects of abortion (Veatch ,2000, p.3). What is known is that abortion has been a cursed action since the primitive age (Mohagheghzadeh ,

Zargaran , 2011, pp.18-23). From the very early time, the act of abortion has been accompanied by punishment (Nie, 2012,pp. 4-42). As long as it is, mothers love their children at every stage of their s development and consider their children as a part of themselves. But there are some exceptional cases, however, when this feeling can be adversely affected. The fetus is derived from illegal sexual intercourse, physical defects of the fetus, poverty, and many other circumstances that are not mentioned in this article. Nevertheless, the health of the mother has always been a significant aspect of this argument Therefore, it is observed that today, apart from the four countries of The Vatican, Chile, El Salvador and Malta, all countries around the world have considered abortion legal in order to protect the mother's life (Wilcox, Horney, 1984, pp.120 (5), 727-733).

## **Subjectology**

In this section, it is necessary to define the general issue of the discussion, i.e. abortion to pave the way to discuss the minor issue of therapeutic abortion.

## **Fetus definition**

The word "fetus" literally means anything covered and veiled. The product of pregnancy, which is the origin of the establishment of sperm in the uterus and the end of the pre-birth moment, is called fetus because it is covered by the mother's womb (R,K: Atrak, 1387).

## **Abortion in Jurisprudence and Medicine**

Abortion in medical terms is a title for intentional or artificial expulsion or spontaneous withdrawal of the fetus before the birth time (Goodarzi, 1374, p.593). Dorland's Book of Medical Culture states that abortion is the withdrawal of pregnancy products from the uterus, before the fetus is able to live and it can refer to stopping a natural or pathological process before it can finish (Dorland, 1392, p.21). The word abortion in lexical sources means falling from top to bottom (Tarihi, 1416, p.256). Islamic jurists consider the

lexical meaning of the word abortion not to go away and consider the fall of the fetus as abortion (Najafi, 1983, pp.343-359/ ). The phrase "Ajhad al-Janin" used in the jurisprudential system means the phrase "Esqat al-Janin"(Sadr, 1420, 237/9).

## **Types of Abortion**

Abortion legally can be categorized into four types: criminal or illegal, traumatic, spontaneous, and therapeutic abortion.

## **Definition of Therapeutic Abortion**

Therapeutic abortion means termination of pregnancy before the ability of fetal life in order to protect mother's life. Abortion-therapeutic endemics include: a) termination of pregnancy to protect the mother's life b) termination of pregnancy to maintain the health of the mother c) termination of pregnancy in cases where pregnancy leads to birth of a deformed baby or abnormalities contrary to life d) elective abortion in multiple cases (Roche, 2004, pp.5- 6) (e) termination of pregnancy in cases where the baby is unable to live. As it is clear from these indexes, the end of pregnancy for maternal life is the end of pregnancy. This is the case that the present article seeks to determine based on its conceptual coordinates.

## **The Origin of Therapeutic Abortion in the Context of Laws**

Perhaps the oldest sentence that can be found in the form of the relevant laws regarding therapeutic abortion is the protection of the mother's life in Iran, related to the General Penal Code of 1304. In Article 183 of the law, the legislator stated: "A physician, a midwife, a surgeon, or a pharmacist and any persons who provide the means of abortion in case of a medication hospitalization, or surgery will be sentenced from three to ten years imprisonment unless it is proved that these persons do such a work to protect

the life of the mother.” After the 1304 legislative year, by reviewing medical laws and regulations, the most prominent ruling on therapeutic abortion can be found in the Medical Law Enforcement Regulations adopted in 1348. The legislator had decreed in Article 17 of that Regulation that: "In cases where abortion is necessary for saving the mother's life, the physician is obliged to take action in the hospital and after consultation and approval of two other physicians, within 24 hours, the report will be sent to the board of directors of the medical system by mentioning the reason and the name of the place and the names of the consultant physicians.” The Guardian Council did not endorse article 17 of the regulations. However, the reason for the council's rejection of that legal item was not related to abortion in order to protect the mother's life, but the Council of Guardians' objection was related to the legislator's lack of attention to the division of abortion before and after blowing the soul.

