THE PUNISHMENT OF ABORTION IN IRAN LAWS

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Abstract

Abortion is one of the social and legal issues in all human societies. Abortion, in all of its development and growth, from creation to the birth time, is one of the religiously prohibited matters in Islam. And in legal system of Iran, in which the rules and laws are driven from Imamieh religious jurisprudence, abortion is considered a crime and it deserves punishment. Today, related to the abortion matter, there seems variety of contacts from different countries. Some of the countries, because of the need to control population growth, accept the abortion unconditionally; but some others set heavy punishment for abortion but Iran belongs to the series of countries that in some specific situation and conditions by taking into account some rules, gives permission for abortion; although the decision of having any children should be made before pregnancy rather than after (Golduzian, 1384, p.209).

Key words: Abortion, crime, mother, punishment, social and legal.

Özet

Kürtaj (yani, çocuğunu anneden doğurmamak için erken zamanda almama) tüm insan cemiyetlerinde sosyal ve hukuk problemlerinden biridir. Kürtaj İslam kurallarına göre yasaktır. İran’ın hukuki sisteminde ve İmamiye inanışın yasalarına rağmen kürtaj cinayet olarak değerlendirilir ve ceza verilmektedir. Çağdaş dönemde kürtajın artmış, ülkelerin birbirine etkisi de önemli fonksiyona malıkdir. Öyle ülkeler var ki, nüfus artının önünü almak için kürtaj kaçılmazdır. Lakin bir çok ülkelerde kürtaj, ağır cezayı gerektiriyor ki, İran da bunlardan biridir.

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Lâkin bazı hallerde tip ilminin geldiği sonucu dayanarak kürtaj kaçınılmaz oluyor. Bunun da tedbiri, hamile kalmdan önce alınmalıdır.

**Anahtar kelimeler:** Kürtaj, cinayet, anne, ceza, sosyal ve hukuku.

**Introduction**

“I present my best respect towards human life from the creation of sperm”.


As the societies are developing and day by day great steps are taken towards this development, setting the laws and rules in accordance with the needs of the world is an important matter that needs a specific attention; and one of the most important issues, which need to be taken into account, is the matter on “abortion”.

As a matter of fact, in most of the legal system of the world the existing laws and rules are less consistent with what that occurs in real world and this leads to many serious problems. In many countries abortion is considered as a crime and it deserves punishment, but statistics of health organization in 1390 shows that 36-53 million abortions have happened per year and that only of them happened in healthy and equipped clinics.

In the past jurisconsults usually considered abortion as a sin for any reason and believed in punishment for its commitment. But today, regarding the needs of the world and the development of science and technology and by watching the movies and photos and slides of deformed/malformed infants, the great jurisconsults’ visions have been adjusted and new sentences have been given by them. Hence, first the jurisconsults’ opinions are given and then we will explain its laws and rules.

**Lexical and technical meaning of abortion**

a. Lexical meaning: abortion is a word with Arabic origin and its meaning in Persian language is **Seght-e Janin**. It is usually pronounced as /Aborsion/ in Persian language. (Moeen, 1363, pp. 1364-1983).

b. Lexical meaning of fetus: the term fetus is also an Arabic word and lexically it means everything which is covered and hidden and the Persian meaning is **Janin**. Hence, while the infant is inside the belly, it is called fetus (Hassan, 1363, p. 201).

From medical point of view, a live creature, which is made of the combination of a man’s sperm and a woman’s uvula is called fetus.

In legal terminology, the infant, while he is in uterus, is called fetus. Its origin is the beginning of pregnancy and the end is the moment before the birth (Jafari Langerudi, 1381, p. 201).
c. **Definition of abortion:** In medical term, abortion is the intentional or the artificial expelling, or auto exiting of load before the natural time of birth (Gudarzi, 1375, p. 593).

Human interest to existence and the continuation of his generation is a natural and intrinsic willing in which he is incidentally and unintentionally attracted to it. By investigating historical documents it is understood that the respect to the fetus was under the observation among the clean nature of human beings.

