The possibility of retaliation in intentional abortion in penal code of Iran

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Abstract
The punishment of the abortion of a fetus with soul, was mentioned in religious traditions from a long time ago, but the phrases which juriscounsults of the past used is full of ambiguity, and this has caused diversity of opinions in understanding the so called phrase; while famous juriscounsults of Shia and soni have frankly talked of not having the permission of retaliation (hanging) in the case of intentional abortion. Islamic penal law has had ambiguity and lawyers have had several concepts from it, so this question was considered consistently that is abortion forbidden or authorized? So we should study and compare lawyer’s aspects in penal laws from the years of 1925 up to 2013 with the verified religious sources in the case of intentional abortion of a fetus acquiring soul. Fortunately, in the new code, it has been distinguished that this action, even after entering of the soul into the fetus’s body, it wouldn’t be considered as homicide, and it is a much lower crime. With the first principle, being cautious of bleeding, lack of a clear reason of retaliation (hanging) and some other indications, would confirm the retaliation of hanging in intentional abortion of a fetus acquiring soul.

Keywords: intentional abortion of fetus- insufflation of soul- retaliation (hanging) - jurisprudence- Islamic penal law.
Introduction

In Iran’s code, for the first time we encounter some rules which were registered in the general penal code the year of 1925 specified for the penalty of abortion. Articles 180-184 of this law, influenced by the French penal law and without considering the jurisprudence sources, did not include abortion as murder, and the penalty for the person, who caused abortion of a woman with a bump or any kind of harm, was selected to be a first degree of criminal imprisonment from three up to ten years, after the glorious Islamic revolution, the drafters of the laws following jurisprudence sources, refused to write about retaliation for abortion in the book, and in the expression of the different stages of fetal blood money in Articles 297 to 302 of the blood money law passed in 1983, the penalty for intentional abortion of the fetus acquiring soul in the article 91 of the sanction laws which was passed in the same year includes:

If a pregnant woman visits a doctor or a midwife for abortion, and the doctor tries to abort the fetus knowingly and intentionally, the blood money of the fetus is his responsibility, and if the fetus acquires soul the doctor should be retaliated.

With the ratification (Islamic penal law) in the year of 1991, which was the reformed format of the approved laws in the year of 1983 and the approval of the sanction laws in the year of 1996, the above article changed into the sanctions book article No. 622 and it became as follows:

Any person, knowingly and intentionally, with a bump or disturbing a pregnant woman, would cause the fetus to abort, in addition to paying the blood money or retaliation, would be sentenced from one up to three years in prison.

This article, due to weakness in developing and ambiguity in writing, had caused lawyers to have several conceptions. Some believe that according to this article, the penalty of the murderer of the fetus is death, and some other believe that the penalty of retaliation in this article, is for the crime committed to the woman and not the fetus. Some other lawyers have also without explaining of the given article have passed with brevity and moderation or have doubted to choose one of the sides.

In the Islamic penal law approved in the year of 2013 has been said that:

The intentional abortion of the fetus even after entering the soul does not have any retaliation and it is sentenced to pay the blood money.

Shia and sonni jurists based on the tradition texts, have appointed a certain blood money for taking the life from the fetus in every stage of its life, but none of them have sentenced the murderer to death before the stage of entering the soul into the fetus’s body. But the subject of the penalty of intentional abortion of the fetus after entering the soul into the body has caused a diversity of opinions among the jurists. Some, believe that the murderer deserves the retaliation and some others have neglected the retaliation penalty of him.

First speech: approval of retaliation in intentional abortion of the fetus

A) Islamic penal law approved in the year of 1983:

After the glorious Islamic revolution, the drafters of the penal laws according to religious sources had not told any penalty in the retaliation book, and in addition of expressing the blood money of
different stages of fetus in articles 297-302 of the blood money code approved in the year of 1983, have distinguished the intentional abortion of the fetus acquiring soul in the article 91 of the sanction law approved in the same year as follows:

If a pregnant woman visits a doctor or a midwife for abortion, and the doctor tries to abort the fetus knowledgably and intentionally, the blood money of the fetus is his responsibility, and if the fetus acquires soul the doctor should be retaliated.