Finally, in 1363, the Council of Guardians declared: "The 17<sup>th</sup> article of The Islamic Consultative Assembly, which implies abortion for the health of the mother, is not religious, and since abortion regarding the case of the health of the mother can demonstrate itself in different reasons and dimensions, its cases (reasons and dimensions) should be determined. For example, in a case that the possibility of mother's waste of life and stoppage of her soul preservation over abortion is rationally determined or even the mentioned cases fears do exist indeed before the soul is blown into a fetus, the abortion is permissible and lawful. And in the case of after the soul being blown to the fetus, if it is a matter of maintaining one of them in such a way that if no action is taken, either the mother life or the fetus's are in threat, abortion is not allowed to save the mother's life, and other cases should be determined and the sentence should be determined according to the matter. The 1370 Penal Code indicates that despite serious treatment of abortion agents in Article 623, the legislature has excluded abortion in order to protect the mother's life from

punishment. The importance of abortion led the legislature to enact a single article in 1384 known as the Therapeutic Abortion Act.

In this single article, fetal diseases and maternal survival as causes of therapeutic abortion have been identified. The single article states: "Therapeutic abortion with the definitive diagnosis of three specialists and forensic approval of the fetus disease, which causes the difficulties for a mother due to retardation, deformation, or the mother's illness, associated with the threat of the mother's life, is permitted before the blowing soul (four months) with the consent of the woman, and the punishment and responsibility will not be imposed on the physician in charge. Violators will be sentenced to the penalties prescribed by the Islamic Penal Code from enforcing the provisions of this law. In addition, the legislator entered the Islamic penal code in 1392 under the article 718. The following note is: "Whenever a fetus with a life-threatening survival is aborted in order to protect the mother's life, blood money will not be proved." According to the above mentioned laws, it can be found that despite the differences between the above mentioned articles about abortion, before and after the soul is blown, or the differences in words and differences in punishments, protection of the mother's life as a license agent is common among all legal articles under the title of therapeutic abortion.

However, in this study, specifically, the single article of therapeutic abortion approved in 1384 and note of Article 718 of the Islamic Republic of Iran approved in 1392 are discussed because judicial and expert decisions of forensic medicine are made based on these two mentioned laws.

## **Evaluation of Non-abrogation of the Article 84 on the Semantics of "Threat" and "Danger"**

On 10/03/1384, the legislator imposed a single article on therapeutic abortion. The single article stated: "Therapeutic abortion is permitted, before the soul is blown (age of four months) and after the consent of women



(mothers) are given, with the definite diagnosis of three specialists (medical practitioners) and forensic medicine authorities approval of the fetus disease, diagnosed with retardation or deformation that can bring about difficulties for the mother or diagnosis of species of diseases in the mother herself that can be counted as a threat to her own life. Under these circumstances, the consulted physician is not administered any punishment and is not penalized. As it is clear from the single article, the legislator considers abortion to be conditional based on the mother's illness, with her life's threat and before the soul is blown. Therapeutic abortion with... the mother's illness, which is accompanied by the threat to the mother's life before the soul is blown... is allowed. However, about eight years later, the legislator declares in article 718 of the Islamic Penal Code: "Whenever a fetus with a life-threatening survival is aborted in order to protect the mother's life, blood money is not proved." The legislator accepts the abortion permit in the assumption of the threat to the mother's life without any restrictions such as before or after the soul is blown, and does not even consider blood money for it. However, the article 84 considers abortion permitted in the condition that the mother's life is threatened only before blowing the soul. Is it possible to consider that Article 718 of the Islamic Republic of Iran has been imposed in the period after article 84, and considers the single article as obsolete one and, as the article 718 has stated, to permit to abortion before and after the soul is blown? In order to answer this question, the subject and the verdict of both articles should be carefully analyzed. Article 84 considers the license of abortion permitted in the condition of the threat to the mother's life before the soul is blown, while the note of Article 718 of the Islamic Republic of Iran considers the license of abortion permitted in the condition of the threat to mother's life before and after the soul is blown.

