



The legal challenges of feticide rape

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ABSTRACT

For experts of criminal law feticide is always as one of criminal justice subject is one of undesirable ways of birth that is done by their parents. Feticide has its different special condition in different society, as in our country, Iran is according to Islamic rules, and consider as a crime, but gradually, remedial feticide is accepted in Islamic rule, but it has its defect for example undesirable feticide that is arising from rape as we point it later. On the other side some feminism accepts it completely because they believe unconditionally freedom. In this document after we describe about feticide, discuss different kind of it, also we talk about legal vacuum that exist in mothers condition and their child and offering some related way.

Keyword:

- ✓ Legal
- ✓ Challenges
- ✓ Feticide rape

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INTRODUCTION

Feticide is one of the prevention ways of undesirable birth that is arising from sexual relation of individuals, and also prevent from birth of defective baby which is one of the problems proposed in society and one of basic subjects that organized criminal justice, in a way in "Hammurabi" which is oldest and the most completed legal, mentioned and also consider some penal about it.

In consolidated religious feticide is prevented and for protection of after birth, for example some rules is considered, for example discussed about hitting of pregnant woman, and the guilty person should pay unlimited ransom to husband of that woman. (Najafi Abrand Abadi and Badamchi, 1381:84)

Also from the point of view of Islam, protection of the fetus is respectable event at the first time of formation semen in womb of its parents and considers it as a complete human who has her/his law. (Article 993, 852,976,1109 civil law), also according of law, abortion fetus has its punishment and in case of Injury of it, apply ransom.

In criminal law of many countries, criminalization of feticide is one of the most important discussions, also in our country before Islamic revolution at 1355, the skillful physician believed that feticide is permitted and legal only for these cases: saving the physical and mental health of its mother or the defect of fetus, to pay attention to financial condition of people at the time, the rich people had healthy condition for feticide, but the people who weren't rich so they had unhealthy condition for feticide, so it caused so much healthy problems even for the fetus.

After Islamic revolution the previous rules of feticide were cancelled and at 1361, the mulct Islamic Punishment were replacing that previous rules, and after that with the approve of punishment role at 1370 were replaced with the blood money part, but there replaced with legal feticide. Of course it pointed that the permitted feticide according to article (623 ل.م.ق) is approved only for saving the health of his mother, but in this article there isn't any pointed to the time of feticide, so in deliberation sentry, in 6053 theory dated 19/11/63 its time is before respire of soul fetus.

Fortunately, with the pondering and existing so many vacuums at 1384, the rule of fetus trophy approved according 51 cases by physician that it pay attention to mother and fetus condition is legal.

Also in the approved rule of 1392 the coroner make decriminalization regarding to feticide and in the footnote of 718 articles is noted to feticide- therapy regarding to mother's healthy and also his emphasis was on paying bloody money.

1. Feticide:

Despite a archaism of this subject and doing of this crime in all period of time, likewise in our juridical system there isn't any description about feticide and only pay attention to punishment of this crime but with studying of jurisprudence text, medical description and lexical meaning, we be able to present some definition about it:

1-1-conception of feticide:

1-1-1-The meaning of feticide:

The lexical meaning of abortion is dropping, falling down, felling, protrude, and wasting. (Johari, the word of feticide,

Tarihi, ج, 286/2) Ebnne Manzor also said the meaning of feticide is dropping, felling and happening.

The lexical meaning of fetus is everything which is covert (Moein 1360,1ج, 124ص, Amid, 1286, 1ج, 708 ص, Bastani, 1370, 306ص) and because the sperm is hidden by mother's womb so it named fetus.

1-1-2: Before Islamic revolution of Iran there weren't any definition about fetus, but regarding to article law is defined: In point of view of juridical feticide is any criminal act which is caused pause in during of pregnant and also killing of fetus. (Razmsaz, Babak, Studying of Legal and juridical of feticide, First ج, Tehran 1379).

The other of feticide is (Intentional ejection of fetus, before determinate time) or (Interrupting the natural period of pregnant).

1-1-3-Feticide is the action f unnatural exiting of fetus before the natural period of its time by mother or any other person which caused to die.

