

## PERSPECTIVE

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# Abortion in Iranian Legal System

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## ABSTRACT

Abortion traditionally means miscarriage and is still known as a problem, which societies have been trying to reduce its rate by using legal means. Despite the fact that pregnant women and fetuses have been historically supported; abortion was firstly criminalized in 1926 in Iran, 20 years after establishment of modern legal system.

During next 53 years this situation changed dramatically, thus in 1979, the time of Islamic Revolution, aborting fetuses up to 12 weeks of conception and therapeutic abortion (TA) during the entire period of pregnancy were legitimated, based on regulations that used medical justifications. After 1979 the situation changed into a totally conservative and restrictive approach and new Islamic concepts as “Blood Money” and “Ensolment” entered the legal debates around abortion. During next 33 years, again a trend of decriminalization for the act of abortion has been continued.

Reduction of punishments and omitting retaliation for criminal abortions, recognizing fetal and maternal medical indications including some immunologic problems as legitimate reasons for aborting fetuses before 4 months of gestation and omitting the fathers’ consent as a necessary condition for TA are among these changes. The start point for this decriminalization process was public and professional need, which was responded by religious government, firstly by issuing juristic rulings (*Fatmas*) as a non-official way, followed by ratification of “Therapeutic Abortion Act” (TAA) and other regulations as an official pathway.

Here, we have reviewed this trend of decriminalization, the role of public and professional request in initiating such process and the rule-based language of Iran TAA.

**Keywords:** Immunologic indication; Iran; Islam; Legislation; Therapeutic Abortion

## INTRODUCTION

The word abortion roots in the Latin word of *aboriri*, which means, miscarriage and is usually categorized into spontaneous, criminal and therapeutic abortion (TA).

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It is also medically defined as termination of pregnancy before the 20<sup>th</sup> week of gestation or a fetus less than 500 g of weight, by the World Health Organization.<sup>1</sup> Muslim jurists usually define abortion as an induced ejection of a fetus prematurely from the uterus, regardless of justification behind the action.<sup>2</sup> This definition of abortion is near to its dictionary definition and lay meaning that is synonymous with miscarriage, which implies a deliberate termination of pregnancy.

Although, like many other nations, Iranians have been trying to reduce the rate of abortion by using different instruments including legal means, the issue of abortion is still a problem in Iranian society. In the absence of official data some studies estimated total abortion rate for the country to be 0.26 abortions per married women, and generally 7.5 abortions per 1,000 married women in the productive ages (15–49) in each year.<sup>3</sup> The rate of abortions has been reported to be 29 per 1,000 pregnancies in Southeast of the country.<sup>4</sup> According to a study in year of 2000, 21% of all pregnancies were unwanted and illegally induced abortion was performed for 21% of them.<sup>5</sup> After passing “Therapeutic Abortion Act” (TAA) more official data of legal abortions is available but the rate of spontaneous and criminal abortions is still undetermined.<sup>6</sup>

Because Iran is the only Islamic country that its legal system is based on *Shi'a* school of Islam, today, Iran's experience on abortion could be counted as unique in some dimensions.<sup>7</sup> In this new religious-democratic political system, supporting ethical issue by legal means must follow the routine legalization pattern. In Iran, few laws have been exclusively ratified concerning ethical standards of biomedical practice, but other more general laws such as “Constitution of Islamic Republic of Iran”.<sup>8</sup> (articles 3,21,29,43) or “Public Insurance Law”<sup>9</sup> have noticed ethical issues in a basic level, mainly emphasizing the principle of justice, and also “Iran Civil Code”, which requires compatibility with moral norms as a precondition for the contracts and actions made by the individuals in the society.<sup>10</sup> Regarding more specific legal issues, in some cases Iranian criminal law (The “Law for Islamic Penalties” that was known as “Public Criminal Law” before 1979<sup>11</sup>), 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 (article 648).<sup>12</sup> 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.<sup>13</sup> Other act that was exclusively ratified in order to legalize a moral responsibility was “The Law for Punishment of Avoiding Helping Injured People and Removing Life-Threatening Situation” in 1975<sup>14</sup> and its executive bylaw in 1985.<sup>15</sup>

Since 1979 important features of biomedical ethics in Iran could be known as organ transplantation, assisted reproductive technologies”, TA and embryonic stem cell researches”.<sup>16</sup> Despite claims that introduce “legislating” as the main problem of biomedical ethics, some aspects of these practices have been justified in Iran health system using Islamic rulings (*Fatwa*) or through official legislative branch of the government.<sup>17</sup> Our main purpose in this article is describing and analyzing the process of legalizing abortion that would lead to reach a model for legalizing new similar issues. We have also tried to give a historical preview, explain Islamic views on abortion and Iranian legislative system in introductory part.

