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A survey on abortion laws in Asian countries

Nafise Jalali [a], Moslem Doosti[b], Mostafa Ighani [c]

[a] *Law, Islamic Azad University, Phd Student of Criminal Law and Criminology, Gorgan, Iran.*

[b] *Law, Islamic Azad University, Phd Student of Criminal Law and Criminology, Gorgan, Iran..*

[c] *Law, Islamic Azad University, Phd Student of Criminal Law and Criminology, Gorgan, Iran.*

Abstract

the issue of abortion permit and legalize abortion is one of the issues influenced by the juridical, legal and political matters of each country so it has had different sentences in different times. The intentional abortion is considered as a crime in most laws, with the exception of those authorized for medical and non-medical concerns.In order to prevent the consequences of illegal abortion and more protection of women's rights, further researches are needed to establish or modify the rules with a new attitude to the question of abortion. For this purpose, the present study is a comparative study of abortion laws in Asian countries. The results indicate that Asian countries have chosen similar procedures for abortion permits, and the final tendency of most Asian countries is to allow abortion in situations such as saving mother's life, rape or adultery with near relatives, fetal defects and special social/economic conditions.

Keywords: abortion, medical abortion, maternal health, criminal law, fetus abnormalities

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I. INTRODUCTION

Abortion is one of the most common crimes of our time. Pregnant women who have abortion for various reasons today are not few. Abortion, which is rising globally, is usually located for reasons such as setting up a family and limiting the number of family members, hiding forbidden or illegitimate sexual relations before official and legal marriage, escaping unintended pregnancies, adultery and assault, and even in some cases, car accidents leads to abortion [1]. Criminalization or decriminalization of abortion is one of the issues raised by the criminal law of most countries. Considering the growth of the ideological doctrines of free will and feminist movements that consider women's right to dominate their bodies as one of their basic rights, and on the other hand, not respecting the rights of the fetus as a human being, we see the decriminalization of abortion and after that, expanding of the allowed ablation of pregnancy. Therefore, abortion has always been controversial throughout history, and various views have been expressed about it [2]. Criminal laws of most Asian countries consider abortion to be a crime. Whether an intentional or unintentional crime, although, historically not considered a crime in some countries, and does not include punishment for it, abortion is basically prohibited in most countries because of religious and social expectations [3].

Among countries that have allowed abortion, the highest rate is reported in Vietnam [4].

II. ABORTION CONCEPT

A. The Linguistic Meanings of Abortion and Fetus

Both abortion and fetus have had an Arabic origin and later on they entered Persian language. Abortion with Arabic origin is derived from fall, and it means falling and abscission, and the fetus also means everything covered and hidden [5]. In Moein dictionary, the term "abortion" has various meanings, including snow, a flame that jumps out of a flint and premature fallen fetus [6]. In Amid dictionary, abortion also has the concept of a premature baby who has fallen from the mother's abdomen before the birth, and the fetus also means anything covered and hidden until it is in the mother's abdomen and unpatented [7].

B. Abortion as a medical expression

Exit or extrusion of the fetus before being able to live independently is the meaning of abortion, and since the fetus is not able to survive before six months, it is considered to be aborted if it exit the uterus before the 6th month of pregnancy. And from the sixth month onwards, if the fetus is born, it is viable, but the chance of survival is low due to premature aging. The fetus is aborted when it is dead inside the womb, which results in departure of the whole or part of the embryo from the womb [8]. From some legal medical experts' point of view, prolapse of the fetus from the uterus, while the developed organism cannot live outside of the womb, until the 20th week of pregnancy has the title of abortion [9].

C. Abortion from Legal point of view

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It has not been defined in penal codes of the pre-revolution and/or post-revolution (following the jurisprudence) and they just determined its punishment. But several definitions have been issued by jurists. Some of them say: "Abortion is the intentional dismissal of the fetus, in a way that is not alive or able to live, or to disrupt the natural course of pregnancy [10].") Some others believe: (Abortion is extrusion of fetus before proper time of delivery in a way that is not able to survive) [11]. It seems that the legislator's purpose in determining the punishment for this crime should be considered in order to reach the correct meaning of it. In regard to the mentioned points, it is possible to define such a definition of abortion: ‘‘an act that causes the disruption of the pregnancy and the prolapse of embryo out of the mother's womb so that it cannot survive.

