Analysis of the Legal Aspects of Abortion-Therapy
In the Light of Comparative Studies

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ABSTRACT
Background: In new societies abortion-therapy is not known as deviation or digression, and it is a function which carries out since human being. It is a result of scientific, medical, economic and political changes and has a strong contribution with explosion of population, shortage of sources, women’s freedom, and the benefits of governments.

The United Nations has enumerated various conditions which abortion is permitted in some countries, so saving mother’s life, protecting the woman’s physical and mental health, pregnancies caused by rape and incest, fetal defects and illnesses, social and economic conditions as well as the woman’s own will, are some kind of this conditions...

Aim of study: Abortion therapy’s index is varying between countries, so in this study, we are going to compare these criteria from different legal view.

Results: There are three general approaches to abortion in different legal systems. Some legal systems either unconditionally permit or unconditionally prohibit abortion, while others consider it permissible under certain conditions. Comparative study shows that most countries have adopted the third approach that is considering abortion permissible only under certain conditions; in such cases, abortion is decriminalized by transforming its nature from criminal to therapeutic.

Materials and methods: In this article, abortion-therapy is examined on the basis of the anticipated elements and with a comparative view. In this line, study of the status of abortion-therapy in the Iranian legal system will not be ignored.

Discussion: The researches about the abortion show that there is a direct relation between the legality of the abortion and the low death rate of women caused by criminal miscarriages, Promoting advocacy among health professional could be other efforts to change the different others legal system.

KEY WORDS: Abortion-Therapy, Mother’s Health, Fetal Defect, Right to Life.

INTRODUCTION

The conditions and legal elements governing abortion cases are multifarious and varying from country to country. One report says, “Currently the laws of 32 countries prohibit abortion. In 36 countries, permissibility of abortion depends on its necessity for preservation of the mother’s life (or circumstances such as rape). 59 countries allow abortion for protection of the mother’s physical or mental health of which 14 countries consider the economic and social situation in deciding the permissibility of abortion too. There remain 56 more countries which generally allow abortions but limit its operation to certain stages of fetal develop-

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ment (normally prior to 12 weeks) or to cases where the consent of the fetus parents or the mother’s parent (where she is underage) must be obtained.  

According to the current laws of Canada, abortion has no temporal or medical conditions. In other words, a pregnant woman may refer to any abortion center even in her ninth month of pregnancy and have her fetus lawfully aborted.  

In the United States and pursuant to the Supreme Court’s decision on Roe v. Wed, abortion was declared unlawful in all states. The said decision maintains that the right to personal life as well as the right to privacy covers the fetus as well; however, this right is not absolute and unconditional and the interests and expediency of each state should be considered in the respective regulations.  

Among the countries of Europe, abortion still remains a taboo in Ireland, where despite its permissibility for saving mother's life, it appears to be prohibited due to non-transparent laws. However; in spite of such restrictions for Irish women, they still have the privilege of traveling to England for performance of abortion. Poland, Iraq, Lebanon, Yemen, and Syria do not allow abortion except where the mother’s health is endangered, while Turkey allows abortion in all circumstances.  

Abortions can be generally divided in three categories:  

Natural Miscarriage- In natural abortion, physical weakness or complications in the female organs responsible for the proper survival of the fetus causes miscarriage without human interference.  

Criminal Abortion- Criminal abortion or premature expulsion of the fetus may be carried out by the mother through deliberate operations on the womb, use of drugs or intentional blows, or by the physician or other persons through persuasion of the mother to consent to abortion, intentional blows in the form of assault or battery, or as a result of medical failures amounting to default or negligence, lack of skill or violation of governmental regulations.  

Therapeutic Abortion- Nowadays abortion-therapy for reasons such as protection of mother’s or fetus’s health, fetal defects, or other causes such as rape or adultery-induces pregnancies has been accepted in many legal systems, though the elements and circumstances of its admissibility vary in different countries.  

In this article, abortion-therapy is examined on the basis of the anticipated elements and with a comparative view. In this line, study of the status of abortion-therapy in the Iranian legal system will not be ignored.  