### **Abortion before Establishment of Modern Legal System**

Prohibition of abortion has been codified from ancient time in documents such as “*Hippocratic Oath*” and is claimed as “an almost absolute value” in human history.<sup>118</sup> Although documented history of biomedical ethics in the *Mesopotamia* including southern parts of today Iran started with introduction of the “Code of *Hammurabi*” in 1772 B.C,<sup>19</sup> the first ancient documents that had prohibited the act of abortion are those of *Zoroastrian* sources, mainly reflected in *Avesta* and *Dinkard*.<sup>20</sup> *Zoroastrian* was the official religion of ancient *Persia* for about 12 centuries that played an important role in forming the public policies including regulation of medical practice of the time.<sup>21</sup> Destruction of life and aborting the fetuses had covered a full attention in this faith and was counted as prohibited for *Zoroastrian* healers. In the case of intended abortion, both parents were subject of punishments, while especial rules for the care of pregnant women were enacted<sup>22</sup> by the government which was religiously considered responsible.<sup>23</sup> In addition during these centuries Iranian medicine had been affected by Greek tradition. So the Hippocratic

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oath that prohibited abortion became more common in *Persia*.<sup>24</sup> This Prohibition of abortion in *Galenic* tradition continued influencing the medical practice<sup>25</sup> and the practice of many Iranian Muslim physicians during medieval.<sup>26</sup>

After introduction of Islam to Iranians in mid 6<sup>th</sup> century, the country had been ruled by a *Sunni* political system of *Umayyad* and *Abbasid* Caliphs and later, *Safavid* dynasty (1501-1722 A.D), with the religion of *Shi'a*, which continued to be the country's official faith until now. Therefore Islamic rulings have had a full religious and political support in Iran.<sup>27</sup> Direct notice of *Qur'an* to evolution of fetus has led to emerging a noticeable amount of religious sources which determined the act of abortion as a crime and punishable through the Islamic traditional courts. Inside such governing systems, the juristic opinions like prohibition of abortion played an important role in almost all social interactions, either the governmental or interpersonal, because they were basic documents for adopting social regulations and courts judgments. In some medieval Islamic sources, there are chapters that describe social and governmental regulations (*el-Ah'kaam el-Hisbah*) for regulating activities such as medical practice. Two main resources of this category are works of *el-Shayzari* (*el-Nahayah el-Rutbah fi el-Tibb el-Hisbah*) and *ibn el-Ukhuwwa* (*el-Maa'lim el-Ghorbah*).<sup>28</sup>

### Establishment of Modern Legal System Until 1979

Although works of some great Iranian Medieval physician had been thought in Europe until 17th century, modern medicine entered Iran in 19th century by establishment of "*Dar-ul-Fonoon*", by contribution of some European scholars and physicians in 1851.<sup>29</sup> This school that was the first modern college in Iran and included some disciplines such as medicine, played an important role in "Constitutional Revolution" of Iran (1905-1907) that changed the absolute monarchy political system to a parliamentary kingdom.<sup>30</sup> In this new legal system the parliament representatives ought to be elected by the direct vote of people and the parliament had the authority to verify the prime minister candidate whom was nominated by the king and also ratification of laws. Thus modernization of medicine was not an isolated phenomenon and was part of larger cultural and sociopolitical changes in the country.

The first act regarding medical practice was ratified

in 1911 to regulate issuing medical permit for different people who used to practice medicine.<sup>31</sup> Later in 1926, for the first time, the act of abortion was criminalized in articles 180-183 of "Public Criminal Law". The law put heavy punishments even for parents who aborted their fetus and up to 10 years prison for medical professionals who had committed this act. The only legal justification for the act of abortion within these articles was saving the mother's life.<sup>11</sup> The content of these articles was derived from the criminal law of France, where most of Iranian intellectuals and highly educated lawyers had been graduated and also was one of the original countries of the "*Dar-ul-Fonoon*" teachers. Later in 1969, 17<sup>th</sup> article of "Medical Code of Conduct" –In fact, this code was an executive bylaw for "The First Act of Iran Medical Council"<sup>32</sup> - justified abortion in situations that was necessary for preserving the mothers' health, while the "Public Criminal Law" had limited the justified cases to those necessary for saving the mothers' lives. In addition, physicians were obligated to consult with other two consultant physicians and report any case of abortion to the medical council.<sup>33</sup>

In 1973 one clause was added to the 42<sup>nd</sup> article of the previous "Public Criminal Law" of 1926 that decriminalized medical interventions and excluded these interventions from the list of the crimes.<sup>34</sup> Later in 1976 an executive bylaw for this clause was ratified. Article 3 of this executive bylaw facilitated the act of abortion and permitted unrestricted abortion before 12 weeks of gestation based on parents' justified and sufficient reasons. The physician was the responsible person for evaluating this justifiability. Interestingly the consent of single mothers had been counted as valid. Article 4 of this bylaw was attributed to TA cases including prevention of physical or mental injury to the woman or preventing the birth of a child with non-curable illness. In this situation, again physician had been nominated as the responsible decision-maker after obtaining diagnosis verification from two other doctors. In such cases, only the mother's consent was sufficient and no restriction was determined for fetus gestational age.<sup>35</sup> Contrary to the previous laws that were compatible with the traditional religious consensus on justifiability of abortion in cases of saving mother's life, this new bylaw permitted unlimited abortion based on the parents' request and physicians' judgments. Before notification of this bylaw some debates regarding the issue of abortion had existed between opponents and

proponents of abortion, for example a group of 16 physicians had published a letter against a proposed motion in the parliament for legalizing abortion and those media, which were supporting this act. The physicians argued that such legalization was against professional codes and also in conflict with the constitution that had introduced Islam as the official religion.<sup>36</sup>

