LEGAL PROTECTION FOR BIOMEDICAL ETHICS IN ISLAMIC REPUBLIC OF IRAN

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ABSTRACT

Iran is the only Islamic country that its legal system is based on Shi’a school of Islam and formal legislative system of the country encompasses religious considerations through democratic-theocratic political system. In Iran religious, politico legal and ethical discourses are overlapping and have official and implicit interactions. Generally, in Iran, few laws and regulations have been exclusively ratified in order to legalize ethical issues in biomedical practice or to guarantee an ethical biomedical practices. But inside other more general laws, such as criminal or civil law, there are some parts or clauses related to these subjects. In this paper we reviewed those legalizations within Iran legal system that deal with ethical dimensions of issues such as abortion, organ transplantation, assisted reproduction, medical professional ethics, stem cell researches, helping people in serious dangers, confidentiality and euthanasia. Despite of noticeable achievements of legalizing ethical issues of biomedical practice in Iran during
recent years, more attention should be paid to the issue of legalizing remaining topics for better organization of related activities and also protecting the human dignity and moral values, while considering public good. Issues such as human cloning, genetic engineering, stem cell researches and those concerning end of life cares in clinical settings, have not been legalized yet. On the other hand, the limited number of legalizations in these fields as organ transplantation and assisted reproduction are not comprehensive and just include one aspect of the subject as we showed in this paper. This situation increases the possibility of misinterpretations and misunderstanding. The need for a comprehensive law for biomedical practice while considering ethical issues in Iran should be taken into consideration by responsible bodies.

**Keywords**

Legal Protection, Bioethics, Iran
INTRODUCTION

Iran is the world’s 18th country regarding its geographic area, with the land area of 1,648,000 square kilometers and the population of almost 75 million. 1,2 Regarding religion Iran is a homogenous country. 98% of the Iranian population are Muslims, most of which (89%) are Shi’a Muslims and 9% belong to Sunni school of Islam. The remaining 2% of Iranian population belong to other faiths including Zoroastrian, Christian and Jewish. Shi’a Islam is the official religion and Farsi (Persian) is the official language of the country.4

Legal protection for biomedical ethics is an approach typically contemplated by the legislators for the purpose of safeguarding the rights and prevailing ethical values of the society and the rights of individuals as well as establishment of order and security.

Iran is the only Islamic country that its legal system is based on Shi’a school of Islam that is practiced through a religious democracy. Like other fields passing laws and regulations concerning ethical issues in biomedical discourse must be under routine legalization system during the history of Iranian Parliament from 1906 up to now. Numerous political changes in the country that some of them, like 1979 revolution, had completely changed the governmental and political system from an monarchy kingdom to a new experience of a religious democratic system, consequently had been ended in changes in legal system.

Generally, in Iran, few laws have been exclusively ratified in order to legalize ethical dimensions in biomedical practice or to support an ethical discourse within biomedical practices. But inside other more general laws and acts there are some parts or clauses related to these subjects.
For example “Constitution of Islamic Republic of Iran” (articles 3, 21, 29, 43) or “Public Insurance Law” include ethical issues in a basic level, mainly emphasizing the principle of justice. As another example “The Criminal Law” (That is known as “Law for Islamic Penalties” after 1979 and “Public Criminal Law” before 1979), includes some articles related to ethical issues in biomedicine such as abortion (articles 622-624, 487-492), informed consent and physician responsibility (articles 59, 60, 319-322) or confidentiality in medical practice (article 648). Also in different clauses in the “Iran Civil Code”, this point has been stressed that the people’s actions and their contracts and agreements must not be in conflict with the public policy of the society and moral norms. Hence, considering moral norms is a precondition for the contracts and actions made by the individuals in the society. Although some of these legal requirements are very general and could not be considered as serious guarantees for ethical practice in the field of biomedicine. Similarly in other more specific laws related to health care system such as “Law for prevention of Transmissible and Sexually Transmitted Diseases” some ethical issues like confidentiality had been noticed.

In this article we will try to review the legal protection for some manifestations of biomedical ethics in the Iranian legal system.

**Method**

For this study we reviewed the collections of Iran laws and also searched the official website of the Research Center of the Parliament of Islamic Republic of Iran that indexes all laws and regulations that are ratified by the authorized bodies including “The Parliament (Majlis), “Council of Ministers” and The Supreme Council for Cultural Revolution”. For ensuring not ignoring relevant subjects, we done a literature
review started in PubMed using a very general search words that showed us all related papers which have been indexed in this database until July 2012. In addition we used some Iranian databases that usually index papers which are published in the country such as SID, IranMedex and Magiran. We selected some papers based on their title and abstract and chose those with more relevant contents. To concentrate on some features of biomedical ethics that is known as famous features of Iranian context, our inclusion criteria were “existence of an independent act” for these features. Therefore we selected 3 hot topics of biomedical ethics that had been legalized through parliamentary pathway in Iran and were directly and exclusively related to ethical issues in biomedicine. At the same time we mentioned other related legislations and laws that are not exclusively related to ethical issues in biomedical practice but have related components in this regard. Our study showed that main features of legal protection for bioethical issues could be categorized under these following schemes.