In Islamic religious, the lifetime of fetus is stating from the time of setting sperm in the mother's womb also the period time of growing and changing to coagulum, Mazghh, and ... is protected and there are specific statement for every duration, (seyyed Javadi, fani, Khoramshahi, 1381: قج 199)

So that according to point of view of jurists even spoiling of sperm which is beginning of creation of human is taboo and its bloody money is 20 Dinar and also in jurisprudence text which is noted to Quran verses (Hajj,5 - Momenono,14-Qafer, 67- Qiamat, 38) and accounts (Amoly, 1412ق: 29ج, 21Bab, 229ص, Tousi, 1418ق: 10ج, 325-334) fetus duration is divided to part before respiring of soul and after it

((Everyone who kill someone without (he/she) commitment any murder or immorality, such that kills all people, and everyone who saves someone from death, such that vitalize all people)).

1-1-4-Feticide from the point of view of physician:

Feticide is the rejection of fetus before it be able to live independently or dropping of fetus before growing completely.

Of course from the point of view of physician, before 6 months fetus is not be able to live independently, so if before of that time the fetus is born, but because of its immature to die, it doesn't applies to fetus, because it named feticide whenever die into womb. (Abbasi, 1383:47ص). In physician term, feticide is defined: Exiting the result of pregnancy whiles the developed creature will not be able to live out, it means the finishing of pregnancy before be able to live independently that it takes time until 20 weeks. (Judicial, 1373:536ص). Therefore if the fetus get out of mother's womb before complete growing but the doctors be able to save it with special devices, it doesn't name feticide.

1-1-5- Feticide from the point of view of feminism:

Most of feminists limit human life from the born of death and their respect are also limit between this times, therefore murdering of human limit in this period of time. Besides all the feminists believe that women are abject so for their o should adoption some strategic. (Mansoor Nejad, 1381, 248). So that some of them use the sentence of (Sholamis Fireston) the reason of this problem is ability of reproduction. (Froudman, 1381, 37).

Accordingly always women desire to control their pregnancy. Therefore they believe that are owner of their body and id the fetus waist their life so can kill it easily and the government supports them.

1-2- Pregnancy form the view point of women:

Child bearing have the most efficiency on the life of women, (many of them don't like to get pregnant because of careers, economic or emotional, spiritual situation. specially in current period, training the children are very complicated, preoccupied of those problems untimely presence of a child has so many effect of most aspect of a woman life like individual and social planning of her life for improving, changing, getting expert or successful.

And falling in a difficult situation that if she wants to escape that situation has so many costs for her. According to international maries stops European society of contraception yearly more than undesirable 22% of pregnancy lead to feticide and because it is in unhealthy situation, yearly 68,000 of women die in the world. In Iran feticide is legal only when continuation of pregnancy compromising healthy of mother or lead to born an ill baby. (Shamshiri, Milani, 1386, 251) . Most of experts believe that the most important reason of feticide is unexpected pregnancy. All legal condition of feticide in Iran related to mother. On stream, necessity of feticide related to unexpected pregnancy and sex relation before marriage which is illegal and guilty. Most of women do not regard to sanitary and legal aspect of feticide, which cause these problems internationally and domestically looking for some ways to organizing the rules of feticide.

2- The kind of feticide from the view point of law and medical, the punishment and the effective factors on it:

Feticide based on different view point of legal element, moral and definition of medical organization have different influences.

2-1- Species of feticide:

2-1-1- Natural feticide:

Natural or involuntary feticide that allocate a large percentage of feticide which is happened due to genetic, environmental elements and also effect of that elements of organism or other unknown reasons.

So that minor events in the life of individual like intensification of feeling of happiness or sadness cause feticide. In this case there isn't any casual relation between mother's action and this event or in the other words because this action is lacking basic elements so it isn't punishable.

2-1-2- Criminal feticide or ejection of fetus before natural time:

Maybe feticide in this condition happens by mother with attaint of womb, eating medicine or intentional impact, or by doctor and other persons except mother, with suasion her to do feticide, injury her by beating , or the risks of doctor's failure like carelessness, imprudence, or lack of skills. (Abbasi, 1379: 2ج, 71ص).

The feticide which isn't included the definition of natural and medical is criminal feticide, which maybe become intentional unintentional and once the error.

2-1-3- Remedial feticide:

Remedial feticide happens when mother isn't able to continue pregnancy, in this case with expert doctor's approval, for saving mother.