### Islamic Perspectives on Abortion

After 1979 revolution for the first time in the history, *Shi'a* clerics held direct responsibility of governing society and dealing with different executive and administrative issues including health-related problems. In this new government, all the laws required to be compatible with Islamic rulings and based on the theory of "*Velayat-e Faqih*" (the guardianship of the jurist), a religious scholar is nominated as the supreme leader by a council of jurists, "Assembly of Experts".<sup>37</sup> The supreme leader is the head of political system and directly assigns the head of judiciary system, six members of the Guardian Council and members of Expediency Council. Guardian Council supervises and validates those laws passed by the parliament (*Majlis*) to be compatible with *Shi'a* teachings and the constitution. In the case of the Guardian Council's disagreement, the law should be returned to the parliament for correction. In those cases that parliament representatives insist on their views, the issue is sent to "Expediency Council" which approves or rejects the parliament point of view. As a result the supreme leader's religious and political views are seriously considered as the base for ratification of laws and regulations. Therefore the role of *Fatwas* in this legislative system is substantial, since they can justify a special biomedical practice, even in the absence of an officially ratified act. When a consensus exists among religious scholars regarding the subject, this general opinion is usually considered for policy-making. But in the cases of lack a consensus, policy makers need to choose one of juristic opinions. In the absence of an organized *Shi'a* seminary (like Catholic church), such *Fatwas* are those issued by the supreme leader, whose opinion could be sufficient justifying reason for biomedical practice by executive sectors and also for legalization of these issues by legislative branch of the Islamic Republic of Iran.

Islam generally emphasizes the sanctity of life including fetal period. The stages of fetal development

has been described in holy *Qur'an*, 23:12–14 in detail, which may represent the high importance of this issue in Islamic tradition.<sup>38</sup> During entire pregnancy period, fetus is protected by *Shari'a* in different levels; depend on its gestational age. Therefore, in all schools of Islamic jurisprudence, abortion seems to be generally forbidden and unlawful and is categorized under the category of Islamic criminology (*jinayah*).<sup>39</sup> According to *Shi'a* resources, pregnancy starts after implementation of the embryo in the uterus and ends with child delivery or abortion<sup>[38]</sup>. 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,<sup>40</sup> contrary to Catholic that considers full moral status for human zygote, just after conception.<sup>41</sup> From Islamic point of view, the most important time in pregnancy seems to be the point of ensoulment, when the fetus achieves the human identity and personhood. By this time an "angel" that is sent by God inspires the spirit in the fetus. Although there is not a consensus on the exact time of ensoulment and various times such as 40, 42, 45 or 120 days have being claimed by Muslim jurists, none of them accept any time beyond 120 days. Consequently, the jurists of all Islamic schools prohibit abortion after 120th day of conception. The only exception is life-threatening situations in which both mother and fetus are in serious danger.

Most disagreements about conditions of permissibility of abortion are regarding before the 120<sup>th</sup> day (4 months) of gestation. A number of juristic principles and rules have been used by Muslim jurists for justification of abortion in different situations, including the rule of "Contrariety between two harms" (*ta'aarud. el-dararayn*) or the rule of "Necessity to choose" (*el-takhyeer*), that permits mother to prefer herself over the fetus, when both mother and fetus are in serious danger or the rule of "Protection against distress and constriction" (*el-'usr wa el-haraj*) or the principle of "No harm, no harassment" (*la darara va la dirara fi el-islam*) when the fetus has severe malformation, retardation and abnormalities. Recently in some cases of rape, some Muslim scholars recognized the psychological damage suffered by a woman as a justification for abortion.<sup>39</sup> Thus, 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 is not acceptable by majority of *Shi'a* jurists. In the case of TA *Shi'a* jurists inside Iran accept maternal and definite fetal problems but usually do not consider a probable deformity as a valid justification for TA.<sup>38</sup> Based on these Islamic views, most of the Organization of Islamic Corporations (OIC) country members have restricted abortion to the cases that the life of the mother is in danger. In twelve out of 57 OIC members including Turkey, Tunisia, some former Soviet Union states and Bahrain, abortion is unrestrictedly allowed before a determined fetus age. Seven countries permit abortion in the first 4 months of gestation for fetal deformities including Benin, Burkina-Faso, Chad and Guinea, Kuwait, Qatar and Iran.<sup>38</sup>

### Abortion in Various Laws after 1979 Revolution:

After 1979, "Public Criminal Law" was implicitly abolished in 1983. In addition, the 1976 bylaw that permitted unrestrictive abortion was one of the first regulations that became disvalued in 1982 by Guardian Council. Interestingly, this is the only example of a case that Guardian Council has disvalued a regulation -in this case a bylaw- other than acts and laws. Later, abortion was criminalized within articles 90 and 91 of the new law of "Ta'ziraat and Deterrent Punishments" (*Ta'ziraat* are those punishments NOT specified in *Shari'a*) in 1984.<sup>42</sup> In this new law the punishment for abortion was a combination of blood money that its amount was determined in the articles 194-198 of new law of "*Diyaat*" (The plural form of "*Diah*" which is the monetary compensation for injuries to the human/fetus body that is also called "Blood Money") in 1983,<sup>43</sup> imprisonment and even retaliation for intentional aborting of fetus before and after ensoulment.