I- Fetal Defects and Complications  
Fetal defects and complications are considered as justifying circumstances for abortion in most legal systems. Permissibility of abortion on these conditions has been foreseen in the laws of such countries as Spain, New Zealand, Finland, Ethiopia, Niger, Togo, Kuwait, Qatar, Mexico, Panama and etc. For instance, in accordance with the law of 02.1983 in Qatar, if it is verified that the fetus would suffer from serious and incurable handicaps or mental disorders which would cause it serious damages in future, abortion may be permitted with the consent of the spouses.  

In France, if there is a serious risk that the fetus would suffer from physical or mental defects after birth, in a way that it is threatened
by significant handicaps, abortion may be permitted under certain conditions. The pregnant woman who satisfies the conditions enumerated by law may through the help of a gynecologist working in a public hospital or a private medical institution expressly mentioned in Article L. 2322-1 of the Law, have the fetus aborted. The physician involved must gather a multidisciplinary group as follows to make the final decision in this respect:

- A gynecologist,
- A physician nominated by the pregnant woman,
- A social worker or psychologist,
- One or more qualified physicians for rendering consultation on female health laws and regulations.

The medical council holds a meeting with the woman or her spouses, then if the council concludes that the mother’s or the fetus’s health is in danger, issues a permission to be submitted to the hospital with the woman’s medical dossier, the minutes of the council and the test results.

One of the noteworthy points about the French law is the involvement of the psychologist or social worker to evaluate various aspects and psychological consequences of abortion as well as the mental condition of the spouses.

In England, unlike the 1967 Law, the amendments made in 1990 expressly rejects the time limit for invoking the fetal defects resulting in major handicap of the child and accordingly, this ground may be invoked at any time during pregnancy. However; any physical or mental defect cannot serve as this ground and there should be some abnormal conditions causes by genetic disorders and resulting in stable and serious handicap.

In Sudan, if there is a high probability of fetal handicap or death, the decision for abortion-therapy must be adopted by two consulting physicians or an experienced consultant and the abortion must be carried out in a licensed and well-equipped hospital. In Yemen, Tunisia, and Kuwait also abortion is permitted based on similar grounds and upon approval by the medical council foreseen in the law.

In Iran, based on the Law of Abortion-Therapy, fetal illnesses justifying issuance of the permission for abortion have been defined. However; those circumstances have been criticized in terms of their practical applications. In this respect, it has been said:

"The Law on Abortion-Therapy has been adopted by the Islamic Parliament in 2005. Viewing the list of enumerated illnesses, this Law will have no impact on birth of defective children. The list of defects justifying abortion-therapy includes 50 different illnesses, but those children suffering from such illnesses normally die of natural causes within a few days after birth and therefore, their abortion will have no effect on decreasing the number of congenital defects. There are many types of such congenital handicaps such as blindness, deafness, muscular problems, mongolism, etc, that permanently torment the born child, while the list clearly ignores such defects. Adoption of the Law on Abortion-Therapy in its present form will not bring about any changes in control and prevention of congenital handicaps... This is while medical tests can easily detect many of these illnesses; muscular problems and genetic disorders prior to the fourth month of pregnancy and thus help prevent many cases of births with acute and heavy handicaps and prevent a lifetime of suffering and hardship for the defective child."

Limitations and shortcomings of the law in the long run will contribute to increase of criminal abortions or various psychological, economic and social problems resulting from
the births of defective children which further highlight the necessity of revising the Law.

2- Cases Pertaining to the Conditions and Request of the Mother

2-1- Abortions Due to Mother's Conditions

Abortions carried out for mother can be viewed in three different aspects: first, abortion for protection of mother's life, second, abortion for protection of mother's physical health, and third, abortion for protection of mother's mental health.

Nearly in all legal systems, abortion for saving mother's life has been accepted. In general, such conditions as kidney disorder, diabetic retinopathy, scythe-formed cell disorders, heart failures, radiotherapy or chemotherapy are among the instances where interruption of pregnancy has been allowed in various countries.  

Among the countries where abortion is justified only for saving of the mother’s life one can mention Kenya, Libya, Nigeria, Tanzania, Afghanistan, Iran, Lebanon, Yemen, Paraguay, and Venezuela.  

