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Criminal Protection from Fetus in Iranian Jurisdiction

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ABSTRACT

Fetal protection is an issue that has been outlined in human societies and it has been considered in many legal systems throughout the world. In Iranian criminal law, fetus has a human personality and is respectable and protective. Any violation from this law is legally forbidden and is considered as a crime because like other human beings, fetus has rights such as rights of living and being healthy. So protection of fetal rights is not limited to support of its life by abortion ban or other practices resulting in life deprivation rather it includes protection of fetus's health right.

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Introduction

As a potential human who is able to change into a perfect human, fetus should be respected. Nowadays, abortion as a crime is being studied throughout the world as a severe problem. There are some reasons by which many countries are going to eliminate legal limitations and getting more freedom in this regard including ineffectiveness of current laws about unsafe conditions and women's mortality, protection of mother's health, ethical, socio-economical constraints, fetal abnormalities, population control.

In this paper, legal ordinances of abortion in different stages namely before manifestation of soul and after that and other things in this issue will be dealt with in addition to definition of fetus and crime and their types.

Definition of fetus and prohibition from hurting it

Lexically, fetus has been adopted from jinn who is hidden in the body (Alraghib Al-Isfahani, 1412)

Fetus is defined as an infant who is inside of mother's body and womb covers the fetus and it is not visible by others. In Islamic rights, fetal life has two stages: the first one is before soul inspiration and the second one is after soul inspiration. Some believe that abortion before soul inspiration also is a kind of manslaughter but many believe that it is considered as manslaughter after soul inspiration.

According to articles 622 to 624, act of Islamic punishments approved in 1996, abortion is considered as a crime and it is allowable when it is necessary to protect mother's life.

One of issues that are being interested in direction of fetal protection is approval of regulations with aim of forbidding any behavior resulting in abortion or injuries to its organs. It is evident that any measure against fetus may result in abortion, its death in the womb or injuries that may cause it to die. Generally, injuries to fetus are not always physical and directly on mother or fetus rather physical and non material behaviors including act and failure of act can result in fetal damage. Sometimes, it results from behaviors of father, physician and other people towards mother so considering that the fetus is living inside mother's body and has a deep relationship with her; she is physically and psychologically effective on unborn child. Mother has a great motivation. Mother's motivation for giving

food, caring, sympathizing and loving her child comes from secretion of a hormone called Prolactin which is placed in posterior hypophysis and it starts to secret in pregnancy. Mother and her fetus are so close to each other that any two other entities don't have this relationship. This closeness is not only biologic and physical but also emotional and psychological (Biazar Shirazi, 1993:32, Vahid Dastjerdi, 1993: 79-80)/ it is evident that unborn infant who spends 9 months of her/his important growth inside mother's body, is dependent on mother in her/his fetal life which is a milestone for being a human and entity. This dependency that is necessary for readiness and growth in outside world is spiritually and physically effective on fetal development. The fetus is being fed and developed by materials which are transferred to its placenta after being treated by blood. On the other hand, the fetus is affected by emotional and mental feelings and movements of the mother. It is no doubt that children are born with different behavioral patterns showing their spirits. Researchers believe that the behavior does not start from the birth rather it begins before birth and it is predictable. One of the most important effects comes from fetal environment. When the fetus is inside mother's body, it is affected by many hormones. Hormones secreted in a pregnant under much pressure in response to stress can have an adverse effect on mood of fetus after birth (Khabar journal, May, 1850). The main role of mother in formation of fetal mental and physical structure cause that it is being paid attention in Islamic teachings and narratives. According to Islam, happiness of infant is made in fetal periods and mother plays an undeniable role in this regard (Falsafi, 1418) so a pregnant should avoid any behavior that is dangerous for fetus. Ethically, nobody is allowed to compromise life and health of an unborn infant even his/her mother who cares o noted that, who is legally responsible for injuries that mother causes to her fetus? In order to support criminally the fetus and responsibility of mother to her fetus, according to article 489, act of Islamic punishment, Legislator has been kind to criminal mothers and he has sentenced mothers, who commit abortion, to pay blood money not punishment. Based on this article, when a woman aborts her fetus, she must pay blood money whenever possible and she has no right to use blood money herself. Blood money for fetal organs and its