In 1992, three laws that were related to criminal issues including "*Hodood* and *Ghisaas*" (*Hodood* is the plural form of "*Hadd*" which contrary to *Ta'ziraat*, refers to those Islamic punishments which their extent, degree and type is specified in *Shari'a* and *Ghisaas* refers to punishing a crime equally to the resulted injury, based on the "eye for eye" argument), "Law about Islamic Penalties", and "The Law for Blood Money" (*Diyaat*) became unified as one general criminal law known as "Law for Islamic Penalties" consisted of 497 articles. In 1997, "The law of *Ta'ziraat* and Deterrent Punishments" of 1984 that consisted of the crime of abortion was revised and added to this unified law and formed a law with 729 articles). In this new law, abortion was again criminalized in articles 622-624. The main difference

with the previous 1984 law was omitting the death penalty for those people who aborted post-ensoulment fetuses. The amount of blood money for the fetus was determined in articles 487-491 which was completely copy of articles 194 -198 of previous "Law for Blood Money" (*Diyaat*). On the other hand, the "Medical Code of Conduct" was not abolished after the 1979 and the Guardian Council interpreted its 17th article on 8<sup>th</sup> of February 1985 that recognized abortion permissible before ensoulment in the presence of assurance or logical probability of dependency of mother's life to the abortion.<sup>44</sup>

### Iran Therapeutic Abortion Act<sup>45</sup>

Until 1998, legal abortion was limited to the cases of saving the mother's life based on a general consensus among *Shi'a* jurists including Ayatollah *Khomeini*,<sup>46</sup> the first supreme leader of Islamic Republic of Iran. In this year, Iran's program for screening couples before marriage for detecting endemic disease of Thalassemia was implemented.<sup>47,48</sup> The first possible preventive strategy was pre-marriage counseling to encourage separation for Thalassemia gene carriers. But another option was prenatal diagnosis followed by aborting those fetuses with Thalassemia. Responding to increasing public request for prenatal diagnosis and aborting problematic cases, Ayatollah *Khamenei*, the second supreme leader, issued a *Fatwa*, which allowed aborting such fetuses. Based on his opinion, the government permitted abortion before 16<sup>th</sup> week of gestation in 1998.<sup>49</sup> A survey showed that all the cases of legal abortions between 1999 and 2000 were Thalassemia cases.<sup>50</sup> This *Fatwa* could be known as the starting point for a chain of activities that ended in passing a separate law for medically indicated abortions in 2005.<sup>51</sup>

During the following years of this *Fatwa*, new medical technologies for prenatal diagnosis were accessible and a public need for abortion because of other fetal problems -but based on the same argument - was increasingly transferred to medical professionals. In addition, the professional requests for clarifying maternal indications of abortion were raised and they were forwarding public requests and also their own concerns to the responsible body in the government, which was Iran Legal Medicine Organization (LMO). This process finally led to proposing a list of fetal and maternal problems by LMO to the head of judiciary branch of the government (Who is also a religious cleric and eligible for issuing *Fatwa*), which was approved by him.

Following this approval, LMO circulated an official letter that allowed the regional LMO offices to permit TA for 29 fetal abnormalities and 22 maternal diseases in 2003.<sup>52</sup> Subsequently Iran Medical Council forwarded this letter to its members officially.

As it is clearly declared in the official letter, the main purpose of notification of this list was solving some of the problems and also better organized abortion system and protecting ethical and religious values and rights of people. The letter also introduced a list of medical specialists which were directly corresponding with the fetal and maternal list of problems; including General surgeons, Orthopedists, Nephrologists, Urologists, Pediatricians, Neonatologists, Hematologists, Neurologists, Neurosurgeons, Rheumatologists, Dermatologists, Gynecologists, Cardiologists and also specialists in Infectious, Pulmonary and Gastrointestinal diseases as well as Legal Medicine. The letter also requires one ultrasonography for maternal problems and two ultrasonographies for fetal abnormalities to document the gestational age of the fetus –that needed to be less than four months of gestation- and also approving the fetal or maternal problem with two specialist doctors from above specialties. In addition, the letter clarified that adding new indication to this list continues in the LMO but in the case of proposing new indications, abortion committees need approval of three specialists, instead of two, for issuing the permission for TA, otherwise assaulting this list will be punishable. In all cases, both mother and father should give their requests and required medical documents to regional offices of LMO in order to receive the official permission for abortion. During the following years, this list of 51 items served as the basic document for medically indicated abortions before ensoulment and subsequently other indications mostly, immunologic fetal problems such as Chediak-Higashi Syndrome, Wiskott-Aldrich syndrome, Severe Combined Immunodeficiency Syndrome (SCID) and Leukocyte Adhesion Deficiency Syndrome (LADS), were added to this list in 2011 (Table 1).<sup>53</sup>

In a parallel activity, in 27<sup>th</sup> of August 2002, a “Motion” by about 40 representatives of the parliament was proposed in order to legalize TA for the first time.<sup>54</sup> The proposal was sent for “The Parliament Commission for Health”, for first line evaluation in the 6<sup>th</sup> parliamentary period after Islamic Revolution, but had not brought to public hall of the 6<sup>th</sup> parliament by the commission and the process of ratification of this

act had been followed by the 7<sup>th</sup> parliament. In July 20, 2004 commission proposed the motion to the parliament public hall for the first time. Representatives generally voted for the subject and the motion was again sent to the commission for more discussions and negotiations.<sup>55</sup> In this session, some opponent parliament representatives argued that the act for legalizing TA should be requested from parliament by the “Ministry of Health and Medical Education”(MOHME) through a “Bill”, instead of being proposed by the representative themselves because it needs precise and deep discussions by the medical experts. In addition, legalizing abortion by the parliament could be a “historical stigma” for the ratifying parliament. In response, the commission declared that the subject had been sent to the parliament as a “Bill”, by MOHME, too, but because of more completeness of the motion, the subject is proposed in this form. The main arguments of opponents was “Slippery Slope” argument due to open and easily interpretable nature; vagueness and ambiguity of the proposed text and one of the opponents called this type of abortion “Homicide”. On the other side supporters of the proposed act, emphasized on the problems of abnormal children for the family, the financial burden on the society, low quality of life for such babies and illegal abortions that happen in the absence of a legally approved facility. The supporters insisted on several safeguards in the act for preventing abuse.

