

Nemesis in abortion intentionally in Jurisprudence and Law

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Abstract: The abortion intentionally has a long literature in the history of different human societies. The crime of abortion intentionally including: bring the embryo out as intentional, before its normal born time, especially if it is brought out of Mother's womb as dead or not livable, this is a kind of crime which related to women and all of populous countries involve with it. Religions divine like Islam are also precursors of human dignity by Holy God, and they know that the live right for embryo is Godsend and any offensive to this creature, counted as big sins which deserve to be punished. Before blowing soul to the embryo, it has a vegetable life. After blowing soul to embryo in fourth month, it enjoys of human or animal life. Same vital transforming in embryo's life caused to change legal and religious orders. Taking away of embryo's life before or after blowing soul to it is per se unlawful but maybe this respect in some assumptions in Contention with more important rights as mother's life right may be ignored and other rights would be preferred on it. The Shiite jurists and Sunnis in the field of taking life away of fetus in different stages of its life, considered some particular blood money, but none of them announce a particular nemesis for murder in abortion intentionally before blowing soul to the embryo. But nemesis for abortion intentionally after blowing soul to fetus counted (as one of the most important stages of human life) that has been changed to dispute argument subject between jurists. Some believe that the murder in this situation should deserve to be punished and others cancelled the nemesis order for murder. No doubt, second group idea, it is not associated with deprivation any penalties except paying blood money from murder but according this idea the murder committed a kind of crime and unforgiving sin for the reason she deserves to be punished. But from this groups' idea, some jurists say that "the murder cannot be punished to death only for killing her embryo whose blown soul in it.

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1. Introduction

As holy God says "It is the same one who has created everything perfectly and it has done it well and the God started the creation of man with mud. Then, Holy God made the human generations from a kind of extraction and minimal water then God made the human body as well-shaped then God blew from its soul to human body and put eyes and ears and heart for human but a man attempts to less God thanksgiving for benisons. Seemingly, in the current and modern civilized world, one of the problems which human communities and families encountered with it is about increasing population. And majority of societies welcomed to reduction of population and even families encouraged to this matter. As currently, having less child, even in third world countries or developing countries has been changed or being changed as an important and comprehensive culture. Abortion intentionally is the most common type of intention murdering in different Iranian communities, for this reason, the consideration of penalties related to this kind of common crime has many necessity and importance.

Juridical literature

A) Imameyeh Jurisprudence

Salar Deylamey (Salar Deylamey, Hamzat Ibne Abdol Azize, almarasem in alnaboveyeh orders p243). is the first Jurists who consider accurately the nemesis embryo murder plan and he judicial decrees to this issue. Also in this field he says that "if a pregnant woman whose embryo killed, will encounter with two situations: or her embryo is grown and perfect. However, its murder killed for committed to this crime; otherwise for UN grown embryo should be paid a blood money. After his idea, Mohaghegh Haley (Haley, Nagmodin Gapharebne Hassan, Sharahyee Islam in Masael alharam or Halal, p1049). Expresses his ideas with other phrases in this field of Dyyat(Atonement). Therefore he expresses same ideas "if a someone hit a pregnant woman and for the effect of this offensive, the woman's embryo left mother's body and died in falling situation, the aggressive person counted as murder if this action happened intentionally, definitely, this person would be killed, and if this action was Quasi- intentional, the murder should pay the blood money and if it was error,

a wise man from the murder should pay the blood money. If the embryo was brought out of mother's body in the effect of beating and some else killed that alive embryo, the second person would count as a murder therefore, in this situation there is no guarantee like the first case and he would be punished. If the embryo was not alive, the first offensive person would count as a murder for this mistaken and the latter would be guilty for punishment as well. Then after Mohaghegh Helli, some of jurists with using same or similar phrases to express text below, have selected same quotation in this field ... (Haley, Yoseph Ibne Ali Ibne Motahar, Tabcereh almotaletin phel Ahkam Din v.2 p8.1). and Ayatolah Khoeie (Khoyee, sayed Aboul ghaseme Mosavi, Mabaney Taklameh almenhaj, v.2 in the field of embryo blood money). has attributed this quotation to Mashhor and he continued "...". If a somebody beat a pregnant woman, the this action caused to abortion or and embryo's death, the Offensive person Known as murder and majority jurists believe that the if the offensive person's action assigned that this action, has been done as intentionally and he aimed to kill embryo, in this situation, the nemesis for this person would be obligatory. But there is something wrong here about this idea which is called as near to the lack of punishment because in this situation paying blood money would be obligatory and ...and same situation related to time after leaving embryo from mother's body especially if it was with guarantee and died. Or if the embryo has been aborted safe but it didn't remain alive because its age was less than six months. But here Moahghegh Helli's phrases and this group of jurists are including ambiguous. Because they announced the embryo's death depends on the time and its collapsing. Of course the appearance of these phrases reflected this issue that if the embryo's death of exciting and collapsing occurred in mother's womb, the punishment is not proven..on the other phrase, the punishment in this field related to time the embryo in out of mother's womb stayed alive for a short time.