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injuries are compared to blood money of fetus itself (Khoee, 1976:411). Sometimes, it is the father who hurts the fetus and he plays role in different way in fetal abnormalities and affects negatively fetal spiritual and physical structures. For example, addiction to drug or alcoholic drinks may impair sperm resulting in fetal abnormalities including mental retardation or death (Motieian, 2008:18 and Danesh 1995:80). Generally, regarding legal protection of fetus, it should be said that the legislator has specified criminal protection of fetus to any injuries to all body of fetus. So if there is harm for fetal organs, it will be considered as a crime but if detrimental behaviors cause spiritual damages and compromise fetal mental health, there will be no punishment and the legislator is silent in this regard.

Right of action due to injuries born on the fetus

As mentioned, there is no legal article in Iranian legal system in order to identify responsibilities of those who compromise fetal lives and make a child with congenital defects. So there is a legal gap considering injuries incurred on fetus during their lifetimes. Lack of legal protection from children, who are in fact innocent victims of their fetal lives, is not legally fair and it is against objectives and philosophy of criminal law. However, it seems that this issue can be outlined under general rules of criminal responsibility of people for incurred injuries to the fetus in an extent that they are not against laws of crimes and punishments. According to the law included in article 957 of civil law, pregnancy will be enjoyed from civil law in a condition that the fetus is born alive. Legal personality of the child will be identified for recoverable damages if it is born alive. It seems that this rule is executive regarding fetus and damages resulting from a crime. Nobody has right to claim damages except loss bearer. This right belongs to the loss bearer; heir or a representative (Abbasi, 1998:165) so if loss bearer is a child, his/her legal agent can charge compensations about injuries incurred on his/her fetal life. Otherwise, after being mature, the child can act for damages.

Action of right in relation to realization of conditions:

1- Realization of damage: the main basis for criminal complaint of child or his/her representative is realization of damage. According to legal divisions, damage is interpreted as physically, financially and spiritually if it causes harms to the body, honor and reputation and human emotions. Criminal responsibilities are based on type of incurred damages. If there are financial and spiritual damages, financial claims are made without criminal responsibility but if the harm is physical, criminal responsibility will be included.

Physical harm will be realized in two forms: 1- maim 2- death
Maim also is in three forms: mutilation, organ dysfunction, organ deformation

However, if a child is born with disability or mental and physical disabilities caused during conception and in fetal life, he/she will suffer physical harm and loss and the agent who has harmed the child has to compensate the damage. Then, criminal responsibility and criminal administrations will be run for the agent.

2- A harmful behavior: another thing for being successful in criminal legislation regarding fetal harms is detrimental behaviors. People are responsible for those detrimental behaviors that harm others. For example, if gynecologist who is responsible for prevention of prenatal injuries, avoids offering

emergency medical aids during delivery and the infant due to long and difficult delivery suffers from lack of oxygen and is born with brain defect due to damages of brain cells, the gynecologist may be responsible for the harm born on the infant.

3- Causal relationship: in addition to above mentioned factors, causal relationship should be proved. On the other hand, there should be cause and effect relation between the loss and detrimental behavior. It is evident that this relation avoids criminal responsibility to the agent.

Right of infant regarding prenatal injuries is outlined for different people including a pregnant that causes fetal damages due to defection in her humanistic and ethical duties. The father also can play effective role in different ways on physical, mental structure and abnormalities of the fetus. In addition, responsibilities of other people including public and specialists (physicians) are outlined as third parties who can be dangerous for fetus by their detrimental behavior.

Conclusion

Since a fetus has a potential personality and can take developmental stages and humanistic evolution, like other humans, it has rights that should be supported. Nowadays, although abortion is considered a crime in Iranian legal system and other countries, fetal protection suggests protection of its life right by its abortion in related laws. However, it seems that the philosophy of laws protecting fetus is not only supporting its life right but also its healthy right during all pregnant period and providing suitable conditions for delivering it healthily. As mentioned, current laws cannot respond to this protection. So criminal laws should be formulated in a way that in addition to protection of its life, any behavior that causes harm and damage against this vulnerable entity and compromise its mental and physical health, should be considered as a crime and independent sanction should be considered for those who protest to these rights.

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