The commission brought the motion to the parliament public hall for the second time for voting about details on April 10, 2005<sup>56</sup> and the discussions continued for the next parliament session on April 12, 2005.<sup>57</sup> During these two sessions some opponents and supporters described their arguments. Both sides used the religious language for convincing the other side. Supporters emphasized on the *Fatwa* of the supreme leader and some juristic rules as “protection against distress and constriction” (*el-usr wa el-haraj*). Opponents criticized the argument of financial burden, based on sanctity of life in Islam. The commission spokesman declared that the commissions had the positive written opinion of the supreme leader from his office. Finally the act was ratified with positive votes of 127 of 217 present representatives. But the Guardian Council rejected the first version of the act, because of some problems and based on article 94 of constitution, the act was returned to the parliament for revision.<sup>54</sup>

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**Table 1. Legal Medicine Organization indications for Therapeutic Abortion.**

Year	Maternal Diseases	Fetal Abnormalities
<p>Fetal and Maternal Indications for TA introduced in 2003</p>	<p>Any kind of cardiac valve diseases with functional class 3-4 heart failure not reversible to class 2/ Any kind of acute heart disease except Coronary Heart Disease like Myocarditis and Pericarditis that caused class 3-4 heart failure/ Positive history of Dilated Cardiomyopathy in previous pregnancies/ Marphan Syndrome when Ascending Aorta diameter in more than 5 cm/ Eisenmenger's Syndrome/ Pregnancy Induced Fatty Liver/ Esophageal Varicosis Grade 3/ Positive History for Esophageal Hemorrhage Following Portal Hypertension/ Uncontrollable Autoimmune Hepatitis/ Renal Failure/ Uncontrollable Hypertension ( With Safe Medications for Pregnancy)/ Any Type of Pulmonary Diseases that ended in Pulmonary Hypertension, even Mild Degree such as Emphysema, Fibrosis, Diffused Bronchiectasis/ Any Type of Hyper-coagulative Abnormality which Needs Heparin Therapy that be Life-Threatening for Mother/ Mother Infection with HIV that Has Entered AIDS Phase/ Active Lupus Systematic Erythematous (SLE) with Involvement a Major Organ/ Vasculitis with Involvement a Major Organ/ All Kinds of CNS Masses that Starting the Treatment Threatens Fetus Life and without Treatment Mothers Life Would Be in Danger, Considering Type and Location of the Tumor/ Pamphigus Volgaris and Severe Generalized Psoriasis and Advanced Melanoma that Put the Mother's Life in Danger/ Multi Drug-Resistant Epilepsy/ Multiple Sclerosis associated with Mother's Disability/ Advanced Myasthenia Gravis with Serious Danger for Mother's Life/ Motor Neuron Diseases like ALS which Are Aggravated during Pregnancy and Seriously Threaten the Life of Mother</p>	<p>Osteogenesis imperfecta/ Osteochondrodysplasia/ Malignant forms of Osteopetrosis infantile/ Bilateral renal agenesis/ Recessive Polycystic kidney/ Multicystic dysplastic kidneys/ Potters syndrome/ Congenital nephrotic syndrome &amp; Hydrops/ Severe bilateral hydronephrosis/ alpha thalassaemia and hydrops Fetalis/ Homozygote Thrombotic disorders (Protein C Deficiency or Factor 5 Leiden Deficiency)/ Trisomy 3/ Trisomy 8/ Trisomy 13/ Trisomy 16/ Trisomy 18/ Anencephaly/ Fetal hydrops with any etiology/ Cats cry syndrome/ Holoprosencephaly/ Syringomyelia/ Cranioschisis/ Meningoencephalocele &amp; Meningohydrocephalocele/ Thanatophoric dysplasia/ Cyclopia with holoprosencephaly/ Ichthyosis congenita neonatorum/ Schizencephaly/ Exencephalia/ Chromosomal abnormalities ended in serious brain and kidney involvement such as VACTERL syndrome Severe Prenatal Neutropenia/ Grisley Syndrome/ Chediak-Higashi Syndrome/ Wiskott-Aldrich Syndrome/ Severe Combined Immunodeficiency Syndrome (SCID)/ Leukocyte Adhesion Deficiency Syndrome (LADS)/ Hemophagocytic Lymphohistiocytosis (HLH)/ Chronic Granulomatous Disease (CGD)</p>
<p>Fetal and Maternal Indications for TA Introduced in 2011 (Added to 2003 indications)</p>		

The parliament revised and ratified the TAA on May 31, 2005. In this session pregnant mothers' consent was considered sufficient for TA.<sup>58</sup> Fifteen days later, Guardian Council approved the TAA after "vigorous debates" among opponents and supporters.<sup>59</sup>