Second Martyr also has understood same points from Mohaghegh Helli's phrase and continued "... (Alalamey, Zino din ali, masalek. Alphahm, v.2 p5.9)." the Criterion of order to penalty or blood money in all form of this issue, understand to embryo's life after it collapsing, as regards if it was alive or not, and whereas the cause of death occurred for a criminal action till it is confirmed. The Second possibility is noted to the time of embryo's collapse to death, and to discover whether the embryo was alive before the criminal action should be awareness that someone as a murder has done it. Because if it is not obvious the status of embryo's life before its abortion, the occurred action would not counted as murder. Many years ago, reliable determination of embryo's life before its abortion was not obvious, therefore, the only way to understand about

the status of its life was the time of its separation of Mother's womb and that was the reason to this reality.

So the phrase of (Almost collapse), and other phrase like this, so related to the first possibility and in order to come off the orders to Nemesis permits, has subject, but the second possibility, caused not to be ignored the subject of punishment obligatory and the it only has attitude or discover aspect and if today this issue proven with different reasons and witnesses or other science binding about the status of embryo's life before criminal action and in to the mother's womb, not needed to any achievement for this seemingly action any more. An important point in understanding the jurists' phrases is according to the first possibility in this field we can say that the mentioned jurists do not allow the embryo's murder nemesis in this background and if a someone, killed an embryo in to the mother's womb, the murder would not deserve to be punished but in this field the condition of Nemesis permits related to the slain that was out of its mother's womb, means it was not in embryo status and that time it was killed. Therefore, the first possibility, from renowned jurists later don't permitted to the embryo's murder punishment (in What is Jenin embryo's death), so the second possibility, allowed to the embryo's murder punishment (What is Jenin in embryo's death.) for this reason, some of contemporary jurists, due to mentioned ambiguity which seen in different Jurisprudence texts of last jurists, caused to make different viewpoints for jurists' opinions including: some of them believe that the announcement to the embryo's murder punishment issue from the famous jurists' opinions except in some rare cases not seen (Madaney Kashaney, Reza, katabe aldeyat, p73). Or others say that the jurists have not represented any opinions to the embryo's murder punishment (Makareme Shirazy, Naser, Bhoose faghheyat Hamat, p290).

Mohaghegh Ardebil gives a probability: if someone who punished a pregnant woman with awareness of her pregnancy and it action caused to abortion, the offensive person would deserve to be punished because he/ she committed to murder intentionally and forcible (Moghadase Ardebilly, Ahmadebne Muhammad, Majmaolephadeh and alborhan in description of arshad). But majority of contemporary jurists didn't believe in the note of (Almost collapse) or something like that during representation of their opinions. Their indults cleaned the existence ambiguities between the contemporary jurists' words. With regarding to this point, the majority of contemporary jurists don't allow the embryo's murder punishment (Golpayegany, Muhammad Reza, Majmaol masael, v.3 p 291). Next group also cited cobra (...) in Abubasir's saheyeh he say that an embryo's murder should not deserve to be punished like a crazy or "Sabey" murder (Khoyei sayed abulghaseme, Mabaney takmelat almehaj. V.2 p417). In

this between, only some of contemporary jurists allow to be punished an embryo's murder (Madaney Kashaney, Reza katabe aldayat p73). So except Salar Deylamey and a few number of contemporary jurists, nobody clearly selected to embryo's murder punishment permits for an embryo with soul in its body.

B) Public Jurisprudence

The total of Sunni jurists of fourfold religions Jurisprudence, do not allow the embryo's murder punishment (Shafeie, Muhammad Ibne edrise alalam. V.6 p117). In this between only Hezme Zaherie (Ibne Hazam andolesee, ali ibne ahmade Ibne sayeed, almahaley belasa.r.v.1 p31), Ibne Ghaseme (Ghanem, Omar Ibne Ibrahim, ahkame aljanine in alfeghat alsamy. P.189). Malakey, Ibne Jozey Hanbaley, allowed to the embryo's murder punishment.