Which in the last part of the article it is designated that if the abortion of the child by the doctor or midwife is done after the entering of the soul into the fetus’s body, the one performing the action should be retaliated and if these specialists have guided the pregnant woman to the ways of aborting the fetus, they would be sentenced to prison from six months up to three years. As we have seen, the sanction code from the year of 62 according to the religious jurisprudence of Imams and the speeches of jurists, the abortion of fetus by doctor or midwife before entering of the soul would result to pay the fine of blood money and after entering of the soul would result to retaliation.

B) Islamic penal code of the year of 1991

With the approval (of the Islamic penal code) in the year of 1991 which was the reformed version of the approved code from the year of 1983, and its sanction approval was in the year of 1996, the above article was transformed to the article 622 of the sanction book and the transformation is as follows:

Any person, knowledgeably and intentionally, with a bump or disturbing a pregnant woman, would cause the fetus to abort, in addition to paying the blood money or retaliation, would be sentenced from one up to three years in prison.

This article, due to weakness in developing and ambiguity in writing, had caused lawyers to have several conceptions. Some believe that according to this article, the penalty of the murderer of the fetus is death, and some other believes that the penalty of retaliation in this article is for the crime committed to the woman and not the fetus. Some other lawyers have also without explaining of the given article have passed with brevity and moderation or have doubted to choose one of the sides.

One of the lawyers, have compared these two conceptions with the above article that we put a comma after the word retaliation and read the article as this: even with paying blood money or retaliation, the person of action would be sentenced to one up to three years of jail, this conception would take place that the penalty for the fetus acquiring soul would be death; so the meaning of (the person of action would be sentenced to one up to three years of jail) is that if the person is sentenced to pay the blood money, he would be sentenced to jail, and if he is sentenced to death, the sentenced prison time from one up to three years would interfere and in the condition of vindication, the prison sentence would not be counted for. But if we put a comma after the word (the man of action), this conception would be noticed that the payment of blood money or retaliation is due to the article; meaning that the blood money and retaliation is related to bumping, hurting and annoying the pregnant woman.
One of the lawyers notifying that the subject of articles 622-624 is fetus abortion, and the phrases is related to the fetus, the phrase (in addition to paying the blood money or retaliation of the man of action) is related to the condition of the fetus before and after entering the soul and says:

The objection of hurting the woman and even her death and the conditions of performing retaliation or blood money in these cases are indicated in the Islamic penal law approved in the year of 1991 and there is no requirement for redesigning in these articles. So the drafter following the jurists, have chosen the law of that it is possible to retaliate the murderer of the fetus.

Some according to the phrase killing the fetus in clause 2 of article 302 of Islamic penal law believe that the drafter have counted the fetus acquiring soul as a human, and have called taking his life the same as other humans homicide. Therefore intentional abortion of fetus would lead to retaliation same as other humans in the drafter’s opinion.

In reply to them, it is said that mentioning the word homicide in this clause is caused by negligence in expressing; because the drafter is in the place of explicating the time of paying the retaliation in this article and responsible for the objects for proving it. In addition, it could be said that, in the Islamic penal code there is no definition for killing, and in the first article of the penalty book the word killing is not used alone, but it is added to the word man and homicide is used as the subject for divisions and orders. Linguistically, killing is related to end an animal’s life and includes killing animals. According to this, the Holy Quran has talked of hunting (Maidah, verse 95). Regardless of these points, even if the phrase abortion of fetus is supposed to represent that the fetus acquiring soul, is counted as human, retaliation could not be confident from this phrase; because intentional homicide of man is not accompanied with Proof of right to retribution; as to murder child by the father or to murder a lunatic by a sane person, even if both of them are evidence of murdering human, but by stipulation of articles 220 and 222 and based on jurisprudence basis, it is not entitled to the penalty of retaliation.