**Abortion in the past and present scholars’ points of view**

In jurisconsults’ opinion, fetus life consists of two stages:

1. From the beginning of the inception until spiritual animating (of course life exists at the beginning of the creation of sperm).
2. From animating (spiritual animating) time until the birth time. Most jurisconsults consider the second stage of humanity as the other human beings and they believe that according to many verses of holy Quran murdering is religiously prohibited.

**Imam Khomeini’s idea:** he is one of the past scholars who believed that abortion is an absolute religiously prohibited matter except the situation in which the continuation of pregnancy would be dangerous for mother. In this case, he believes that abortion can be done only if the spiritual animating has not been happened in fetus. He not only considers such abortion allowable but also necessary. In the cases that doctors have consensus that the birth would lead to mental retardation or deficiency in body, Imam Khomeini doesn’t believe in abortion. In the cases that both mother and fetus are in danger and saving both of them is not possible, he says: “if it is thought that both of them would die, abortion should be determined by lottery.

**Ayatollah Khamanei’s idea:** Khamanei, one of the present scholars, considers the abortion allowable for saving the mother and in this case there is no problem in abortion before spirit animating.

**Ayatollah Makarem Shirazi’s idea:** in the cases that the birth leads to mental retardation or deficiency in body, he considers abortion allowable before spiritual animating only if the deficiency or retardation is definitely determined.

**Developmental stages of fetus from scientific perspective and the amount of blood-money for that.**

Blood-money is a kind of financial punishment that under specific conditions is given to him. (Fezi, 1385, p. 330).

Fetus, in mother’s belly, passes different stages to be mature enough and these stages in the nota bene 487 in Islamic punishments are as follows:

- **First, this is the entrance and placement of sperm and at this stage it would be two weeks old (its blood-money is 20 Dinar).**
- **Second, it is called grume.** At this stage fetus is fundamentally changed and it is converted to solid and dense blood. Fetus, here, is about four weeks old (its blood-money is 40 Dinar).

Third, at this stage the fetus is called the lump of flesh in which fetus is converted
to a piece of meat. Here it is about eight weeks old (its blood-money is about 60 Dinar). Fourth, at this stage fetus is changed to bone but no meat has been created on it yet. It is about 12 weeks old (its blood-money is about 80 Dinar). Fifth, sarcomatous, it is a kind of fetus in which the skeleton and the frame of meat have been completed and it is not spiritual. Its about 16 weeks old (its blood-money is 100 Dinar).

b. Biological life: it consists of the signs of spirit on fetus. Many of the related signs to pregnancy appear at this stage and principally fetus is ten months old and if the infant is born at this time it would be alive and livable (Pad, 1352, p. 67).

**Abortion from medical jurisprudence perspective**

From medical jurisprudence view, if the exiting of fetus happens after six months of pregnancy and the ability of being alive is possible at that time, it is called an early childbirth or parturition. And if the fetus is not able to be alive, it is called abortion.

In medical jurisprudence abortion is divided into different parts:

1. Criminal abortion (intentional)
2. Medical abortion (medico)
3. Disease abortion (automatic)
   1. **Criminal abortion**: it refers to exiting of fetus from uterus in which it occurs intentionally. It might happen in different ways, and to do that different substances and methods can be used including jumping from heights, self hitting, intentional hitting of uterus, or using laminar or herbal poisons, or mineral poisons (white phosphor) or other poisonous materials which are very dangerous.
   2. **Medical abortion (medico)**: according to the latest laws in Iran, medical abortion with the aid of recognition of three specialized doctors and affirmation of Medical Jurisprudence with regarding the proved problematic fetus mental retardation or birth deficiency will lead to the mother easiness or the sickness of mother well-caused the threatening of the mother’s life, before the spirit will be allowed by the mother satisfaction, so doing no punishment and liability won’t threaten the supervisor.

   This kind of abortion will be happened as the result of problem in mother or couple, uterus, womb. There is no person to intervene in this process. This is called **“pathological fetus abortion”**. In this sort of abortion mother and the others won’t be blamed.