Abortion
Abortion is a very important, controversial and traditional debate in biomedical ethics and medical law. It has been a subject of philosophical, religious, legal and ethical debates since a long time ago. Today, prenatal diagnosis of fetal defects and diseases during the period of gestation is easily feasible by recent advancements in the medical technologies. Therefor abortion could not being seen only as a traditional ethical concept. In other word, some dimensions of abortion such as therapeutic abortion due to fetal problems are completely new emerging issues. This issue has intensified serious and vociferous debates and discussions on the permissibility or impermissibility of the abortion more than ever. Since, the awareness of the parents and the physicians of a
child's disease and defects that would result in foreseeing financial and spiritual burdens on the family and society after birth or the suffering that the defected child would experience after birth. These problems might be counted as ethically justified arguments for permissibility of therapeutic abortion.

In general, considering ethical-legal debates on the issue of abortion, and responding to this question that who is eligible to decide to abort the fetus, two rival perspectives or approaches may be assessed: By the first perspective, it is mother who bears and carries the fetus and consequently is considered as the owner of right and claimant. Therefore if her decision ends in abortion, it should be respected and supported. Under this approach, the fetus lacks any rights in the shadow of the mother's existence and it is mother who decides about continuing the carriage until the end of the gestation period or its stop and premature ending, while observing her own personal expediencies. This opinion is based on contemporary women-dominated and feministic attitudes.

In another perspective, that may be regarded to some extent as to be in compliance with the utilitarian ethical theories, the positive and negative outcomes resulting from the abortion should be separately evaluated in different and varied circumstances and states and the inherent value of each of them should be compared with another one and finally a position should be adopted that is followed by more utility and benefit for the concerned people in each case.

The ethical-legal status of the fetus is also one of the most important challenges that exist in the area of abortion that potentially can influence the decisions around this issue. At any time that the fetus could be imagined as a human being, it would be eligible for having rights. This
issue of having rights is followed by a consequent responsibility of the society and related people. Therefore aborting this fetus will be definitely forbidden and its committal would be reproachable as like any other murder and crime. As a result, determining the beginning of the honorable life of fetus and the time when it will be considered as a human being is the starting point of widespread controversies between the opponents and proponents of the abortion. There are different opinions regarding this issue; in one perspective, the fetus is a human being with a sacred life since the moment of conception and abortion is not permissible at any case. Conservative religious approaches mainly Catholic tradition and also some deontological ethical theories based on Kantian ethics are among the serious supporters of this perspective. In contrary, other approach considers the stages of the biologic development of the fetus and its moral status. In this approach the personhood is not presumed for the fetus from the time of conception. Among the proponents of this perspective the controversy is more related to the exact time or stage of fetal life in which it could be counted as a human being. In Islam the issue of fetal development has been discussed in The Holy Qur'an, 23:12–14 in detail: (We created man of an extraction of clay, then We set him a drop in a safe lodging, then We created of the drop a clot, then we created of the clot a tissue, then We created of the tissue bones, then We covered the bones in flesh; thereafter We produced it an another creature. So blessed be God, the Best of Creators. ) which may representing the high importance of this issue in Islamic tradition. During entire time range of pregnancy fetus is protected by Islamic law in different levels, depend on its gestational age. It could easily claim that in all schools of Islamic jurisprudence abortion seems to be gener-
ally forbidden and unlawful and it is categorized under the category of Islamic criminology in Islamic jurisprudential sources\textsuperscript{15}.

According to Shi’a resources pregnancy starts after implementation of the embryo in the uterus and ends with child delivery or abortion\textsuperscript{16}. Although the legal and ethical status of the human embryo before implementation is not clear, there is no evidence in Islamic tradition that shows the life begins from the time of conception.\textsuperscript{17} Contrary to Catholic, an opinion which considers full moral status for human zygote just after conception and as a result restrictively bans any abortion activities.\textsuperscript{18}

The most important time in pregnancy from Islamic point of view seems to be the point of ensoulment, when the fetus achieves the human identity and personhood. By this time an angle that is sent by God inspires the spirit in the fetus, based on Quranic verses. Although there is not a consensus on exact time of ensoulment and times such as fortieth, forty-second, or forty-fifth night or after one hundred and twenty days are claimed by Muslim jurists, none of them does not accept any time more than 120 days for ensoulment and consequently abortion after 120 days of conception is prohibited by the jurists of all Islamic schools. The only exception is life-threatening situations in which both mother and fetus are in serious danger and since logically the life of fetus is dependent to the mother’s life, if abortion is performed, the life of mother will be saved.

Thus most disagreements about conditions of permissibility of abortion are regarding before the 120 days (4 months) of gestation.