According to the article 487 that the blood money of the fetus acquiring soul, if is a boy, full blood money, and if is a girl, half blood money should be paid which is false for Proof of right to retaliation; because the religious and legal Concomitant between proof of full blood money and for killing a human and the proof of the right of retaliation is not available; as for murdering a lunatic, full blood money is fixed, without the existence of the right of retaliation.

It seems that because the drafter in article 91 of the sanction code approved in the year of 1983, had frankly set the death penalty for intentional abortion of the fetus acquiring soul, so if the conception of the drafters of the approved code from the year of 1996 was to alter regulations related to intentional fetus abortion and their goal was to revoke the penalty of retaliation, it deserved to clearly mention this change, or even they forbid themselves of using the word retaliation in this article which is related to the sanction branch and is not familiar to the subject of retaliation; while in the article 622 is word of paying the blood money or retaliation of the man of action. The phrase man of action is indicating approval of retaliation in cases which the fetus acquires soul. So the article 91 of the sanction code that is frankly setting the penalty of retaliation for the crime of intentional abortion of the fetus acquiring soul, and the way of writing in article 622, is contrary to that the drafter didn’t want to alter the mentioned penalty.
Based on this basis, the other ambiguous point occur in article 622, which is if the penalty for the crime intentional abortion of the fetus acquiring soul is retaliation, so how the drafter have conducted 3 years of prison in addition to that? While based on the valid tale of which is used in juridical sources and is verified as a rule by everyone, we could not sentence a person any other penalty in addition to death.

For removing this ambiguity, we could say that the setting the penalty of prison from one up to three years, is an assumption that if the retaliation is not performed and the parent would be satisfied and decreases the punishment to the blood money; so that it is stipulated in the next two months that the sentenced prison penalty is an addition to paying the blood money. In spite of this, we could not say that the sentencing of the prison penalty in addition to paying the blood money or retaliation of the man of a crime committed on the woman, and not the retaliation of intentional abortion of the fetus.

Second speech: no proof of deliberate abortion fetal death

A) General Penal Code of 1925

In none of the laws of different countries of the world, abortion is not murder case and intentional abortion of the fetus, is not considered as murder. In Iranian law, the first time in 1925 on the occasion of the General Penal Code we see punishes of abortion. Materials 180 to 184 of the Act, regardless of the legal sources and by the French Penal Code, abortion is not considered as murder and Punish of the people who beat or harass any woman and cause abortion, it has been Degree criminal imprisonment of three to ten years, But the Supreme Court at that time, was under the influence of legal resources And his vote passed by legal.