Law literature

In any law of each country around the world, the abortion is not counted as a murder case and abortion intentionally never considered as a murdering case (Sadighey, Muhammade Hadey, particular penal laws(1) p46). In Iran rights, in public Penal law, Adopted 1925 for the first time we encountered with some kind of cases in the field of abortion punishment. The legal rules from 180 till 184 of this law with no regarding to Jurisprudence resources which affected of France Penal law, the case of abortion has been separated of the subject of murdering and if a someone with beat action or any other hurting ways caused to a woman abortion, its number one criminal imprisonment would be 3 to 10 years. But the Supreme Court in early days, usually affected by Jurisprudence resources and according to legal and religious rules they have expressed their opinion in this field (Valedie, Muhammad Saleh, particular penal laws, v.2 p118). After victory the Islamic republic of Iran, the drafters of Penal code obeyed of Jurisprudence resources and they prevent the abortion punishment plan in punishment book and in the side of representing blood money, different stages of embryo has been assigned in the rules of 297 till 302 and the Dyyat (Atonement). rule adopted in 1983, explained the penalties related to embryo's murder intentionally which it is alive and has soul in its body. In Article 91 the sanctions law enacted the same year as following below:

If a pregnant woman due to abortion visited a doctor or midwife and if a doctor attempted for aborting as knowing to intentionally, he would be the responsible to pay the embryo's blood money and if there is a soul in embryo's body, the doctor should be punished...

With approving (the Islamic penal code) in 1991 again the modified form of these rules and their approvals performed in 1983 and the approval of the term part which related to this matter adopted in 1995, the upper Article to article 622 of term book changed as law as following below:

Whoever intentionally or knowingly hurts or teases a pregnant woman and for this kind of action caused to her abortion, in addition the offensive person should be guilty to pay the blood money or punishment According to the occurred case would be sentenced to imprisonment of one to three years. This legal Article due to some kind of weakness in its compilation, ambiguity and writing, caused to make some different viewpoints by jurists. Some of them believe that according to this Article, the embryo's murder punishment is nemesis (Shmbayate, Hoshange, particular penal laws, v.1.p419), and others believe that nemesis punishment in this article related to the occurred crime on the pregnant woman not to her abortion (Shokrey, Reza, Islamic penal code in discipline of current laws,p637).

Some jurists as (lawyers) without consideration on this Article with extension and conspectus passed beside it (Goldozeyan, Iraghe, specific criminal law, p 166) or in selection one of two modes they have doubt. One of lawyers with regarding to the subject of Article 622 till 624 which (related to abortion) and used phrases in this legal Article, he considered other phrases as (in addition to pay the blood money or nemesis for mentioned case) he believed that everything depends on the next or before status of fetus which can here assign the case, then he continued "hurting to a pregnant woman and even her death and the condition of coming nemesis or blood money off in these cases, has been assigned according to approved law in 1991 that was no needed to redesign this Article. So, the lawyers to follow of the famous jurists have selected some opinions in the field of being punishable of embryo's murder (Zeraat, Abbase, details on the Islamic penal code). Some cited to these phrases as (embryo's murder) in the note 2 Article 203 of Islamic penal code and they believe in that the lawyers, counted the embryo with soul as a human and taking its life away counted as taking other human lives which is called as murder (Entezarey, Abulfazle, comparative consideration on the field of abortion and its legal effects, p114).

But with regarding to change of Islamic Penal code, the abortion punishment changed as well. In Islamic penal code after its approval in Parliament judiciary commission, which recently has been approved by Guardian Council, hereupon, different changing happened in legal blood money, Also the subject of abortion according to this new law summarized in paying Legal blood money.

In Article 306 of new Penal code: the intentional crime on embryo, although occurrence after blowing soul, never caused to nemesis otherwise offensive person would be committed to pay the legal blood money based on Punishable by imprisonment and the murder would be guilty to imprisonment according to the fifth book of term.

The reasons to the nemesis fixity

First reason

The most important reasons on fixity the nemesis right in embryo's murder referred to this subject that the embryo has a soul and after four months, the embryo included the soul and counted as a human. Therefore, total reason to fixity the nemesis rights related to human issue and its respect soul in this field and the embryo included under this subject.

The embryo completes his growth stages in its mother's womb and after its physical creation is completed, its spiritual creation will be completed and that the soul blown to it and that is enough to called it as a human and its life in or out of the mother's womb is accidental and strange matter and nothing to do with the truth or non- truth as self on it. With regarding to common reason of Quran and nemesis justifiability, we reach to this point about the rule of self nemesis right and organ nemesis, human, and soul.

As Quran says: (24th verse of maedeh) And our books in which they self-esteem.

Also in the Torah, we adjudge them that a soul should be nemesis against soul. (178th verse of Baghareh).

To people who believe in God, I adjudge you about your killed people to nemesis should be flown.(33th verse of Esrae).