Non-therapeutic abortion for non-medical reasons such as financial problems that puts the family into hardship, the fear of abnormal babies due to old age of mother or family planning purposes are not ac-
acceptable reasons to attempt abortion by most of Shi'a jurists including Ayatollah Khomeini and Ayatollah Khamenei, former and present supreme leaders of Islamic Republic of Iran. In the case of therapeutic abortion Shi'a jurists inside Iran accept maternal and definite fetal problems but usually do not consider a probable deformity as a valid justification for therapeutic abortion. In Iranian legal system, performance any criminal acts that lead to the stop of fetal life and/or deprival of life from the fetus or its premature extraction is considered abortion.

Article 622 of the “Law for Islamic Penalties” states: "Anyone who causes the abortion of a pregnant woman by her hit or annoyance and torment shall be sentenced to a prison term of 1-3 years in addition to the payment of blood money or death penalty as the case may be." Article 623 of the same law states: "Anyone who commits abortion by any means shall be sentenced to a prison term for six months to one year and if he/she leads the pregnant woman to the use drugs or means deliberately and knowingly so that her fetus is aborted, then he/she shall be sentenced to a prison term of 1-3 years, unless it is proved that that action is for the preservation of the mother's life and in each case, it shall be judged for the payment of blood money in accordance with respective regulations". And article 624 of the stated Act which directly hints to the criminal responsibility of the physicians, midwives or pharmacists provides: "If the physician, midwife or druggist and persons who are treating or midwifing or operating or selling drugs provide the means for abortion and/or abort the fetus, then they shall be sentenced to a prison term of 2-5 years and the judgment for the payment of blood money shall be delivered in accordance with respective regulations".
Islamic Punishment Code has determined the blood money for the fetus before the ensoulment and thereafter in Articles 487-493, which are derived from juridical texts and the abovementioned points have been stipulated by the legislator.

Positive criminal behavior (material) i.e. committal of the criminal act is necessary for the occurrence of the abortion crime and as a rule, the omission of act could not form the material element of the crime in abortion, unless where a person is legally obliged to do something and has not fulfilled his/her obligation that would have resulted in abortion.

Parliament (Majlis) of Islamic Republic of Iran ratified the Therapeutic Abortion Act on 31 May 2005 and after 15 days on 15 June 2005 The Act had been approved by The Guardian Council (A supervisory council for parliament acts to be compatible with Shi’a teachings, The official religion of the country, and also with the Constitution Law) after “vigorous debates” among opponents and supporters.

Based on this act performing abortion is permitted with definite diagnosis of retardation or malformation of the fetus that is unbearable for the mother or life-threatening disease of mother by three specialist medical doctors and confirmation of Legal Medicine Organization (An official body as a part of judicial Branch of the government for forensic medicine purposes). This act allows therapeutic abortion with mother’s consent only before ensoulment, which based on most Islamic Sunni and Shi’a, jurisprudential scholars beliefs is 4 months after fertilization. In addition the list of the maternal and fetal problems that legally justifies the abortion act is open and the “Forensic Medicine Organization” holds the authority to add new maternal and fetal medical problems to this list. The ratification of this act was reflected in media worldwide.
Assisted Reproductive Technologies (ART)

Traditionally, having children is a basic social value for Iranian spouses. Infertile couples are at higher risk of developing poor health situation and low quality of life in addition to their infertility experience. Infertility influences men and women's quality of life and emotional well-being in a negative way. Infertility in Iran is a noticeable medical problem, about one fourth of the Iranian couples experience primary infertility at some point in their lives. In 2008 the overall prevalence of infertility in Iran was 8% including 4.6% primary infertility that had been increasing significantly from 2.6 in period between 1985-1989, to 4.3 in 1990-1994 and 5.5% for the 1995-2000 as well as 3.4% of secondary infertility, with reports of lower rates in northern Iran, although there are reports of 12% in some areas.

This high prevalence of infertility in Iran and existence a traditional cultural resistance against adoption raised public need for developing “Assisted Reproductive Technologies” inside the country. This major public request has been pushing the health system to provide appropriate services and to seek jurisprudential and legal legitimacy from religious authorities and legislative system which also is based on Shi’a jurisprudence. Contemporary practices for assisting couples to have children involve various techniques including IUI, IVF, Gestational Surrogacy, and “Third-Party Gamete Donation and there are no legal or religious barriers for infertile couples in using these various methods of Assisted Reproductive Technologies. Today Iran is undoubtedly leading country in Muslim world regarding these technologies.