   It’s possible to have fetus abortion before four months that’s called **“early fetus abortion”**.

   If it ensues after four months, we call it as **“delayed fetus abortion”**. when fetus abortion dies in mother’s belly and doctor doesn’t implement the extraction of fetus, Not only it’s not accounted as crime, but also he/she will be blamed if he/she remises to extraction of fetus. (Shambayati, p.411).
The punishment of abortion in the law of Iran

The aim of this law is to support the child’s life. Of course the pregnancy must be natural. So pregnancy out of womb- that is possible to happen in cannula, belly or spleen- won’t be accounted legal support of fetus because of sheer decline. On the other hand, laboratorial fetus is not falling under fetus abortion orders until it has not moved to womb.

The fetus abortion is crime provided that the woman’s pregnant. That means that being as crime is dependent on the result-whether the condition of doing is directly related to the fetus abortion crime or not-but, if the responsible person for this abortion was not aware of the existence or surviving, he/she won’t be fallen under the punishment. (Gudarzi, 1375, p.273).

Punishment according to the law

a. We have this statement in nota bene 622 in Islamic punishment law: “if someone intentionally causes the fetus abortion as the result of bothering and hitting, he/she must pay blood money or would be retaliated; besides he/she will be sentenced to 1-3 years if the fetus was spiritualized.

b. We have this statement in nota bene 623 of Islamic punishment law or the person will be sentenced to 6 months or 1 year imprisonment if he/she gives spices or other things to the purpose of fetus abortion. If he/she intentionally tempts the woman to use spices or other things for fetus abortion, he/she will be sentenced to 3-6 months imprisonment, unless it is affirmed that this has been done because of saving the mother’s life. In both cases they will be charged for paying the bloodmoney according to related requirement. So, different aspects must be clarified in details so that the criminals can’t escape from punishment.

c. Nota bene 624 in Islamic punishment law has passed “if doctor, midwife, druggist or people who perform healing, midwife, surgery, druggist provide the tools for fetus abortion, they will be sentenced to 2-5 years imprisonment. According to the nota bene 487 in Islamic punishment law. As we mentioned before, they will be charged to paying the blood-money “if they implement it in the stage of fetus life. If doctors and midwives implement it in the biological life, they will have retaliation.

d. We have this statement in the nota bene in Islamic punishment law “If woman implement her fetus abortion, she will pay the blood-money appropriate to its stage and she won’t receive any quota. There is in the draft of new law of alleging bad excuses that “besides the blood-money she will be sentenced to 1-3 years imprisonment. And it has been come in the rest of nota bene 220 G.M that “If the fetus is in the biological life stage and it has been spiritualized, the mother will be sentenced to nemesis punishment, if the husband has commanded to his wife to implement the fetus abortion in the biological life or force her to do this by different tricks, reluctances and woman obey his command, In this situation according to the nota bene 211 in Islamic punishment law” so, the pregnant woman will be sentenced to retaliation and his husband will be sentenced to imprisonment for life” but its punishment was repaying blood-money in the fetus life stage.
we have this statement in the nota bene 151 in alleging bad excuses ‘’if the disability or remiss of the driver or crew leads to fetus abortion and it was unintentionally done, this time he/she will sentenced to 6 months or 2 years and blood-money if the injured body quests it.

We have the statement in nota bene 488 ‘’while killing the mother, fetus dies or has the abortion, the blood-money of fetus will be added to the mother’s blood-money according to the stage of fetus, too.

**Vital fetus abortion:** In Iran it’s good to have fetus abortion for saving the mother’s life and we have specific orders according to situation.

According to the judicial prescription there are recipes for medical curettage

*First,* it is dangerous to the mother’s life if she continues the pregnancy.

*Second,* curettage is before spiritualization.

*Third,* we need the husband and wife, judicially satisfaction and medical jurisprudence to vital pregnancy cease.

The fetus abortion is one of the important and comprehensive issues and every country has discussed it differently and has passed law about the topic. (Shambayati, H. Specific Punishment law,. vol., 1, p.428.tehran).

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