Yes, if it is said that the two phrases "threat to life" and "danger to life" both stated the same meaning and have no difference in meaning. As an

illustration, the legislator in the book of law has adopted numerous semantic commonalities in spite of the differences of words. It should be said that certainly the article 84 is obsolete, because the license for abortion in both articles is subjected to the life of the mother. If the threat and danger are of the same meaning, the note of Article 718 of the Islamic Republic of Iran will certainly be the abrogation of the single article. However, if it is said that the two terms "threat to life" and "danger to life" both do not have the same meaning and each of them has a semantic space independent of the other. In this case not only is article 84 not obsolete, but each of the legal provisions has been precisely and practically enacted in its own place.

## **Semantics of the Words "Threat" and "Danger" in the Laws of Therapeutic Abortion**

In order to clarify the meanings of the words "threat" and "danger" in the laws of therapeutic abortion, it is necessary to analyze both words lexically and terminologically.

### **The Word "Threat" in Words and Terms**

As it is clear from the title of the single article, the law in question is "single article", and other articles are not available before and after this article in order to evaluate the legislative language for the word "threat". Threat literally means fear and intimidation (Mozafar, 1372, p. 163). Threat in law terminology means creating fear for another individual regarding his/her life, properties, or reputation (Langroodi, 1363, p. 183). The term "threat" has been used four times in the current penal code, which has been a meaning close to each other, governing the lexical meanings and terminology in the legislature's view. By considering the lexical meaning of the threat, one can see that the realization belongs to the threat in the future; Threat means scaring someone that one promises to do something against him or his belongings (Hashemi Shahroodi, 1426 ,pp. 671/2). The Persian equivalence of the word "threat" comes from

"wa'id" and the origin of "wa'id" comes from the root of "wa'ad" which means promising to do something in a certain time or place in the future. In his book titled "Al-Mufaradt fi Gharib al-Quran", Ragheb Isfahani wrote: "Waqib is specific to evil and bad, so the meaning is threatened: evil that will be realized for the future at a certain time or place." According to the above mentioned arguments, it can be said that the important point in semantics of the word "threat" is the subjectiveness of the concept of threat. It is essential to note that threat is a subjective matter and its actuality is and can be determined in the future.

### **The Word "Danger" in Words and Terms**

The term "danger" and its derivatives have been used about 20 times in the Islamic Penal Code and in all cases, a single concept has been desired by the legislator. The word "danger" is visible in lexical sources as damaging and harmful, and it is also more precisely meant to be about to be perished or to be wasted (Vaseti,1414,357/6). The Persian equivalence of the word "danger" almost means destruction (Amid, 1391,p.867). One of the notable points in the semantics of the word danger is the fact that danger is an external matter and it is necessary to reach its actuality in the outside world. Although according to the lexical data, it can be said that both the words "threat" and "danger" have close meanings to each other considering that threat is a subjective concept and danger is an external one, a serious and effective difference between the single article of therapeutic abortion and the note of Article 718 of the Islamic Republic of Iran can be understood (Abdi,1398). Abortion permits are permitted in the condition of a mother's disease that can be a threat to her life based on the single article of therapeutic abortion if the fetus has not reached the stage of blowing the soul. Since the threat is a subjective one, it implies that the pregnant mother is allowed to have an abortion from the time of diagnosis until the disease causes the mother death.

However, the condition for the license of abortion in Article 718 of the Islamic Republic of Iran is a threat to mother's life. The threat to life is external and when the conflict between the mother's life and her fetus's is made then the mother is allowed to have a therapeutic abortion. The most important difference between the concept of threat and danger in the two articles discussed is in the time range of abortion license. According to the single article of therapeutic abortion, the pregnant mother from the time of the diagnosis of her deadly disease and before the soul blowing can have an abortion. While according to Article 718, the pregnant mother has an abortion permit only in the occurrence of conflict between the mother's and the fetus's.