For instance, in Lebanon, abortion is allowed only in emergency for saving the woman's life and with observance of the religious beliefs. Furthermore, the patient must consent to the operation and if she is in critical conditions and her family withdraws their consent, the physician may adopt the appropriate decision and when restrained by religious beliefs, the physician may assign the operation to another colleague.  

Fore reasons of mother's physical health as well, most countries permit abortion. Morocco, Guinea, Rwanda, Jordan, Pakistan, Saudi Arabia, Qatar, Korea, Costa Rica, Peru, Uruguay, and Ecuador may be mentioned among these countries.  

The first law regarding interruption of pregnancy prior to nine months in France came into force in 1975. This law expressly distinguishes between deliberate abortion, criminal abortion and therapeutic abortion. Amendments made in the law in 2002 increased the permissible time window from 12 weeks to 24 weeks (Implementing Regulations adopted on 3 May 2001).

In the New Law of Public Health, the legal characterization "interruption of pregnancy for therapeutic reasons" was changed to "medical reasons". This change of characterization together with extension of the permissible time-window explains the increased flexibility of the French law-makers towards abortion. According to Article 1 of this Law, if two medical specialists with good faith recognize that continuation of pregnancy would endanger the woman's life or may cause physical or psychological damage to her or to her other children, abortion would be allowed.  

The English Parliament showed renewed attention to the issue of abortion in 1990 and when adopting the Law on Human Reproduction and Embryology, and through Section 37 of the said Law, made numerous amendments to the 1967 Abortion Act which opened new horizons before the law in this respect. this Act, in addition to numerous minor amendments and endorsement of the basic grounds for permission of abortion as foreseen in the 1967 Act, has provided for a new general rule which expands the cases of permissible abortion in the English law.  

According to new regulations, when the surgeon and the physician diagnose that continuation of pregnancy would result in serious permanent damage to physical or mental health of the pregnant woman, interruption of pregnancy is allowed with no time or place limits; in other words, it would not be even necessary.
that the embryo be less than 24 weeks old and even near-delivery abortion would be permissible in such cases even if it amounts to the baby's death. In England, the physical and mental health of other children has also been considered and in cases where damages to their physical or mental health are anticipated, abortion may be requested. On this basis, upon the diagnosis that continuation of pregnancy would endanger mother's life, interruption of pregnancy at any stage would be allowed. However; even the possibility of saving mother's life or reducing the risk to her life would suffice to justify abortion even if she dies after cessation of the pregnancy. 17

In Saudi Arabia, according to the regulations on medical professions based on the Royal Principles and Law No. 5 as well as Fatwa No. 140, abortion is permitted when pregnancy threatens the woman's life; a decision to be adopted by the respective medical committee examining the case. In such cases, pregnancy must be less than four months in progress, however, in further progressed pregnancies; the medical committee may also warrant abortion to save the mother's life. Thus, unlike our country, Saudi Arabia allows abortion after incarnation of soul in the embryo if it determined by the medical commission, it is necessary to save the mother's life.

In Qatar, permissibility of abortion is based on Law No, 1983/2 governing the activities of physicians, surgeons and dentists. According to this Law, abortion is prohibited even if the law-maker provides that if the pregnancy is less than 4 months in progress, abortion may be allowed in certain circumstances one of which is the case where continuation of pregnancy would cause serious or particular damage to the pregnant woman's health. 19

In Bahrain, abortion is subject to the governmental regulations and directives on medical professions, private hospitals, dentists and medical activities adopted in 1987 and amended in 2003.

Article 19 of the governmental directive No. 7 provides that the physicians are not allowed to warrant abortion or premature interruption of pregnancy unless in circumstances where continuation of pregnancy is considered a danger to mother's life, including her permanent illness (such as kidney defects). Such a decision must be adopted by three specialists and the operation must be performed in a licensed hospital after obtaining the consent of the woman or her close relatives. 20

In respect of the mother's mental health, no widespread consensus exists but certain countries such as Spain, Northern Ireland, Algeria, Malaysia, Thailand, Colombia, and Jamaica have allowed it. Article 214 of the Tunisian Criminal Act allows abortion within the first three months of pregnancy without any limitation by a doctor in a licensed hospital, health institute or clinic. After that period, abortion is allowed if pregnancy endangers the mother's physical or mental health; thus in that country, mental problems of the pregnant woman are also considered as grounds for permissibility of abortion.