As it is mentioned above, all of these activities have been practiced after the beginning of leadership of Ayatollah Khamenei, the successor of the
former Iran “Supreme Leader”, Ayatollah Khomeini and as a result of Iranian political system, Ayatollah Khamenei’s juristic opinions about assisted reproductive technologies are the most important base for medical practice in this field as well as other religiously sensitive and ethically debated areas in medical practice such as organ transplantation, abortion or embryonic stem cell researches. The simple reason of great importance of his religious and jurisprudential rulings (Fatwa) is their potentiality to be a base for practice and legislation inside Iran. His unrestrictive opinions than other Sunni and even Shi’a jurists have paved the way for development of assisted reproduction practices in Iran36. In Ayatollah Khamenei’s view, as many other Muslim Shi’a and Sunni jurists, IVF generally is acceptable by using of married parents gametes37. His juristic ruling (Fatwa) in 1999 permitted gamete donation by third parties to infertile spouses38,39 while he clarifies that the child will be related to the donor, sperm or egg, not to recipient couple40. This Fatwa seems to be unique among Shi’a and Sunni jurists and usually known as a revolutionary Fatwa, even among Shi’a jurists41. IVF clinics in Iran use the original Fatwa of Ayatollah Khamenei and perform gamete donation in Iran and in Lebanon where he has many Shi’a followers. He also allows using the gametes after the death of their originator42. There are reports regarding monetary gamete exchange in Iran and Lebanon where interestingly some women from US sell their eggs to infertile spouses and as well some Sunni Muslim infertile couples are using the third-party gamete donation services in Lebanon secretly ‘going against.43

Among all these methods, that regarding unrestrictive opinion Ayatollah Khamenei potentially could be performed in Iran, the only legalized one is “Embryo Donation”. “Iran Embryo Donation to Infertile Spouses Act” was ratified in July 2003 by Iran Parliament44. Based on
the first article of this act; all authorized infertility clinics are permitted to transfer IVF-resulted embryos of legally and juristically legitimate couples, after obtaining their written consent, to the women uterus of the couples whose infertility has been proved after medical treatment. This act involves both bilateral and unilateral infertility from both man and woman, in summary all infertile couples that woman can potentially carry a fetus with in her womb, were permitted to receive embryos. The second article of the act declares that the request for receiving a donated embryo should be given to court and the court would be responsible for attainment the requesting couple eligibility and competency. The donation process must be performed only after court permission to the couple who both need to be morally competence and holding the Iranian nationality. Based on this article the couple should not be legally incompetent, drug abusers or addicted or seriously ill. The other parts of the law includes emphasizing the responsibilities of the requesting spouses toward the coming child as the same as a normal parents regarding taking care of, educating, giving alimony and respecting them( Article 3) and also an executive priority for these cases in “Family Courts” without complying with the “Civil Procedure Formalities”, as well as putting opportunity of “Reconsideration” for couples who are nominated as disqualified by the “Family Courts” (Article 4). Finally in the last part (Article 5), the act bounds “Ministry of Health and Medical Education” for preparing the “Executive Bylaw” of this Act within 3 months with cooperation of “Ministry of Justice” for ratification by “Council of Ministers”.

The “Executive Bylaw” of the act was passed by “Council of Ministers” in 13 March 2005 after 20 months of ratification of the act in parliament, based on a draft proposed by “Ministry of Health and Medical
Education” and “Ministry of Justice”45. The “Executive Bylaw” limited the maximum of embryo’s age to 5 days after conception. Based on the first part of this bylaw the donation should be in voluntarily and non-monetary. The bylaw also added some condition for donors including normal physical and psychological health and “Intelligence Quality” (IQ), being free of drug addiction or abuse and serious diseases such as HIV/AIDS and Hepatitis, in addition to the emphasizing on need for an official marriage between the embryo’s genetic parents and confidentiality of their identity. The third part of the bylaw asks the infertility clinics to separate preserved embryos based on the parents’ religion, especially Muslims from Non-Muslims, and to observe religious balance between donors and recipients. This part of the bylaw emphasizes on confidential process of obtaining, preserving and donating of embryos and nominates the related information as “Top Secret Governmental Documents” and their disclosure requires an authorized court request. Finally the bylaw permits establishment of “Embryo Banks” under supervision of “Ministry of Health and Medical Education”

Confidentiality

Confidentiality is a moral duty and ethical requirement since a long time as a social custom and it is one the most central components of patient-physician relationship and concerned about one of the basic issues regarding the patients’ rights46. In medical practice patients who may not disclose the private information of their disease, even to nearest relatives, usually disclose very personal issues for their treating physician and expect a deep ethical support and a general legal guarantee in this regard47. Therefore, although confidentiality is rooted in religion and ethics and keeping secrets is always regarded as a praiseworthy and valuable act,
the legislator has provided legal sanction for the disclosure of medical information that ensures the rights of persons whose prestige and personality might be damaged or a physical, financial and spiritual damage is followed for them due to the breach of confidentiality. The Iranian legislator like other countries has also considered the breach of confidentiality and the disclosure of patients' secrets as a crime and deems its perpetrator(s) criminally prosecutable. Article 648 of “Law for Islamic Penalties” criminated this issue. The constituent elements of the crime include: the perpetrator's personality, existence of the secret, disclosure of the secret and criminal intent that in case of the establishment of its occurrence, the perpetrator will be sentenced to a prison term of 3 months to one year as well as a fine.

However, that general rule is particularized in certain legal cases that are stated as exceptions to the confidentiality rule and are circumstances in which breaking the rule could be legally justifiable. Those circumstances include: the consent of the secret holder, reporting contagious diseases, reporting of birth and death, testimony before courts, patient's decision to commit crime, maintenance of the important expediencies of other people and disclosure of secret for self-defense.