Based on this act, performing abortion by physicians 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 verification of LMO. This act allows TA with mother's consent, only before ensoulment that is considered 4 months after conception. In addition, the list of maternal and fetal problems that legally justify TA is open and the LMO holds the authority to verify such diseases. Ratification of this act was reflected in media worldwide.<sup>60</sup> In contrast with two other acts which are

related to ethical issues in biomedicine in Iran legislation system including "Organ Transplantation Act"<sup>61</sup> and "Embryo Donation to Infertile Spouses Act",<sup>62</sup> which require MOHME to prepare executive bylaws,<sup>63, 64</sup> TAA, itself had not put the responsibility of preparing the executive bylaw on any governmental organization; and the MOHME trials for preparing such bylaw have been unsuccessful.<sup>59</sup> This time, LMO that was responsible for verification of the TA cases, issued an executive bylaw for this act in 2008.<sup>65</sup>

This LMO bylaw was trying to clarify some general and ambiguous terms of TAA and explain the process for requesting TA. "Abortion" (termination of pregnancy before the 4<sup>th</sup> month from the time of conception), "Fetus Retardation" (absolute or relative structural or functional impairments of fetus nervous system that causes intra-uterine or neonatal death or

mental/physical abnormality that impose constriction on the mother), “Fetus Anomaly”(lack or impairment of formation or development of one or more organs that causes intra-uterine or neonatal death or mental/physical disability that impose constriction on the mother), “Constriction”(worry or hardship of mother as the result of fetus anomaly or retardation that is not bearable for her) and “Maternal Diseases”(clinical and medical conditions that are considered as life-threatening if continue) were defined in the first part of the bylaw. According to this bylaw, diagnosis and determination of either a case fulfills these definitions or not, is based on “medical custom and verification of related specialist”.

Legal acceptance of only mother’s consent in the case of abortion was an important dimension of TAA in a socially male dominant context where father’s consent was traditionally mandatory for abortion.<sup>59</sup> Although based on TAA only the mothers’ consent is sufficient for TA, LMO had been requiring both mothers’ and fathers’ consents (or the court order in any case of absence of the father) according to the 2003 regulation and 2008 bylaw. This situation continued until October 2012 when LMO announced that the mothers’ consent would be sufficient. The contemporary process of LMO for issuing permission for TA is summarized in chart 1. Although today, the previous list of fetal anomalies for abortion is valid and previously listed problems are always permitted by

LMO, aborting other cases with problems such as Down Syndrome could receive legal permission if 3 pediatricians verify the constriction of mother. As it is clear in the chart, the main responsible person for determining the mother’s constriction is the pediatrician. For example in cases of fetal immunologic problems, 3 specialists in the field of pediatric immunology should verify that such syndromes would lead to the mothers’ constriction. But regarding the maternal problems the process is not so easy. For example, despite the case of Multiple Sclerosis (MS) with disability is considered in 2003 maternal indications for TA, most of physicians avoid verifying this situation as life- threatening.<sup>66</sup>

## DISCUSSION

### The Process of Decriminalization of Abortion

As we described above, the act of abortion had punished since the ancient time through the traditional means, mainly religious-based courts. Finally, after establishment of the first modern and parliamentary politico-legal system in the country, abortion was officially criminalized in 1926. Since then, decriminalization of abortion could easily been seen until 1979 by involving medical professionals. During these 53 years (1926-1979), the issues of Blood Money for aborted fetus and the concept of ensoulment were not legally considered.

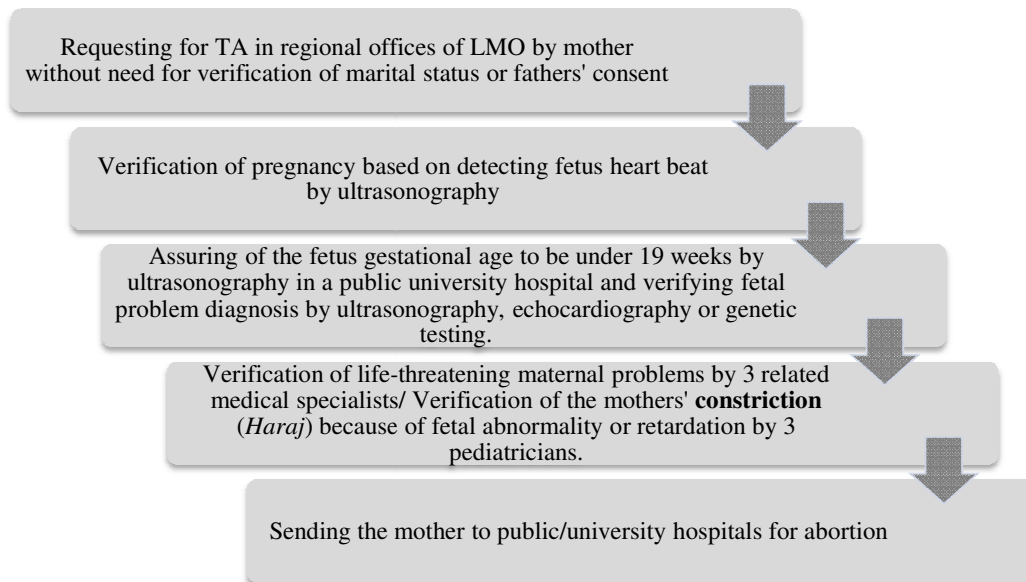


Figure 1. The process for issuing legal permission for TA by Iran LMO.