III. HISTORY

Abortion is not a new social deviation but a process that has been associated with human societies throughout history. In ancient tribal societies, abortion was mainly done using plants and poisonoust grass, sharp tool and severe pressure to abdominal cavity to lead to bleeding. The Chinese and the ancient Egyptians have been doing abortion by using their own methods and procedures. The Greeks and Romans also used abortion to control the population and maintain a sustainable population in the community [12]. The Romans and the Egyptian people had mounted abortion by inserting the wickets covered with various kinds of toxins in the vagina, which has been absorbed and entered into the blood circulation.

Right now, abortion is occurring in all societies of the world, regardless of legal issues [13]. Patterns used in non-healthy and illegal abortions are similar, and are reported somehow different in various cultures. In the rural areas of Indonesia and Thailand, severe abdominal pressure is one of the methods used [14].

In Iran, the most commonly used abortion methods are the use of drugs and toxins, physical violence and regional manipulation with chemical substances [15]. Until the nineteenth and early twentieth centuries, abortion was abandoned in most countries of the world. In the early 1950s, legalizing of abortion became noteworthy in many European countries. Finally, in 1973, the US Supreme Court in a case called Roe v. Wade permitted the abortion in the first three months of pregnancy. In general, the methods used to perform abortion in various societies and cultures, in the past and present, are largely dependent on cultural, religious, economic and ethnic constraints [16].

IV. AB0RTION IN IRAN

A. MEDICAL ABORTION

In our legal system, due to the inspiration of the laws and regulations from the existing religious rules and regulations in the Imami jurisprudence, in most cases, abortion considers as a crime, except in some rare cases. One of these cases is a “single article” that was approved in 2005 as the law of medical abortion. According to the law, "medical abortion with a definitive diagnosis of three physicians and a legal physician's affirmation of fetal disease that causes a parent or child hardship after childbirth, or maternal illness that is associated with a maternal death risk, (before incarnation of soul that is before 4

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months And 10 days), the husband and wife's permission is permissible and there is no punishment and responsibility for the caregiver."
The point to be noted is that the exemption from the payment of the diyah and the compensation is only when the conditions and regulations laid down in this law are followed; therefore, abortion after four months, even if due to an abnormality in the fetus or rescue of mother's life, is not legal and has civil responsibility. The commission of any fault in the process of abortion, also revokes reinstatement of civil liability, and the obligation to pay diyah; and, in accordance with the new rules of the national legal medical organizations that has been communicated to all medical centers, the mother's presence and consent for issuing abortion permit is sufficient and father's consent is not obligatory.

B. THE ABORTION PENALTY

In the Islamic Penal Code, articles 716 to 721 are devoted to abortion's diyah, and the legislator has appointed Diyah at different stages, even when it's only a cell, and in the 624th to 622th articles of the fifth volume of the book Islamic Penal Code, the juridical penalty is forecasted for abortion. Also, in Article 306 of the Islamic Penal Code, in the qisas section, it is specified that abortion does not involve qisas even after the incarnation of the soul.

1. Abortion by mother

According to article (489): "If a woman aborts her fetus, she must pay it's diyeh at any stage, and she will not partake in it." Accordingly, and in regard to the Article Submission, the abortion penalty for intentional or unintentional abortion by mother is merely paying the Diyah.

2. Abortion through giving spice or other means

If anyone other than a physician or midwife or a pharmacist or anyone acting as a doctor or midwife, or a surgeon or a pharmacist, by giving medicines or other means cause abortion, shall be sentenced to six months or one year imprisonment and to pay diyeh. (P. 623)

3. Implication of the pregnant woman to the use of spice or other means

If anyone other than the ones mentioned in the preceding paragraph imply the pregnant woman with awareness and intentionally to use spices or other means to abort her fetus, they will be sentenced to three to six months' imprisonment and to pay the Diyad in accordance with the second paragraph of Article (623). Unless it is proven that this was for protection of the life of mother and so he/she is exempt from punishment.