**Medical Professional Codes of Ethics:**

National medical professional organizations such as “Medical Council of Islamic Republic of Iran” and “Iran Nursing organization” are other important stakeholders in the biomedical ethics scope. Following the recommendation of “The Supreme Leader” of Iran, “Ayatollah Khameenei”, in one of his meetings with some of nurses regarding preparation of “Nursing Charter” on 21 April 2010, “National Code for Nursing Ethics” as a result of a national project supported by “Ministry of Health and Medical Education” was notified to the members of “Iran
Nursing organization” in 2011\textsuperscript{50}. This code begins with 12 underlying values is consisted 71 clauses regarding ethical responsibilities and commitments of nurses toward society, patients and colleagues, professional commitments of nurses as well as specific guidelines for nurses involved in administrative, educational or research activities. On the other side, although “Medical Council of Islamic Republic of Iran” has a separate section for organizing medical ethics activities and hold a number of workshops and annual conferences with the subject of medical ethics and medical law but it have not yet notified any national code regarding ethical issues in medicine\textsuperscript{51}. As an ethics-related activity the Medical Council based on its legal responsibility, transferred to it by “The Act of Medical Council of Islamic Republic of Iran”, of 1990\textsuperscript{52}, that was revised in 2004\textsuperscript{53}, holds the responsibility of investigation of the member’s violation to professional codes and standards. According to this act the “Council of Ministers” had approved “Regulations for Violating Professional Codes by of Medical Practitioners and Related Occupations”, that contain some ethical commitments of medical professionals who are members of medical council. This basic document contains some ethical commitments which are expected from medical professionals. Respecting the confidentiality of patients' medical information, observing professional etiquettes and moral responsibility to continuation of treatment for the patients are the most related and important commitments as well as the related bureaucratic process in 1994\textsuperscript{54}, that was revised in 1999\textsuperscript{55}. It is important to notice that this responsibility has been a traditional activity of the medical council since 1960s and is not a new emerging phenomenon. This professional code was a new version of “Medical Code of Conduct” of 1969\textsuperscript{56}, which in fact was an executive bylaw for “The First Act of Iran Medical Council” 0f 1960\textsuperscript{57}. In modern period of medical practice, that codification
of ethical issues in medicine by professional organizations plays an important role in protecting ethical issues, lack of such document for members of “Iran Medical Association” is a noticeable shortage and the above mentioned act cannot respond to new ethical problems and dilemmas that medical professional usually encounter in daily practice and a need to preparing a “Code of Professional Ethics” by this organization is obvious.

**Organs Transplantation**
The issue of organs and tissues transplantation is among the sensitive, multi-dimensional and evolving issues in the medicine practice, so different questions and ambiguities are raised in its various aspects in medical, ethical, religious, legal and economical respects. Contrary to abortion, tissue and organ transplantation is a new emerging health service that was introduced in mainly in 20th century to human societies. But the idea for transplantation had been one of the human wishes from ancient time including ancient Iran that is reflected in some of Iranian arts of the ancient time. A reports of medical practice in Medieval claims the use of dog bone for curing human bone fracture, by Seyyed Esmaiel Jorjani (1042-1136 AD), in his book ,“Zakhireyeh Kharamshahi”.

Today Iran transplantation development follows the developed international models with about 10-20 years delay and shows a noticeable increase in its quantity. Modern transplantation of human tissues in Iran began with organized transplantation of blood in 1940s. In 1935 the first cornea transplantation had been done in Tehran (30 years after first cornea transplantation in 1905), following by a more modern method in Shiraz, from 1967. Tissue transplantation continued with starting bone marrow transplantation in Tehran in 1990, followed by Shiraz 1991.
Organ transplantation started with living-related kidney transplantation at Shiraz University Hospital in 1967, In the opinion of Islamic jurists, living human being may donate any of his/her organs that he/she wishes to the person who needs organs, provided that losing that organ will not cause his/her own death and/or sufferance and he/she has a rational aim. But the organ donor should enjoy necessary legal conditions for organ donation. Among those essential conditions are legal capacity, intent and consent and the cause for organ transplantation.