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**Table 2. The process of decriminalization of abortion.**

Year	Event	Content	Gestational age	Intended People	Punishments	Notes
Trend of Decriminalization 1926 -79	Public criminal law, articles 180-183	Criminalization	Not Specified	Anyone who causes the woman to abort by intentional assault	3 to 10 years of imprisonment	The only exception was saving the mothers' lives
				Anyone who causes induced abortion for a pregnant woman	1 to 3 years of imprisonment	
				Anyone who leads a pregnant woman for doing induced abortion	3 to 6 months of imprisonment	
				Parents who deliberately abort their fetus	1 to 3 years of imprisonment	
				Medical professionals who provide abortion	3 to 10 years of imprisonment	
				Physicians	-	
1969	Medical Code of Conduct, article 17	Decriminalization	Entire pregnancy	Physicians	-	Cases of danger for mothers' health
1976	Executive bylaw for clause 3 of article 42 of public criminal law	Decriminalization	Under 12 weeks	Physicians	-	Cases of parents request
			Entire pregnancy	Physicians	-	Cases of TA
1982	Abolishment of 1976 Bylaw	Criminalization	-	-	-	-
1983	The Law for <i>Diyaat</i> (Blood Money), articles 194-197	Criminalization	Entire pregnancy	Anyone who causes induced abortion or the woman or those mothers who abort their fetus	Paying Blood Money	
1984	The law for " <i>Ta'ziraa</i> " and Deterrent Punishments, articles 90-91	Criminalization	Entire pregnancy	Anyone who leads a pregnant woman for induced abortion	6 month to 3 years of imprisonment	
			Before ensoulment	Midwife or physician who performs abortion	Paying Blood Money	
			After ensoulment	Midwife or physician who performs abortion	Retaliation	
1985	The Guardian Council interpretation of 17th article of Medical Code of Conduct	Decriminalization	Before ensoulment	Physicians		Cases of saving the mother's life
1997	The Law for Islamic Penalties, articles 622-624 & 487-491	Decriminalization*	Not Specified	Anyone who causes the woman to abort by intentional assault	Blood Money & 1 to 3 years of imprisonment or retaliation	* In comparison with 1984 version of the criminal law, this act omitted the retaliation for induced abortion and reduced the imprisonment.
				Anyone who causes induced abortion for a pregnant woman	Blood Money & 6 month to 1 year of imprisonment	
				Anyone who leads a pregnant woman to do induced abortion	Blood Money & 3 to 6 months of imprisonment	
				Medical professionals who perform induced abortion	Blood Money & 2 to 5 years of imprisonment	
2003	The official letter of LMO	Decriminalization	Before ensoulment	Physicians		Cases of abortion with medical indication
2005	Therapeutic Abortion Act	Decriminalization	Before ensoulment	Physicians		Cases of abortion with medical indication

After 1979, firstly previous legalizations became disvalued, either explicitly or implicitly. The first criminal response to the act of abortion by the new religious government was imprisonment and Blood Money for the cases of abortion before ensoulment and retaliation for aborting the fetus after the time of ensoulment in 1983 and 1984. The process of decriminalization in the new politico-legal system started in 1985 when the Guardian Council accepted the justifiability of abortion when it is required to save the mothers' lives. This process continued with the omitting retaliation for induced abortion and supreme leader's *Fatwa*, which allowed aborting the cases of Thalassemia in 1997 and official acceptance of TA in 2003 and finally passing TAA in 2005. (Table 2) Despite substantial differences, the process of changes in laws regarding TA after 1979 follows the same pattern of before 1979. Although contrary to TAA, the time of ensoulment was not considered in the 1976 bylaw, some similarities such as sufficiency of the mothers' consent for doing abortion are considerable. This law, which for the first time considers fetal viability and social hardships as reasons for justifying abortion, is the only legal way for aborting fetus before the time of ensoulment. It is worthy to mention that for illegal abortions, post-operative medical care and emergency contraception are available and health professionals who are dealing with illegal abortion cases are not under pressure to report these cases to judiciary or other authorities.<sup>59</sup> In spite of this fact, lack of sufficient knowledge and correct understanding of regulations, laws and Islamic rulings still discourages some Iranian women who experience complicated abortions from seeking lawful medical aid.<sup>67</sup>

#### **A Model for Legalizing an Ethically Sensitive Issue after 1979**

The long process consisting of series of activities, which ended in developing TAA, started from an increasing need among public who were seeking legitimate ways for terminating pregnancy. In order to address this need, developing new legal justifications were inevitable.<sup>68</sup> The process of legalizing abortion determines two pathways that have played a substantial role for justifying medical practices with high levels of religious and ethical sensitivities. In the first pathway, which we call it "Non-Official Pathway", justification of TA was based on *Fatwa* of the supreme leader as *Valiye Faqih* or *Fatwa* of the head of judiciary system.

The supreme leader's opinion, can work as a non-written law, which facilitates performing TA and also paves the way for ratification of official laws through the parliament. This *Fatwa* also guarantees approving that law by Guardian Council. There are studies that show before ratification of the TAA, the patients received post-abortion care in Iran public hospitals.<sup>69</sup> In one comparative study, the results of two hospital-based studies in 1994 and 2002 demonstrated a shift toward safer and more explicit abortions from 1994 to 2002, while the legal situation of abortion was not changed during these years.<sup>70</sup> Such studies could be a sign of gradual acceptance of induced abortion in professional sector and could be a result of the 1997 *Fatwa* of Iran supreme leader as a "semi-legal" or informal justification. In addition, the LMO official document of 2003 also could be presumed a *Fatwa* and also a non-official pathway, because in Iran legislation system, the head of judicial branch of the government has to be a high level *Shi'a* jurist with the proficiency for deriving religious opinions from the Islamic jurisprudential sources (*Mujtahid*). In other words, the first general *Fatwa* of supreme leader had continued and also generalized to other similar situations with another *Fatwa* that specified the first rule for special situation.