And whoever killed as innocently, for his murder assigned nemesis.

No doubt, totally the meaning of (Self) in the first verse and (killed) in the second verse and (from less than oppressed) and in the third verse included the embryo with soul.

In a reliable narrative by Imam Ali who quoted from Zarifebne naseh about the companions practices and obviously confirmed the truth of self on embryo with soul. In this narrative, the subject of blood money related to different growth stages of embryo's creation which has been assigned before blowing soul to it and then the determination about the number of embryo's blood money represented as below: (Alhor, alalmely, Muhammad Ibne alhassam, vasael alsheat, v.29 and p312).

Then, when other creation, means soul comes about embryo off, his self will become human soul. If it is a man his blood money will be equal as 1000 Dinars and if it is woman her blood money will be equal as 500 Dinars.

The abstract of this reason can be represented and scaled in the form of first situation which including: the embryo with human soul means (soghra). Killing each human cause to fixity nemesis right (cobra) and after killing embryo with soul, it is caused to fixity nemesis right (result)

Second reason

before blowing soul to the embryo, for some

different stages as and hollow, Chew, bones, flesh some blood money has been assigned which this amount of money will be less that a perfect blood money, but when the is blown to it, according to reliable narrative and Mostafize (same) and to the consensus of jurists, the amount of this blood money would be as a perfect blood money. The fixity of perfect blood money for embryo with soul is a present reason for embryo's murdering intentionally and in this stage of its life, paying blood money would be necessity. On the other phrase, between the fixity of perfect blood money in a non-intentionally murdering or intentionally the fixity of nemesis right in intentional murdering some documents and witness would be needed and if it is proven that a someone has taken a life away as non-intentional, paying the perfect blood money would be necessity. Therefore, we obtain this result that taking away of same human life as intentional, caused to fixity of nemesis right for the family of the murdered.

From this argument due to fixity of perfect blood money for embryo with soul, can be proven the nemesis right of embryo's murder also this matter can be assigned different or represented different as: the fixity of perfect blood money referred to another point it says that embryo with soul against its previous creation stages, has a perfect soul therefore, its blood money would be as perfect. On the other hand, due to demand retribution, we know that murdering a perfect human soul as intentionally caused to fixity of nemesis right then after murdering an embryo's with soul as intentionally caused to fixity of nemesis right. In this exposition against the first exposition the condition between fixity of perfect blood money and fixity of nemesis right would be established by an arbitrator and that arbitrator is to proof of perfect human soul for an embryo with soul. Of course some of contemporary jurists pointed to the synopsis of this reason(Sanaei, Yosof, legalestghaenat,v.1 p 154).

Third reason:

As Tusie said "May be due to proof of nemesis right in embryo's murder- with his document- from Ibne fazal and some of his companions, was argued from Imam Shadegg as he said in this field :

Each of killing something small or significant after deliberately actual Alcod. (Alhore, alalemey, Muhammad Ibne hassan, vasael alsheat. V.29 p76).

The main reason from saghir and Kabir in this narrative, human is Saghir or Kabir but the mean behind the word of Saghir included an embryo with soul.

The reason to lack of nemesis proof

Some of jurists argue that there are a lot of narratives about the blood money of abortion intentional and non-intentional (Same, volume29, abvan dayat spiritual chapter18 p225).But any of these narratives nothing has been said about the nemesis of embryo's murder and it like that the embryo's murder except pay

blood money has no other punishment. For example, one of narratives protested to abortion in Sahefeh Ali Ibn Rebob that will be considered as below (...Makareme Shrazey, Naser, bohoce faghehat hamat p292).

From Imam saddege about a pregnant woman who had drunk a medicine due to abortion and her embryo died. In this field asked some questions from Imam saddege and he replied "if the embryo had bones and bones covered by meat, and also if its eyes or ears completed, the mother would become responsible to pay the blood money and she would pay it to the embryo's father...

Conclusion

With regarding to these presented reasons to proof of nemesis right in embryo's murder intentionally with soul, it would not strong enough and also with regarding to the weakness reasons of nemesis right denier, reference it would be the first principle that they agreed to rule of prevention (dare) and caution in Blood and represented of some is evidence like the lack of religious Text about nemesis in abortion. Therefore, if the embryo's mother or except her in the field of non-permits, committed to abortion. Except paying the blood money and term, and in this condition, there is nothing about other punishment to soul nemesis. Of course, no doubt in term of punishment in abortion and embryo with soul would be harder than term punishment in abortion of dead embryo because with blowing soul to embryo it counted as a perfect human and respect will add to it. But taking its life away counted as a big sin with harder punishment.

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