### **The Scope of Life's Concept in Therapeutic Abortion Laws**

Is the legislator's purpose of the use of the word "life" in the phrases "threat to life" and "danger to life" exclusive to death or can it also refer to the disability and loss of organs? If it is said that the word "life" is unique in the occurrence of death, then the pregnant mother only has an abortion permit when the disease specifically threatens her life; it is clear that in this condition, the pregnant mother faces serious restrictions on the abortion license. However, if it is said that the concept of "life" in the phrases "threat to life" and "danger to life" is not exclusive in the occurrence of death and it is possible to develop and generalize the concept of "life" to the decline of organs, then a wider scope can be imagined for the pregnant mother in the abortion license. Under these circumstances, the pregnant mother does not need to see herself at risk of death in order to be granted an abortion permit, but if her organs or benefits are threatened, the abortion license is available to her. Answering this question entails the determination of first entrance of the condition of "threat or danger to the mother's life" as an exception to the prohibition of abortion to the legislative sphere. Whether the legislator himself

has established the condition that the scope of the concept of the mother's life condition should be realized from the legislative language or whether the legislator has inserted this concept and condition from other fields of knowledge. In this case the relevant knowledge must be referred to in order to receive an answer. Accordingly, in order to answer the question in this section, it is important to consider the kind of knowledge that is the origin of the term "threat" or "danger to life used" in the law.

### **The Origin of the Term "Threat to Life" or "Danger to Life" Used in the Law**

According to the researches, it turns out that the term "threat to life" not observed in the words of jurists, but the phrase "danger to life" has been discussed in jurisprudential sources. The legislator is not the founder of the phrase "danger to life", but as mentioned above, the legislator has taken the phrase in question from the knowledge of jurisprudence like many other phrases. "It is possible for the mother to abort her fetus when she finds herself in danger", this proposition is visible in the jurisprudential system. It should be noted that in order to discover the scope of the concept of "danger to life" from the phrases of jurists, it is necessary to express the historical course and explain and expand the phrase.

### **Historical Course of the Phrase "Danger to Mother's Life" in Shi'a Jurisprudence**

Many of the words and concepts of legal materials, including criminal and non-criminal laws, have entered the legal literature from the knowledge of jurisprudence, narratives (Hadiths), and the Holy Quran. However, the discovery of the exact meanings and concepts of these words and phrases depends on the history of this knowledge. Jurisprudence scholars have written different periods for Shi'a jurisprudence, according to which the works of Shi'a

jurists can be evaluated in different stages. Among the periods defined for Shi'a jurisprudence are the nine stages. In this view, nine periods have been considered for Shi'a jurisprudence: the age of exegesis and explanation, the era of "mohadesan" (narrators), the era of the beginning of ijtiḥād, the era of the perfection of ijtiḥād, the age of imitation, the era of the re-movement of "mujtahidan", the age of the appearance of the religion of "Akhbarian", the new era of inference and the present age (Gorji,1394, p.51). In the present study, it was attempted to investigate the historiography of the phrase "a danger to mother's life" in Shi'a jurisprudence based on nine periods. Although Shi'a jurists from the early periods, especially in the era of the foundation of ijtiḥād thoughts, considered the rulings based on materials to be flexible, so that based on the notion of the mother's life protection, the ruling of therapeutic abortion can be inferred from the works of the same first-round jurists (Sharif Morteza, 1415, p.532). However, if the phrase "a danger to mother's life" is found with the same explicitness in jurisprudential works, it may be said that the phrase is the first in the *istiftā'* (the formal and official answer of a mujtahid to a question) of Mohaqiq Khoei in Mr. Tabrizi's book "Sirat al-Njah" as follows (Khuei,1416, 33/1). "Is it possible to have an abortion when the mother suffers from severe heart disease and the continuation of this condition is a danger to the mother's life? "If the survival of the fetus is a danger to the mother's life, abortion is possible and blood money must be paid."

## **The Possibility of Developing the Concept of "Danger to Mother's Life"**

Now that it has been revealed that the legislator has extracted the term "danger to mother's life" from the knowledge of jurisprudence and introduced the term into the legal literature and it has been revealed that the phrase was

first used in the works of earlier jurists, it is possible to discuss the scope of the concept of danger of life in the words of jurists.