After approving single article at 1384, at the moment feticide is allowed only with some conditions:

-when fetus is forth month

-when mother is sick

-Mother's satisfaciotn

-confirmation of 3 doctors

-the experts of certain illness and confirmation of 5 forensics organizations.

About special disease of fetus, prescription list of doing legal feticide trapy, has notified to illness. But the fetus who suffering mentioned illness, naturally dies after childbirth and dropping them don't have any effect on decreasing congenital disabilities, but most of disabilities like blindness, deafness, muscle weakness, mngvlysm and ... exist which involved fetus and her/his family all time while these illness don't exist in that list for feticide. However it is possible with medical facilities in Iran, to prevent lots of acute birth which leading to decrease disability of babies. Of course it seems that approving this single article has some defects and doesn't have total recall.

2-2- The elements of feticide:

Feticide maybe has different aspect which nearly specifies women's motivation.

2-2-1- Sometime feticide has individual aspect like sexuality, age of mother,

Offense of feticide is including specific crime of women. Because usually women suffer from unexpected pregnancy or to hide their illegal sexy relations, of course the age of mother has mostly effect on this crime and almost it happens between 25 to 38 years.

The age of fetus is involved and most of intentional feticide happen at the age of first to three months. (Mohaghegh Damad, 1373,132).

2-2-2- Social elements:

The other elements which have effect on feticide are illegal relation, busyness of women, unorganized economic conditions, cultural poverty, lack of sufficient training about using debarment facilities which leads to unexpected pregnancy in third world communities.

2-3- Punishment of feticide in Iran :

According to 623 civil law article: Everyone who causes feticide of woman by using spice or other things, condemn to 6 months jail, or if encourage her to use spice, also condemn to 3-6 months jail except to prove it was for saving her mother but any way should pay bloody money.

2-3-2: Punishment of experts:

According to 624 civil law article : If doctor, midwife, or pharmacist, prepare feticide facilities or takes part to feticide condemn to 2-5 years jail and should pay bloody money according to related requirements.

At that article legislator intensify punishment for doctors , midwife and surgeon because they sower to maintaining generation not murdering them and besides medical information of them facilitate their crime, even about them if prepare only facilities it is considered as a crime.

2-3-3- Punishment of feticide by mother:

According to 489 civil law (if a woman feticides her fetus , should pay its bloody money even being in any duration of growing, and she doesn't partake.

Punishment of feticide by mother is paying bloody money which bylaw is a kind of punishment, but it seems only is about before insufflation of spirit.

2-3-4- Punishment of unintentional feticide:

In the event that feticide is arising from , there isn't any result for committed person (Quasi- Intentional feticide) and

also if the beating is unintentional no one can punish the committed person for intentional feticide. The only punishment for him is beating and plus paying bloody money. But if unintentional feticide happens by driver of vehicle ground, marine or aerial, the committed person should be punished according to article 714-715-716. In this case legislation determine two ways of punishment one before natural time if the baby survives or feticide. , of course it is worth mentioning that according Islamic punishment law adopted to August 1392 feticide punishment there is some notification at 306,556,716,717,718,720, and 721 articles.

Results and Offers:

Due to the entries listed and survey of antiquity of feticide, there are some conditions and effective elements which lead mothers to do it that maybe this condition is legal or illegal.

But in different opinions feticide is considered as a right for mother and however according with doctrine or different religious criminalize It and under certain conditions and action to it have been permitted that pointed it before.

Also in this document is pointed to feticide which is right to do when permitted to born deformed baby and also when mother is in danger. But there are some vacuums for example feticide arising from rape. There isn't certain obligation about ravishment, creating and spermatogenesis.

In Islamic punishment rule, some punishment is considered for committed to harshness. (Note 2, 114 articles, Islamic punishment adopted at 1392) and (article ٢٢٤) undesirable pregnancy which is arising from rape is as a trouble for woman who are disposable this crime so they often don't like keep their baby and even they prefer to entrust them to nursery.

Existences of these children has effect on future of their mother and even remember their bad memories and also has some trouble at first of their common life.

It seems victims proceed of feticide to finish this situation.

In our society, feticide is considered as a dealer and is considered some punishment for it.

Feticide has been done only in certain condition which is noted as abortion.

It seems this kind of children, in future, have been getting some kind of social, political and family society, because they are considered as illegal children who are not supported by legislator which cause to suppressed their characters and always are as a result of bad events who themselves as a guilty person.

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