After these steps and preparing sociopolitical atmosphere, those professionals with governmental position brought the bill to the parliament for ratification TAA and notification a bylaw after Guardian Council's approval, a process that we call it as The "Official Pathway This process of legalization could be seen in chart 2. This process declares the substantial role of the principle of "Public Good" (*Maslaha*) that has been traditionally ignored by most of *Shi'a* jurists, but the responsibility of "Religion Institution" for governing the society and responding to public requests made its acceptance unavoidable.

#### **Using a Rule-Based Language**

TAA basically includes two main arguments to justify abortion. The first argument is the presence of a life-threatening situation for mother that is a traditionally accepted reason. The other justifying argument is the fetal anomaly and retardation that lead to mother's unbearable difficulties and afflictions. This refers to a juristic rule known as *La Haraj*, which addresses that no unbearable burden should be imposed on a Muslim or the juristic rule that addresses

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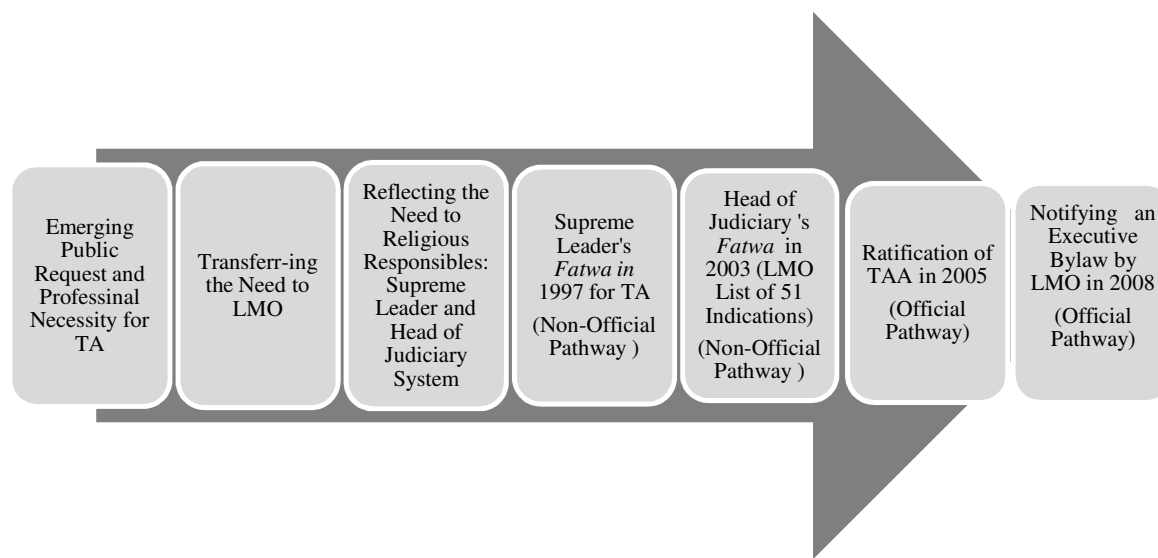


Figure 2. The process of legalizing TA in Iran after 1979.

“Protection against distress and constriction” (*el-'usr wa el-haraj*).<sup>16</sup> We think that the most considerable point regarding this act is the rule-based approach toward the subject, which has been directly reflected in the text of the law. Such approach that could not be seen in other similar acts, puts the end open for more deliberate thinking and also could be known as an innovation in legalizing ethical issues in Iran's bioethical discourse. Regardless of ethical consequences of this act, the importance of using this language in a context that most of *Fatwas* have been traditionally unilateral and subjective, should be seriously noticed. In addition, while the lack a language of rules and principles in contemporary Islamic biomedical ethics as well as absence an organized seminary has been ended in great discrepancies in related areas and also put obstacles for biomedical ethics education and deliberation in Islamic world, this kind of approaches could be a very good starting point for developing a more normative system for Islamic biomedical law and ethics using the language of principles and rules.

### CONCLUSION

The issue of abortion has experienced a process of decriminalization either before or after 1979 revolution. Within this process, those abortions with medical indications including some immunologic problems

have being exempted from punishment and also punishments for criminal abortions have been decreased. Maybe the responsibility of the *Shi'a* jurisprudence for governing the society and responding to the public necessity has played a central role in convincing the responsible juristic system to issuing positive *Fatwas* and widening the range of permissible abortions, *Fatwas* that paved the way for legalizing TA for retarded and abnormal fetuses that causes confliction for mothers. The example of TAA shows that ethically sensitive issues could be legalized in contemporary politico-legal situation of Iran, although aborting fetuses in cases such as rape is not legally permitted and a black market for illegal abortions in such cases is reported.<sup>16</sup> Furthermore, aborting the fetuses with gestational age between the time of ensoulment (4 months) and the time of fetus viability that have medical indication of pregnancy termination such as preeclampsia or spine fracture that continuation of pregnancy would be life-threatening is not legally clear. Future investigations for ethical and practical evaluation of this legal system are recommended.

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