The term "danger to the life of the mother" which has been used from the time of Mohaqiq Khoei is current in the literature of jurists and grand marja's since then and is often accompanied by the phrase "Hayat al-Om", i.e., mother's life. As it is said, if mother's life is in danger (Fazel, 1425, p.446), if keeping a fetus causes the mother's death (Makarem,1422, p.292), fear of mother's death (Khameneei,1420, pp.30-32), because of the significance of saving Mother's life (Sabzevari, 1413, pp.317-329). Jurisprudents consider the word "danger" in these phrases to be dissuaded from "life" of the mother. The word "hayat" is the name of the infinitive from the root of "Hay" meaning "living" versus "dead"(Ebne Manzoor,1414, pp.211-214). The jurists' choice of the word "hayat" in these phrases is nothing more than the meaning of "being alive". This means that jurists have repeatedly adopted the word "life" in various aspects of jurisprudence, including in Abu Yisas and Diyat. The plurality of the use of the word "hayat" against "moat" is visible in Quranic literature (Anam,162; Morsalat,26). Moreover, another group of jurists have used the concept of "danger to the mother's life" with the word "nafs". This conception was elaborated in the words of other faqihs as follows, pregnancy can endanger mother's life (Fazel,1425, p.447), Abortion is a danger to the mother's life (Tabrizi,1427, p.259). The words "danger" and "endanger" in the mentioned phrases are indeed adopted in relation to the mother's "self". The word "nafs" in Arabic implies the act of breeze being blown (as if it exits somewhere). This word is visible in lexical sources referring to the object's essence and truth value (Ebne farc,1404, pp.460-465). However, the meaning of soul as self, is one of the most widely used meanings of the word "soul.". It is on this basis that whenever a person is not in the world of matter, it can be referred to this phrase "he kills himself"(Ebnr manzoor,1404, p.233). Shi'a

jurists have used the word *nafs* in different aspects of jurisprudence. The word "*nafs*" in case of issues of blood money and Islamic *lex talionis* is often used referring to the meaning of "life" (Heli, 1408, pp.180-184). Accordingly, in phrases such as "Pregnancy causes the danger of death" and "Abortion is a danger to the mother's life", word danger means the danger to the life of the mother. The inclusion of the meaning of "life" in the meaning scope of the word "*nafs*" is visible in Quranic literature (Asra, 32). In some of the contemporary *Istifta's*, the phrase "danger to mother's life" can be seen. In these *Istifta's*, the jurist has provided an answer similar to the answer that overlaps with the previous phrase (Makarem, 1422, p.285), i.e., the license for therapeutic abortion. The phrase "danger to mother's life" does not require any specific analysis, because it is quite clear that the focus of the discussion is on the mother's "life." Accordingly, when the phrases such as "If mother's life is in danger", "If keeping a fetus causes the mother's death", "For the significance of saving Mother's life", "Abortion is a danger to the mother's life", in the field of therapeutic abortion, the truth value of the meaning of the danger, that is licensed for therapeutic abortion, is the sort of danger that provides the conditions for the death of the mother, not the danger of organ decline. One of the evidence which proves the exclusiveness of the reference of the concept of "danger to mother's life" to the concept of death is the use of the phrases of loss and decay along with and in parallel to the phrase of "danger to life: in the words of jurists. If the scope of the phrase "danger to the mother's life" was so widespread that the meanings of decline or organ deformation could be included in it, there would be no need for jurists to count the phrases of loss and decay along with the phrase "danger to mother's life" in the abortion license (Khomeini, 1422, pp.291-293). There is a considerable number of research in Persian or Persian translation, in which using the danger



to the mother's life refers to the loss of the mother's life (Khomeini, 1422, pp. 283-284).