Despite of its long history, the issues of organ transplantation from living donors have not been suggested by the legislator and the legislator has merely dealt with the organs transplantation of dead patients or the patients whose brain death is certain. Despite lack of legislation this type of organ transplantation is being practiced in Iran based on positive religious consensus on the subject, therefore if a living person wants to donate an organ that does not cause his/her death, it would be possible if the intended donor meets the following criteria of legal capacity (namely the donor is sane and mature and is not reluctant, forced and constrained to donate organ), The donor intention and informed consent to do the action and presence of a is legally and religiously justified cause for donation (i.e. the organ is donated to a needy human whose continuation of life depends on that donation and not for the purpose of selling and trafficking organs). Another feature of Iranian model for organ transplantation is its regulation regarding citizenship in the organ transplantation, namely organ transplantation from an Iranian to an Iranian is permissible and if the donor and receiver of the organ are foreigner, both of them should be compatriot.
But for organizing other dimension of organ transplantation which is religiously more sensitive, the “Organ Transplantation and Brain Death Act” (The complete name of the act is “The Act for Transplantation the Organs of Dead People and Those whose Brain-Death is Incontrovertible”) has been ratified by the parliament in April 2000. The act declares: "After obtaining the written permission from the ministry of Health, university equipped hospitals for the organs transplantation may use healthy organs of dead patients or patients whose brain death is certain according to the opinion of skilled experts, for transplanting into patients whose maintenance of life depends on organ transplantation, on the condition of the patient’s will or the agreement of the dead people’s guardian". In the three notes of the act it is declared the brain death shall be determined by skilled experts in equipped university hospitals and those experts shall be appointed by the decree of the Minister of Health and Medical Education for a period of 4 years, members of brain death determination teams shall not be members of transplantation teams and physicians who are members of the team shall not be subjected to blood money in respect of injuries inflicted on the dead. In 2002 after about 2 years of delay the “The Executive Bylaw of the Act for Transplantation the Organs of Dead People and Those whose Brain-Death is Incontrovertible” was ratified by “Council of Ministers”, based on a proposal that had been proposed by “Ministry of Health and Medical Education” in 2001. This executive law consisted a medical definition for brain dead (as complete and irreversible activity of cortical and sub cortical brain and the brain stem) that needed to be medically more clarified by “Ministry of Health and Medical Education” and clinically determined by a team of physicians (including one neurologist, one neurosurgeon, one anesthesiologist and an internist)
who should be nominated by “Minister of Health and Medical Education” for 4 years and should visit the dead brain patient separately from each other and independently from transplantation team. In addition Forensic Medicine Organization should confirm the determination process in a governmental university hospital. The bylaw bounded the “Management Center for Transplantation and Special Diseases” of “Ministry Of Health and Medical Education” (MCTSD) to hold the responsibility for coordination transplant activities across the country. The center established “Iranian Network for Transplant Organ Procurement” (IRANTOP) in 2003, a virtual network, for increasing non-heart biting and dead-brain donors to expand donated organs pool for heart, lung, and liver transplantation programs.

Refrain from Helping the Injured

We may claim that the first act that was ratified by Iran Parliament and exclusively legalized a moral responsibility, related closely to medical practice, was “The Law for Punishment of Avoiding Helping Injured People and Removing Life-Threatening Situation” that was ratified in 1975 and 10 years later in 1985 its executive bylaw was passed by “The Council of Ministers”. It should mentioned that although this law seems to be general but as it is clear in its bylaw the injury in this law means Medical Emergency.

Refrain from helping the injured and removal of life-threatening Situation are among those cases where the legislator has noticed the moral duty of the society's individuals and has regarded the breach of this moral duty as a crime.

Under clause 1 of this single-article Act, anybody who witnesses a person or persons being exposed to life-threatening danger and can prevent the occurrence of the danger or the deterioration of its outcome by...
immediate action, asking for the help of others, immediate advice to competent authorities or officials, without being exposed to a danger or putting others in danger and refrains from taking action in this regard, considering the necessity of help indicated by circumstances, shall be sentenced to an imprisonment of misdemeanor nature up to one year and/or a fine. In this case, if the perpetrator is among those persons who could make an effective help because of his/her occupation, he/she shall be sentenced to an imprisonment of misdemeanor nature for a period between 3 months and 2 years and/or a more fine. Officials in charge of medical centers whether public or private who refuse to accept the injured person or to take action for his/her treatment or to give first aids, shall be sentenced to the maximum of the aforesaid punishment. The process for the finance of the treatment expense for such patients and other related issues shall be governed by a bylaw to be approved by the cabinet. The contents of clause 1 of this act clarify the elements and conditions of this crime such as trait and personality of the perpetrator of crime who may be any member of the society as stipulated by the legislator, witnessing person(s) who are exposed to serious danger, having power and ability to render immediate help to the injured for the purpose of preventing from the occurrence or the deterioration of outcome, possibility for asking the help of others, possibility for immediate advice of the matter to competent authorities or officials and finally, helping dose not expose the helper to any serious danger.

**Stem Cell Researches**

Stem cells and their application in the treatment of different diseases is not doubtable and the use of this new emerging technology is going to be more distributed across the world. Such other new technologies in the field of medicine this issue also has been raising ethical and religious
concerns in different aspects and poses many legal-ethical questions in the face of individuals, related institutes and policymakers. In biomedical sciences, stem cells are those cells that have not yet been differentiated to specific cells and have the potential to be differentiated to various types of cells and even to a whole human fetus. Hence, these cells may be considered as an ideal and favorable means for the renovation and replacement of defected or destroyed tissues of the body for treating regenerative and disabling diseases such as Alzheimer, Multiple Sclerosis and Heart Failure. Hence, cloning these cells could be for therapeutic purposes or theoretically for human reproductive cloning, an issue that raises serious ethical and legal concerns. Regarding their origin, these cells could be derived from human embryos and also from some somatic cells of a living person. Using embryonic stem cells is an ethically sensitive issue and has aroused major and considerable ethical challenges. The core of objection against usage of embryonic stem cells is based on the moral status of human embryos, mainly because using this technology usually would end in destroying the embryo before implementation in the womb of a woman. Usually these embryos are provided by IVF clinics. Opponents of researching and applying embryonic stem cells have argued in respect of its inconsistency with sublime human dignity and the decline of human value into an instrument.