A) General Penal Code of 1973

In General Penal Code of 1973, Article 180 to 183 was assigned to abortion by carrying and during these four provisions of comprehensive guarantees, it is enumerated that abortion was criminal and this is the legal element of induced abortion. Article 180 of the law stipulates that: “Multiplied by anyone or any type of harm is caused abortion. Sentenced to imprisonment from 3 to 10 years.” In this article, legislator explicitly mandates that induced abortion with all the conditions and elements had fulfilled. Article 181 Penal Code, has judgment on the case that Where the non-expert does abortion pregnant women with her consent, and knowingly refer to the use of the means or they give her some advice that cause abortion and kill her baby. It is also an expression of induced abortion. Because non-experts people with knowledge, give them the means of abortion to pregnant women Or force them to use the means of their That both of them are deliberately that The first guilty sentenced to misdemeanor imprisonment of one year to three year and in the second case to misdemeanor imprisonment of three to six months. Article 182 Penal Code adopted in 1973 refers to a pregnant woman that without the permission of her doctor eating food or beverages or to use the equipment or the use of means of compliance screws and in this way she kill her baby. In this way the pregnant woman herself cause to be her own abortion and this was done without the permission of doctor. In this case the wrong woman can be
sentenced to misdemeanor imprisonment of one year to three years. It is natural that this case is related to induce abortion. Because a pregnant woman knowingly do the abortion and has criminal intent and committed action that it is required by law and law know it as criminal. Finally, Article 183 of the Penal Code, the sentence the case that Physician or midwife or surgeon or a pharmacist and in which persons as medical or midwife or a pharmacist or surgical who provide abortion facilities and this expertise makes abortion of pregnant women and thereby cause abortion that In this case the parties sentenced to the criminal imprisonment of 3 to 10 years. Also In this case, it seems that the legislator proportionality established penalties between the crime rates 52 years. Because when a doctor or midwife who specialize in medicine and they are aware of the harmful effects of abortion, Knowingly force pregnant woman to do abortion by the use of equipment or medicines or drugged her alcohol and food to kill her fetus, and Shall be sentenced to more punishment. If it clearly done by the doctor or midwife or surgeon for this material for the mother's life, there will be no punishment. However, in the General Penal Code in 1973, other than the four items, there was an article about abortion and these four items was also related to induced abortion And miscarriage was not mentioned in the law And it seems that the four of the comprehensive regulation of abortion was states intentional That there was no intentional abortion even after insufflations of the soul, the death penalty has not been considered.

B) Penal Code 2013

The new penal code that has passed by parliament and the Guardian Council, in retaliation decreed that abortion is not even after death the soul inspiration. Section 6-313 of the new law provides for "deliberately aborted fetus even after it is not in the spirit of inspiration doesn’t have any punished and it is doomed to pay blood money and if that is without legal authorization, in accordance with the provisions of punishment.” In the blood, changes in blood not abortion and female abortion states 1-427 to 6-427.

Conclusion

After the Islamic Revolution, the drafters of the Penal Code to comply with legal sources, refused abortion of the project of punishment in retaliation And the expression in different stages of fetal blood in Articles 297 to 302, say that the compensation law passed in 1983, retribution penalty for the murder of the fetus that has a soul suspended in Article 91 of the law passed in the same year was appointed as follows:

If a pregnant woman visit doctor or midwife for an abortion and the physician is knowingly attempting to make abortion, fetal blood is their price and if the spirit of the fetus is blown, you should be retribution.... With the adoption of the penal code in 1991 which was amended by legislation passed in 1983 and the adoption of sanctions in 1996, that is up by Article 622 of the book became suspended the law was changed in this way:

"Whoever knowingly, causes abortion deliberately by assault or abuse with pregnant women, he would be, In addition to the retribution, shall be sentenced imprisonment of one to three years of blood.” It is due to the weakness and uncertainty in the development of writing, causes different conceptions of lawyers. Some believe that under this Article, retribution is penalty of baby killer and others believe that retribution penalty in this matter is the crime that suffered by women, not
the abortion. Some lawyers also briefly mentioned without explaining the tolerance of the past or select one of the two sides that have doubts.

To regulate the issue of abortion in 2002, the design of therapeutic abortion, signed by forty members offered to the parliament And the first reading was approved in the sixth parliament Health Commission And again to start the seventh parliament "general it approved by parliament. Based on this approval this plan, was on the agenda of the parliament and treatment abortion with the diagnosis of three specialist doctors and the approval of the forensics claiming that the fetus having a disease that after the birth would result to hardship of parents or the baby or the mother’s disease that is filled with death threat to the mother, before entering the soul with confirmation of both man and wife is allowed and there would be no penalty and responsibility for the doctor.

In the new penal code that was approved by the parliament and the guardian council, in the retaliation section it is provided that the abortion of the baby even after the entering of the soul does not have retaliation but in the blood money section, there is no change in the blood money of the fetus and articles 427-1 up to 427-6 would explain the blood money of the abortion of the fetus.
References