In various Australian provinces, the rules governing abortion are differing. In general, all provinces including Victoria, South Australia, West Australia, New South Wales, Tasmania and Queensland, Northern and Central Australia, abortion is allowed if it is necessary for saving mother's life or health which also includes mental health. There is no law in these provinces that requires consent of the woman's partner, and also there is no time limit for performance of abortion. Only in West Australia, an underage pregnant woman would require her parents' or guardian's consent for abortion. 21
2-2- Abortion upon Mother's Request

Mother may also request abortion on any grounds (including personal grounds). Among the countries where the mother's request would in general suffice for warranting abortion one may refer to the US, Austria, Belgium, Canada, Denmark, Italy, Norway, Ukraine, South Africa, Tunisia, North Korea, Cuba, etc. 

Among the Islamic countries, only Tunisia and Oman allow requests for abortion (conditionally). Accordingly in Tunisia, in the first three months of pregnancy and in Oman, in the first 40 days of pregnancy, abortion is allowed. In Iranian Law, this is absolutely impossible and such kind of abortion even prior to incarnation of soul in the embryo has been criminalized by the law-maker in Articles 487 to 493 of the Criminal Code.

Apart from the definite Islamic jurisprudential evidence, indicating the prohibition of abortion in cases of such requests at any stage of pregnancy, it appears that viewing the necessity of protecting the embryo's right to life, abortion upon request of the woman or her spouse without medical back-up and justifications should not be warranted. Undoubtedly, the right to life is one of the most fundamental human rights and prevails over other rights such of the right of choice, self-determination and preference.

The Single-Article Act on Abortion-Therapy adopted in 2005 provides: “Abortion-therapy shall be permitted upon the diagnosis of three specialists and approval of the Forensic Medicine Organization indicating the fetal defect which would cause hardship for mother because of retard or other disorders or due to mother’s illness threatening mortal harm, prior to incarnation of soul in the embryo (the fourth month of pregnancy) and with the woman’s consent and the operating physician shall not be liable and shall not be punished…” In this Act, the pregnant woman’s illness threatening her with mortal harm has been introduced as a justifying ground for abortion. Mother's illness refers to a clinical and medical condition in which continuation of pregnancy would lead to a mortal threat for her. The criterion for verification of this threat is medical practice and the opinion of the specialists. To better regulate the issue of abortion and eliminate some existing problems, regulation and ensuring further precision in issuance of the authorization for abortion in forensic centers, having due regard to Islamic, legal and medical views of different experts, the executive definition of permissible cases of abortion was adopted in the abortion committee of the Forensic Medicine Organization and was endorsed by the Chief of the Iranian Judiciary. Cases such as kidney disorders, fat livers caused by pregnancy, esophageal varicose of the third degree, HIV infection at the AIDS level, etc.

Our law is silent on the issue of the mother's mental health. However; by extending such general principles as the “no damage and no hardship rule” (as embodied in the said Article) to the mental conditions of the woman, this case may also considered as a justified event of abortion with certain conditions. And it appears that in such cases, referring to the necessity rule and the “no-hardship” rule could help.

3- Economic and Social Conditions

Nowadays, poverty is one of the main causes that leads to illegal abortions, and such events are statistically increasing worldwide because population increase in countries would add to the financial burdens of the governments which with a view to cutting such costs, would impose limits on the level of protection afforded to the newly born children.
Today, the problem of abortion has a close link with poverty if in the past, criminal abortions were mostly performed due to unwanted pregnancies or swindling of young girls and indecent relationship, today abortion is conducted mostly by the couples because of economic poverty, lack of sufficient financial resources, too many children, unemployment and such other economic reasons that cannot accept a new child or considering have a new child as a wrong to their other children. 

In England, in addition to protection of the mother’s physical and mental health, if continuation of pregnancy and delivery of the new child would endanger the physical or psychological health of the existing children, cessation of pregnancy would be allowed. However, the question may be asked is how continuation of pregnancy may threaten the psychological and particularly physical health of the existing children? And, could we assume that poverty and family problems have negative impact on new child and it cause to abortion? Some writers believe that in specific conditions, such as when the father is in jail and the mother is economically restrained and the existing children are not kept in good sanitary conditions, continuation of pregnancy and birth of a new child may be harmful.