Although according to the above-mentioned issues, it can be said that the phrase "danger to life r" means mother's state of being dead versus her state of being alive, a group of scholars in the field of jurisprudence and law believe in separation and distinction in the possibility of developing the concept of the word "life" in the phrase "danger to life". The theory is that whenever the mother's life is subjected to death after the soul is blown, the scholars indeed refer to the meaning of life versus death. Additionally, it is only under these circumstances the permission for abortion is issued, because based on the Article 718 of the Islamic Republic of Iran, this permission is only assumed when the mother's life will be perished. However, it seems that as long as the soul has not been blown in the body of the fetus, it is possible to develop the concept of the phrase "mother's life" and consider the inclusion of the mother's organs and interests. It should be noted that if the mother's organs and interests were perished before the soul was blown and there was no choice but to abort, in this assumption, by developing the concept of the term "threat to life" in the single matter of therapeutic abortion, the mother could abort her fetus. The reason for this order is that according to the top of the single article of therapeutic abortion, if the fetus causes the mother's difficulty, the mother can abort her fetus before the soul is blown. Now, according to the above-mentioned legislative, it can be said that before the soul is blown if the mother is diagnosed with a disease that is not caused by the fetus but brings about her loss and difficulties regarding her organs and interests, she can abort the fetus, because in many cases, the difficulties that the fetus brings about for the mother's body is more severe than the decay of the mother's organs due to her own disease. It should also be noted that in many cases, the difficulty caused by a fetus that is licensed to be aborted is transient, while the decay of the mother's organs and interests due to her own disease can be permanent.

Accordingly, the word "life" can be developed in the single article of therapeutic abortion and the life can be considered referring to soul and organ decay. It is also necessary to point out that the legislator considers the concept of the word "life" in its legal language, including life and organs. In Article 204, the legislator states, "The threat of the transaction party in the soul or life or honor of his close relatives, such as the couple, the wife, and the children, is reluctant. In the case of this article, to distinguish the degree of proximity to the effectiveness of reluctance depending on the opinion of the common law." As it is clear from this article, the two words "soul" and "life" have been used in parallel with each other, each of which has its own semantic range. The word "life" is exclusively against death, but the word "soul" is used along with the concepts of "organs" and "benefits".

## **Conclusion**

The words "threat" and "danger", which are used in the single article adopted in 1384 and note 718 of the Islamic Penal Code of 1392, are essentially different; as the word "threat" implies a subjective concept, while the word "danger" refers to a foreign matter. According to the mentioned difference, whenever the word "threat" is used along with the word "life" regarding the issue of abortion, it means that the life of the pregnant mother is not in conflict with the fetus's life, but this conflict is probable in the future. However, whenever the word "danger" is used along with the word "life" regarding the issue of abortion, it means that the pregnant mother's life is already in conflict with the fetus's life. The diagnosis of either state has a direct effect on the time period of the abortion license. When the state is diagnosed as a threat to mother's life, the pregnant mother is allowed to have an abortion from the time of diagnosis until the disease leads the mother to death, of course before the soul is blown, nevertheless under the circumstances of the diagnosis of a danger to life, the pregnant mother is only licensed to have an abortion

when the conflict between the mother's life and the fetus has been realized. The results show that there is no conflict between article 1384 and article 718 of the Islamic Penal Code; hence both articles can be appropriate under their explicated circumstances. About the possibility of developing the conceptual scope of the word "life" in the phrase "danger and threat to life", it should be said that, as mentioned in the course of the discussions, the theory of separation and distinction is more compatible with justice as well as jurisprudential rules. Accordingly, before the soul is blown, the concept of the word "life" can be developed and abortion can be realized as lawful as a result of the decline of the organs and the interests of the mother, but this conceptual development is prohibited after the soul.