4. Abortion by a doctor and midwife or pharmacist

Whenever a physician, midwife or pharmacist, or anyone acting on these titles, although not legally permitted to intervene in these professions, assist abortion or provide abortion equipment, they are punished in accordance with Article 624 of the Criminal Code to prison from two to five years and payment of Diyah. In this case, there's no difference that these people assist abortion or simply provide means of abortion.

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5. Abortion due to beating or harassment of a pregnant woman

According to Article 622, anyone who beats or harasses a pregnant woman with awareness and intention that leads to abortion, in addition to paying a diyeh or qisas, will be sentenced to one to three years' imprisonment case by case. It is noteworthy that the legislator, in addition to imprisonment and diya, has predicted qisas in contrast to other abortion situations. However, Article 306 of the Criminal Code solves this problem and states that deliberate crime on the fetus, even after incarnation of the soul, does not lead to qisas.

V. ABORTION IN ASIAN COUNTRIES

1. Afghanistan

Afghanistan law following Islamic law, has given an important value for human life and considers punishment of qisas or ta'zir punishment (appropriate to that aggression) appropriate for violation of human's right of living. In Afghanistan's law, the term "extinction of the fetus" instead of the term "abortion", which is a more precise term, is used because abortion means falling and extinction means abandonment [17]. Article 402 of the Afghan Penal Code provides: "A person who deliberately destroys a pregnant woman's embryo by multiplication or any other disadvantage shall be sentenced to a long term imprisonment of not more than seven years. Article 403 of the same law states: "Any person who causes an abortion by giving medicines or using other means such as surjury; is subject to a medium term imprisonment not less than a year or more than five years or a fine of not less than 12,000 Afghanis And no more than 60,000 Afghanis. "
According to paragraph 1 of this article, if someone makes a miscarriage by giving medication or using other methods such as surgery and ... causing an abortion, will be sentenced to the average length of imprisonment not less than one year and not more than five years. Or a fine of less than 12,000 Afghanis and no more than 60,000 Afs. Article 404 of the Penal Code also provides: "If the person who helps abortion is a physician, a surgeon, a pharmist or a midwife, he shall be sentenced to the maximum penalty. If the actions of the ones mentioned in this clause is done in order to save the mother's life through treatment, they will not be punished.

Finally, Article 405 states: "A woman who, despite the awareness of the consequences of the act, deliberately eats the spice or uses other equipment, or allows another person to use the aforesaid tools, and in result abortion happens, will be sentenced to short term imprisonment or a fine that does not exceed 12,000 Afghanis. " Also, according to Article 406, the beginning of abortion is not punishable. The Afghan Penal Code does not distinguish between abortion before and after blowing up of the soul, and this is a vacuity in the Afghan Penal Code.

2. Pakistan

Abortion is illegal in Pakistan. The Pakistani law does not permit abortion in the case of fetal defects, and is allowed only if the continuation of pregnancy is risky for the mother's life (the priority of mother's life to the fetus). According to the 1991 General Penal Code, the abortion punishment is categorized based on the age of the mother's gestation: abortion before and after the birth of the fetus is permitted only for the sake of saving a mother's life or carrying out some therapeutic interventions [18].

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3. Australia

The prohibition of abortion in Australia comes from religious beliefs and church approaches, but all over Australia there is no single abortion law, and various Australian states have set different punishments for abortion. Some of these states have declared abortion absolutely illegal, for example, in the central state of Australia, according to the 1900 Penal Code, the abortion penalty is 19 years in prison. In the western states, they have considered whole life imprisonment for the elimination of the mature fetus. Some other Australian States, haven't considered abortion as an absolute crime, and it is not a crime if done according to the laws and for saving the mother's life and mental health, and with the approval of the medical commission for abortion [19]. In none of the Australian states, the consent or testimony of the partner of a pregnant woman is a necessary condition for abortion. There is also no mandatory period for abortion. Only in the state of Western Australia, an underage pregnant woman needs a parent or guardian's consent [20]. The Australian abortion law has defects and in case mothers encounter restrictions in a state, they travel to the nearest adjacent state, where they can abort.