The Lord in Verse 31 of SURRAH ASRA says: “Do not kill your children for fear of poverty. We are the one who feeds them as well as you; yes, killing them is always a great sin”. Therefore, economic problems can never be considered as a ground for abortion in Islam. Further, the said verse seems to have general application and covers both healthy and unhealthy children. Regards to the express of the said verse and the overall spirit of the Islamic laws, one can hardly maintain that such rules as “no damage and no hardship” and quiet economic and social conditions resulting from birth of a new child would cause to abortion. In fact, economic and social excuses could be subject to wide interpretation to the extent that one cannot define their proper boundaries. Especially today when as a result of unfavorable economic conditions worldwide, actually everyone may invoke such conditions as grounds for abortion! However; in respect of defective or handicapped children, due to serious financial burdens and adverse consequences undoubtedly imposed on the family, the society and the individual, proof of hardship as ground for abortion may be possible. The statistics indicate that today a great number of pregnancies, at least in the western world, belong to unmarried or under-twenty women. These women not only are financially incapable handling their embryo and child but also themselves are under protection of their parents. Therefore, non-abortion would impose heavy costs of pregnancy, medical care, delivery and child protection.

The other issue is the entrance of women to the professional world and the working environment. Most employers have a very negative attitude toward the pregnancy of their female workers and consider it as an obstacle on the way of their proper work performance. These conditions may undermine the familial foundations. So many women may commit abortion to keep their jobs despite the will of their husbands or even prevent pregnancy; these may be causes for further divorces. The United Nations considers the mother’s incapability to protect her child as one of the social adverse conditions.

In sum, economic and social causes cannot be invoked as grounds for abortion in Iran, while some other countries admit such grounds as permissible events of abortion. Countries like UK, Denmark, Japan, Zambia, Cyprus, China, India, and Taiwan are among the coun-
tries that somehow consider the economic and social conditions in this respect.

To prevent criminal abortions due to adverse economic and social conditions in countries where these causes are not admissible for abortion-therapy, promotion of the families’ level of training and welfare is an inevitable task of the governments.

**CONCLUSION**

Nowadays, legal regularity adopts different approaches to the abortion. Some unconditioned permit abortion to the extent that in many instances, it can be performed even without medical excuse and based on the request of the mother or the parents. Some other countries adopt a very rigorous attitude towards abortion thus either totally rejecting it or accepting it in exceptional circumstances. However; most countries allow abortion in circumstances related to saving of the mother’s life, as well as preserving the physical and mental health of the mother and the fetus.

Abortion-therapy may be defined as treatment which done in accordance to the laws of a country and with regard to the physical and mental health of the individual and the society. In this definition, economic and social factors have also been considered for the impacts on the quality of life, and the familial and social health.

Definitions of the composing elements of abortion-therapy in any country shall be based on adoption or rejection of the following elements in the first instance; their degree and occasions in the second instance, and the result of considering the conflicting cases in the third:

1- Mother’s life,
2- Mother’s physical health,
3- Mother’s mental and psychological health,
4- Other children’s health,
5- Social and economic problems,
6- Fetal defects,
7- Embryos resulted from unlawful relationships in general,
8- Embryos resulted from incest and rape,
9- Mother’s absolute freedom in demanding abortion,
10- Father’s or parents’ authority in accepting or rejecting abortion,
11- Embryo’s right for life,
12- Stage of embryo’s development (incarnation of soul in Islamic countries).

As said before, with combination of the above conditions and elements, numerous approaches have been formed in different countries of the world and in respect of abortion in which one cannot neglect the effect of religious beliefs and customs. However; some of the above conditions are more consistent with universal ethical and legal principles and foundations, so it may have better practicability. Accordingly, it is justified to adopt the best combination for our legal system in near future of law revising based on the attention paid to the elements of warranting abortion in various countries which are: firstly, consistent with the Islamic context, and secondly, in the conflict between the right of the parents’ (or mother’s) self-determination and protection of the potential or actual right of life in the embryo follows an ethical rule, and thirdly, is consistent with social, economic and individual interests.
FOOTNOTE

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