The “Stem Cell Researches” using “Embryonic Stem Cells” in another feature of Iranian activities with important ethical dimensions which is generally accepted by Shi’a jurists. In 2002, the “Supreme Leader”, Ayatollah Khamenei, supported stem cell researches and encouraged the pioneer scientists of the field, mainly from “Royan” Institute. The permissibility of these activities led to significant developments in this area. In 2003 Iran was the tenth country in the world regarding pro-
duction, culturing and freezing embryonic human stem cell lines as well as producing cloned and transgenic animals.

In the legal system of Iran, only articles 487-493 of “The Law for Islamic Penalties” that deal with the issues of “Blood Money” could be applicable for this subject. Based on this law destroying of embryos could be punished and result in paying fine titled “Blood Money”. But as some jurists and lawyers argue the Islamic rule regarding this issue does not include pre implementation period and as a result it is not possible to use this articles against stem cell researches in Iran. Then as we told before in this paper these researches are performed in Iran, mainly using embryonic stem cells.

**Euthanasia**

Euthanasia is a challenging debate in the area of biomedical ethics that has gained much importance in the light of biomedical progresses in two recent decades. Despite of new and noticeable advancements in the science and technology in the field of medicine, there are still terminal diseases that cause an intolerable pain for the patients. Euthanasia is performed mostly on terminally ill patients, but it might be done in other forms. The requirement for an act of killing patients to be defined as Euthanasia is presence of an intention to help the patient. This feature separates euthanasia from other types of homicides and so some writers call this act as “Mercy Killing”. Euthanasia might be performed with or without the patient's consent that are called voluntary or involuntary euthanasia. In some conditions of performing euthanasia the intention of the patient is not clear, in such situation it is called, non-voluntary. As another classification this act is categorized to active vs. passive euthanasia based on the nature of the action. For example a lethal injection for a patient to kill him is an active type while withhold-
ing some life-sustaining treatments could be a passive act of euthanasia\(^5\). The concept of euthanasia and physician assisted suicide are sometimes confusing. The euthanasia is when the physician or a member of the medical team performs the action intentionally. Voluntary active euthanasia which is the voluntary termination of the life of a terminally ill patient by the physician or any member of the medical team according to the request of the patient or his/her relatives, has been decriminalized in some countries such as Netherlands, Belgium, Luxemburg and some states of USA and Australian\(^6\). On the other hand passive euthanasia that includes refraining from doing any act that causes the patient to stay alive is a debating and challenging feature of this action and there are a lot of controversies around this issue and also the Double-Effect phenomena which could be known as another feature of this act.

In Islam, maintaining the human life is obligatory and homicide is considered as a mortal sin. Almost all Islamic jurists agree that although patients’ permission for the purpose of the termination of his/her life might be effective on the punishment of the physician, but it does not abort his/her sin and does not justify act, as that act is unlawful and is not made justified and legitimate by the patient's consent\(^7\).

In *Maliki* School of Sunni tradition, there is doubt over the effect of the patient's consent in punishment of euthanasia, the establishment or removal of death penalty for the person who performs this action. But some Sunni jurists also have deemed the patient's consent effective in the removal of Qisas and blood money, such as *Hanbali* and *Shafi’i* jurists. Generally Sunni jurists, who doubt the impact of consent on punishment, deem the payment of blood money necessary.

There is also a controversy among Shi’a jurists regarding this issue. Some jurists think that human being is not in possession of his own
soul and in this case, his permission is not like the permission on the loss of properties and generally are agree with the death penalty (Qisas) for performing active euthanasia, even it is voluntary.

Other jurist argue that the rights to Qisas and blood money have not been created before the death of the murdered so that the patients' consent for euthanasia and his opinion to remove the death penalty and money compensation could not be applied after patients' death. Thus these jurists undermine the legal value of patients' consent for euthanasia.

On the other hand some Shi'a jurists argued that Qisas is firstly right of the murdered and is not transferred to the heirs by inheritance. Consequently, the removal of Qisas will be right like the removal of blood money. Furthermore, the doctrine of “Innocence Dominates” and according to the rule of "Dare", it will be removed by the hesitation in punishment and thus the above-mentioned objection is not sustained.

Generally, it may be concluded from Shi’a jurists' Fatwa that murder of the patient, even though by his/her consent and with the incentive of benevolence and mercy has two aspects of offending God's right and offending people's right and although it may be possible that its aspect of people's right i.e. Qisas and blood money be nullified by the victim's consent or of his/her legal guardians, but the illegitimacy existing in murder will not be legitimized by the patient's consent.