4. Lebanon

In Lebanon, abortion is only permitted to protect a woman's life, provided that religious beliefs are taken into account. The doctor should, in consultation with his other partner and his approval, prepare and sign a detailed medical report. The medical council then gives its opinion and the patient announces her satisfaction. If the patient is in critical condition and has no decision-making power and his family refuses to consent, the doctor can make a proper decision. However, in circumstances where his or her religious beliefs prevent her from abortion, she can give this act to her other partner [21].

5. Japan

In Japan, medical abortion is permitted only in the first 24 weeks of pregnancy and has long been subject to the penal code. Abortion in Japan is permissible to maintain a woman's life and physical health, but is not permissible for mental health. Also, when a pregnancy is due to rape or incest, abortion can be done without the legal consent of a woman. However, this should be done with medical equipment and by a doctor designated by a local medical institute. Economic and social factors have been accepted as one of the causes of abortion in this country, while abortion has not been accepted due to mental disorders [22].

6. Qatar

Abortion is prohibited in Qatar under Act No. 2/1983. However, if the gestational age is less than 4 months, abortion is permitted in some cases, including when the pregnancy continues to cause serious or special harm to pregnant women. Fetus disorders and abnormalities are also one of the factors of abortion permits. In Qatar, abortion can be done with marital consent if it is found that a fetus will suffer from severe and incurable disability and mental illness on birth [21].

7. India

The law of medical abortion before 29 weeks of gestation and if the continuation of pregnancy endanger the pregnant mother's life or cause serious harm to her health, or there is a possibility of fetal abnormality, or pregnancy as a result of failure of contraceptive methods, is allowed . This termination

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of pregnancy should only be done by a specialist. For the termination of pregnancy in the second trimester, the opinion of two specialist physicians is necessary to establish the validity of the cause of abortion. The law states that anyone who deliberately does not fulfil the requirements of the law will receive a financial penalty of up to thirty rupees and any person or unprofessional physician who abort will be sentenced to one to two years' imprisonment [17].

8. Indonesia

Although abortion is illegal in the country, according to researchers, 2 million women every year abort in this country (about 70% abortions of South-East Asia). According to Article 348 of the Indonesian Penal Code, which was passed in 1918, anyone who aborts would be sentenced to five and a half years in prison. The law states that if a woman deliberately attempts to induce an abortion, she will be sentenced to four years in prison. In the meantime, the permission of doctors, midwives and pharmacists will be waived if abortion happens. In 1992, the Health Law legalized abortion in emergency cases and in order to save the life of a mother or an embryo. In September 2009, the Indonesian Association of Health Representatives voted to legalize abortions under 6 weeks in cases of rape and a number of medical emergencies [23].

9. Malaysia

In Malaysia, legal abortion services are available in the first and second trimester of pregnancy (before 22 weeks). The abortion provisions are mentioned in Articles 312 to 314 of the Malaysian Penal Code. According to Article 312, any physician who believes that the continuation of pregnancy for the mother's life or her physical and mental health is risky is permitted to perform abortion legally [24]. Article 313 is for maternity consent, and Article 314 provides for serious punishment for cases where the abortion leads to mother's death, if the abortion is performed without the consent of the mother, if the mother feels the movements of the fetus (Usually 19 weeks of pregnancy), mother and physician are fined and prisoned up to 1 year in jail, and if she did not feel the movements of the fetus, both mother and physician, are fined and prisoned up to 3 years in prison. In case of mother's death, the doctor will be sentenced to 19 years in prison [25].

10. Philippines, Sri Lanka and Nepal

Abortion in the Philippines is legally prohibited. According to the 1930 General Penal Code, the protection of mother and fetus's life must be equally important. In accordance with Article 303 of the Sri Lanka General Penal Code, anyone who deliberately aborts (except to protect the mother's health) will be sentenced to a maximum of three years in prison or fined. If the mother feels the movements of the fetus, the punishment for the doctor or mother, is up to a maximum of one year's imprisonment and a fine. In cases of pregnancy due to incest and rape, abortion is illegal. If the abortion takes place without the consent of the mother or leads to the death of the mother, the punishment for the abortion will be up to 20 years in prison and the payment of a fine [26].
In Nepal, in 2002, the law of the country allowed maternal abortion to ensure the health of the mother. Accordingly, abortion is performed before 12 weeks [27].