## References

- Ibn-Manzur, M. (1993). *Lissan al-Arab*. Vol. 14. Beirut: Dar al-Fikr. (Text in Persian).
- Ibn Fares, A. (1983). *Mo'jam Maqayes al-Loghah*. Vol. 5. Qom: Islamic Broadcasting Office of Qom Seminary (Text in Persian).
- Tabrizi, J. (2006). *Serat al-nejah*. Vol. 5. Qom: Dar al-Sedighah al-Shahidah (Text in Persian).
- Jafarilangroudi, M. (1984). *Property rights*. Tehran: Ganjdanesh (Text in Persian).
- Khamenei, A. (1999). *Ajvebah Al-estefaat*. Vol. 2. Beirut: Al-dar al-Islamyah (Text in Persian).
- Khomeini, R. (2001). *Istefat'*. Vol. 3. Qom: Islamic Publications Office Affiliated with the Society of Qom Seminary Teachers (Text in Persian).
- Khoei, A. (1995). *Serat al-nejah*. Vol. 2. Qom: Maktab Nashr al-Montakhab (Text in Persian).
- Dorland, W. (2013). *Medical culture*. : (Trans by Abbas Ghaffari & Akram Abdi). Tehran: Abj Publicatio. (Text in Persian).
- Sabzevari, M. (1992). *Mohazab al-ahkam*. Vol. 29. Qom.: Al-Menar Institute (Text in Persian).
- Hashemi Shahroudi. M. (2005). *Fiqh culture based on the religion of Ahl al-bayt*. Vol2. Qom: Islamic Jurisprudence Encyclopedia (Text in Persian).
- Shrif mortezah, A. (1994). *Al-intesar fi inferadat al-imamyieh*. Qom: Islamic Publications Office Affiliated with the Society of Qom Seminary Teachers (Text in Persian).

- Sadr, M. (1999). *Mavara al-figh*. Vol. 9. Beirut: Dar al-Adhva (Text in Persian).
- Toreihi, F. (1995). *Majma 'al-Bahrain*. Vol. 4. Tehran: Mortazavi Publications (Text in Persian).
- Abdi, M. (2019). *Specialized working group on medical abortion*. Qom: Qom Legal Medicine Jurisprudence Research Center (Text in Persian).
- Gorji, A. (2015). *History of jurisprudence and jurisprudents*. Tehran: Samt Publications (Text in Persian).
- Goodarzi, F. (1995). *Legal medicine*. Tehran: Einstein Publications (Text in Persian).
- Vaaseti Zobaidi, M. (1993). *Taj al-arus min jawahir al-qamus*. Vol. 6. Beirut: Dār al-Fikr.(Text in Persian).
- Muzaffar, M. (1993). *Al-mantiq*. (Trans by A, Shrirvani). Qom: Dar al-ilm Publications. (text in Persian)
- Makarem Shirazi, N. (2001). *Bohooth faqiha ham'mah*. Qom: Amir Al-Muminin Schoo. (Text in Persian).
- Movahedi Lankarani, M. (2004). *Jame al-masail*. Qom: Amir Ghalam Publications (Text in Persian).
- Najafi, M. (1983). *Javaher al-kalam fi sharh sharae 'al-islam*. Vol. 7. Beirut: Dar Ehia al-Tourath al-Arabi (Text in Persian).
- Mohaqqeq, H. (1987). *Share' al-islam fi mase'l al-hilal va al-haram*. Vol. 4. Qom: Ismaeiliyan Foundation (Text in Persian).
- Devereux G. (1954). A typological study of abortion in 350 primitives, ancient and pre-industrial societies. In H. Rosen (Ed.), *Therapeutic abortion*. New York: The Julian Press Inc.
- Goldman, M., & Hatch, M.C. (2000). *Woman and health*. Houston: Gulf Professional Publishing.
- Veatch, R.M. (2000). *Cross cultural perspectives in medical ethics*. Boston: Jones & Bartlett Learning.
- Mohagheghzadeh, A., Zargaran, A., & Daneshamuz, S. (2011). *Cosmetic sciences from ancient Persia*. Tehran. Pharm Hist.
- Nie, JB. (2012). *Medical ethics in China: A transcultural interpretation*. New York: Routledge.
- Wilcox, A.J. (1984).. Accuracy of spontaneous abortion recall. Beirut. Am J Epidemiol.
- Roche, N.E. (2004). *Therapeutic abortion e-medicine*.
- Atrak, H. (2008). Abortion and its philosophical identity in medical ethics. *Medical Ethics and History of Medicine*, 3; 55-64 (Text in Persian).