In Iran legislative system Euthanasia has not been mentioned by the legislator and the perpetrator of euthanasia is dealt with in the same way as with perpetrator of murder, however, Iranian legislator has provided in the Article 268 of the “Law for Islamic Penalties”88. "If the victim pardons the murderer from Qisas before death, the right of Qisas will be removed and the heirs of the slain person may not demand Qisas after his/her death." In this article, the legislator considers the victim's
consent as causing the removal of Qisas. Some jurists hold that whenever the treating physician commits euthanasia with the patients’ consent, he/she would be subject of the article 268 of the law. As a result, Qisas and blood money will be removed. Although some lawyers argue that despite of presence of above-mentioned article within the Iran Criminal Law, if a physician perform euthanasia he/she could be subject of another article of the same law (Article 612) in which the act of euthanasia could be punished as disruption in the order and security of the society and be sentenced to a prison term of 1-3 years.

**DISCUSSION**

We may claim that the first act that was ratified by Iran Parliament and exclusively legalized a moral responsibility, related closely to medical practice, was “The Law for Punishment of Avoiding Helping Injured People and Removing Life-Threatening Situation”\(^{89}\) that was ratified in 1975 and 10 years later in 1985 its executive bylaw was passed by “The Council of Ministers”\(^{90}\). It should mentioned that although this law seems to be general but as it is clear in its bylaw the injury in this law means Medical Emergency.

In the years after 1979 in Iran important features of biomedical ethics discourse could be known as “Organ Transplantation”, “Assisted Reproductive Technologies”, “Embryonic Stem Cell Researches” and “Therapeutic Abortion”\(^{91}\). Despite claims that introduce “legislating” as the main problem of biomedical ethics in Iran\(^{92}\), some aspects of these practices have been justified in Iran health system using Islamic rulings (Fatwa) or through formal legislative branch of the government.

Therefore, we find out that the legislator has protected and safeguarded ethics both in some classic cases of such as abortion, disclosure of med-
ical secrets and also in the new emerging medical issues like assisted reproductive technologies and organs transplantation. There are also other manifestations of bioethics that has been supported within the laws or could be supported by an appropriate interpretation of law.

It should be noticed that public policies in Iran are not limited to those act or laws that have been legalized through the parliament. The main parts of Iran’s public policy regarding ethical issues in biomedical practices are firstly some related laws and acts that have been officially legalized by the country parliament that we discussed some of them and the Fatwas of Shi’a jurists especially those of the supreme leader. In other word, although these Fatwas are not legalized, they hold an impressive effect on the public policy in this field.

One of the problems and obstacles for development biomedical discourse in Iran during recent decades has been lack of a real interdisciplinary dialogue in the field. Although some claim that ethical issues of biomedical sciences are discussed in an interdisciplinary context including physicians as well as legal and religious scholars\textsuperscript{93,94} but the role of humanities scholars especially philosophers and lawyer is, to some extent, neglected in this area and as a result legal system of the country is not very well involved with biomedical issues. Although the formulation of members of members of some more recently formed bodies such as “The Supreme Council for Medical Ethics” of “Ministry of Health and Medical Education” shows more involvement of different disciplines in the policy-making process but the difficulties of forming an interdisciplinary bioethical discourse in Iran could not be solved by only participation of some people from various scientific fields in some committees as their marginal activity, as the main obstacle seems to be founded
in problems based in the “Methodology” and “Process” of policy making in biomedical ethics in Iran.

The experience of legalizing 3 major issues of medical ethics in Iran in could be known as valuable experience for future attempts inside the country and also a source of inspiration for other Islamic countries in order to legalization other features of biomedical ethics.

First and most important lesson is the fact of possibility of legalizing such sensitive issues within legislative system of Islamic Republic which potentially can be done regarding other important issues.

These experiences show that Islamic religious tradition could not counted as the main obstacles for development of biomedical ethics as the ratification process of brain death declared that the main reason for less development of cadaveric transplantation in comparison to living-donor transplantation in Iran is the shortage in public awareness and socio-cultural beliefs rather than religious restrictions.95

**CONCLUSION**

Despite of noticeable achievements of legalizing ethical issues of biomedical practice in Iran during recent years, but more attention should be paid to legalizing remaining issues for better organization of related activities and also protecting the human dignity and moral values while considering public good. Issues such as human cloning, genetic engineering, stem cell researches and end of life issues in clinical settings have not been legalized and the limited legalizations in the fields as organ transplantation and assisted reproduction are not comprehensive and just include one aspect of the subject as we showed in this paper. Regulations and laws that deal with biomedical issue are rarely exclusive and
are mainly a part of more general act such as criminal or civil law. This situation increases the possibility of misinterpretations and misunderstanding. The need for a comprehensive law for biomedical practice in Iran should be taken into consideration by responsible bodies.

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