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11. Thailand

According to the law governing the treatment of physicians in 2005, legal abortions to save the mother's life, to protect her physical health, and to rape and fetal defects, and if pregnancy causes a mother's mental illness, can be done either in public or private health centers [28].

12. Saudi Arabia and the United States

According to the law of the …State of Saudi Arabia, abortion is only allowed to save the mother's life, and if it is proven that the continuation of pregnancy has significant risks to the mental and physical well-being of the mother and is only allowed in the first four months of pregnancy, and if the pregnancy is the result of rape or adultery or fetal defects, is not allowed. Also, the consent of the husband and wife (or his guardian) is obligatory [29]. In the…. United States, abortion is based on restrictive Islamic laws that prohibit abortion except in cases of destruction of the mother's life [30].

VI. OTHER COUNTRIES

Abortion is allowed in Vietnam and China, and the highest abortion rate has occurred in Vietnam. Yemen and Syria accept abortion only if in a mother's life is in danger. Kuwait also allows abortion in cases maternal health is at risk or an abnormal embryo. Turkey allows abortion in all cases for the first 10 weeks of pregnancy, but after 10 weeks under conditions such as the risk of a mother's life or fetal malformation, this is legal. The possibility of legal abortion with the request of the mother under the name of unrestricted abortion has been growing in the countries of Bahrain, Kazakhstan, Tajikistan, and Turkmenistan under the influence of feminist movements and individual liberties or population policies. The request for abortion by the mother can be for any reason.

RESULT

One of the major threats to the health and well-being of women around the world is intentional abortion, and in particular insanitary abortion, due to unwanted pregnancy. Unsafe abortions are relatively high in developing countries, including the Islamic world. Most abortion victims in developing countries have shown that women in these countries are more exposed to harm. Studies have shown that the causes of many maternal disease and mortality in these countries are not due to scientific weakness and the inability to use modern technology in conducting abortions, but social, cultural, health, ethical and legal conditions that governs societies cause the death of mothers. Restrictions and rigorous legislation has never stopped the abortion pathway in situations of reluctance to start and continue pregnancy. In Iran, abortion is only allowed before the age of 4 months in case of a fetus abnormality or a mother's illness that continuation of pregnancy cause danger for her life. Otherwise, according to the Iranian Penal Code, the abortion of a pregnant woman, whether by a doctor or a non-physician, is considered a crime at any rate. Our laws regarding abortion have a more rigorous approach than the attitudes of some religious scholars and priests and religious scholars, and the sanctity of abortion at any stage leads to punishment and tazir. These types of laws have contributed to the development of criminal and insanitary abortions and threatens the health of mothers and the community.

Different legal systems have different types of abortion approaches. A few countries absolutely free up abortions (Vietnam, Bahrain and China), or absolutely prohibit it, and most countries with a moderate

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approach consider it to be permitted under some conditions. In the majority of Asian countries, including Thailand, the United Arab Emirates (up to 4 months), Yemen, Syria, Afghanistan, Pakistan (before embryonic formation), Lebanon, Japan (before 24 weeks), Indonesia, Malaysia (before week 22) Lanka, Nepal (before 12 weeks), Saudi Arabia (before 4 months of age) abortion to save mother's life is accepted.

In these countries, only Malaysia and Thailand allow abortion for the mother's mental health. Kuwait, Turkey, Qatar, and India allow abortion for fetus abnormalities in addition to the risk for mother's life. In some countries, such as Japan, Thailand and Indonesia also allow abortion in case of rape and adultory communities should pay more attention to the issue of abortion and by ways such as providing conditions of marriage for young people, informing young people, promoting culture for avoiding illicit relationships, making pregnancy prevention available, providing education and awareness for the community members, improving the economic conditions of people who have aborted for poverty, To protect the community in order to prevent rape and abuse against women and illegal abortion ,and in cases where the mother's life is in danger, the mother's mental health is in danger, the fetus has an abnormality, economic socio-cultural conditions, The occurrence of rape and adultery and the request of parents for any reason, if warranted, allow abortion under special conditions and situations to legislate in this area to prevent insanitary abortions.

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