Jurisprudential and Legal Challenges of Abortion Resulting from Illicit Relations: A Focus on the Family and Youth Population Protection Law of 2021

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Abstract:

Abortion of a fetus resulting from illicit relations is one of the most complex jurisprudential and legal challenges in the fields of medicine, law, and ethics. The enactment of the Family and Youth Population Protection Law of 2021 has introduced new ambiguities and restrictions regarding this issue. This topic, particularly physician liability and victim protection, has received limited scholarly attention. The aim of this study is to examine the jurisprudential and legal challenges governing abortion of fetuses resulting from illicit relations, identify existing legal gaps, and propose legal solutions for the revision of the relevant laws. This applied study used a descriptive-analytical approach and relied on library-based research. The findings indicate that the legislator has made no distinction between legitimate and illegitimate fetuses, and that a physician's liability, when abortion is permissible, is based on fault in both cases; however, if the abortion is performed outside the legally limited circumstances, the physician commits a crime and bears liability in all cases. Meanwhile, some contemporary jurists, relying on the principles of "la-haraj" and "la-zarar," have considered abortion in such cases potentially permissible, particularly in cases of sexual assault and incestuous adultery. Revising existing laws to explicitly recognize the permissibility of abortion in cases of rape and incestuous adultery, simplifying legal procedures for abortion, establishing specialized commissions, and providing judicial protection for victims are essential measures for resolving legal ambiguities, reducing jurisprudential challenges, and protecting victims.

***Keywords:** Fetus, Pregnancy, Abortion, Illegal, Abortion, Criminal, Ethics, Medical*

Introduction

Abortion of a fetus resulting from illicit relations is one of the most controversial issues in the medical field from jurisprudential, legal, and ethical perspectives. Different societies have adopted various approaches to this issue based on their religious foundations and social standards. In the Iranian legal system, which is founded on Islamic jurisprudence, abortion is generally considered both prohibited and criminal; however, the legislator, taking into account medical, social, and jurisprudential necessities, such as the principles of "la-haraj" and "la-zarar", has permitted it under specific circumstances.[1] However, with the enactment of the Family and Youth Population Protection Law in 2021, new ambiguities and challenges have emerged regarding the abortion of fetuses resulting from illicit relations, particularly in cases of sexual assault and incestuous adultery. These issues require more precise examination from both jurisprudential and legal perspectives.[2] One of the most sensitive aspects concerns the jurisprudential and legal challenges surrounding physicians' liability when confronted with such cases. Physicians face ethical, legal, and professional dilemmas: on one hand, medical ethics and their professional oath prohibit them from

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assisting in abortion; on the other hand, the particular circumstances of victims of sexual assault, incestuous adultery, or unwanted pregnancies, often accompanied by psychological, social, and genetic pressures, create a difficult situation that may require medical intervention based on jurisprudential principles.[3] An examination of the criminal policy under the recent law reveals that the legislator has adopted a stricter approach toward punishing criminal abortion. However, serious jurisprudential and legal ambiguities remain in cases involving illicit relations, which may lead to illegal and unsafe abortions.[4] Despite numerous studies on abortion and medical liability, a significant research gap exists concerning the jurisprudential and legal challenges of aborting fetuses resulting from illicit relations. Previous studies have primarily addressed the general jurisprudential and legal rules governing abortion, whereas a comprehensive analysis of the jurisprudential dimensions, such as contemporary jurists' views on the permissibility of abortion based on hardship, and legal dimensions, such as physicians' fault-based liability in these specific cases, has received less attention. Moreover, physicians' practical challenges when confronted with such situations, existing legal gaps, and the need to provide legal solutions for protecting victims require more detailed examination.[5] An examination of the conditions governing abortion from the perspectives of jurisprudence, criminal law, and medicine, considering the mother's health and jurisprudential principles, demonstrates serious legal ambiguities concerning illicit relations. These ambiguities may result in violations of victims' rights and increased social risks.[6] One of the most significant legal developments in this field is the change in the legislator's approach under the Islamic Penal Code enacted in 2013, which accepted fault-based liability for physicians. However, its implications for cases involving illicit relations, such as the absence of a distinction between legitimate and illegitimate fetus, require more precise analysis.[7] A comparative examination of developments in the Iranian legal system and those of other countries also indicates that different approaches have been adopted toward the jurisprudential and legal challenges arising from illicit relations, which may offer valuable guidance for revising domestic laws.[8]

The primary objective of this research is to provide a comprehensive examination of the jurisprudential and legal challenges surrounding abortion of fetuses resulting from illicit relations within the Iranian legal system, with an emphasis on the need to revise existing laws and provide legal solutions. This study aims to address the fundamental questions regarding the jurisprudential and legal framework governing physicians' liability in such cases, whether the legislature distinguishes between a legitimate and an illegitimate fetus, and how current gaps can be addressed through solutions such as explicitly incorporating jurisprudential rules into legislation, simplifying procedures, and providing judicial protection for victims. Additionally, it seeks to identify existing legal gaps, such as the lack of explicit provisions concerning cases of sexual assault and incest, and to provide practical solutions for improving the legal standing of physicians, victims, and society. To achieve these objectives, the present study examines the views of contemporary jurists, Iranian positive law, the principles of medical liability, and proposed amendments to existing laws.

1. Research Background

Studies on abortion and physicians' liability can be classified into several thematic categories:

1-1. Jurisprudential and Legal Studies on Therapeutic Abortion

Taherbakht and Mohaghegh Damad (2023), in their study entitled "Jurisprudential-Legal Challenges of Therapeutic Abortion in Light of the Family and Youth Population Protection Law," examined the conflicts between the Therapeutic Abortion Law enacted in 2005 and the new legislation. Their findings indicate that the Youth Population Law, by eliminating the concept of "hardship," has imposed significant restrictions on therapeutic abortion. Similarly, Naibzadeh

and Ashraf (2023), in their article entitled "A Jurisprudential-Legal Examination of Abortion in the Iranian Legal System and Its Legal Gaps," identified existing legal ambiguities and proposed solutions to address these gaps. Additionally, Shariati-Nasab (2022), in the study entitled "Abortion Due to Maternal Hardship under the Family and Youth Population Protection Law," analyzed the jurisprudential foundations of the principle of la-haraj and its application to therapeutic abortion.

1-2. Studies on Criminal Policy and Criminalization

Barghi and Rasti (2023), in their article entitled "An Analysis of the Criminal Policy of the Family and Youth Population Protection Law Regarding Criminal Abortion," criticize the legislator's stricter approach to determining penalties for abortion. Beigi (2022), in the study entitled "Feasibility of Criminalizing In Vitro Abortion in Iranian Criminal Law," explores new dimensions of criminalization in assisted reproductive technologies. Aghaei-Nia (2018) and Goldouzian (2017), in their books on specialized criminal law, provide comprehensive discussions on crimes against physical integrity, including abortion.

1-3. Medical and Health Studies

Akrami et al. (2021), in their article entitled "A Legal Examination of Fetal Health Screening and Therapeutic Abortion under the Youth Population Plan," analyzed the impact of new restrictions on the screening process. Moghaddasian et al. (2023), in the study entitled "Conditions for Abortion from the Perspectives of Medicine, Jurisprudence, and Criminal Law in Light of Maternal Health," examined the interaction among these three fields through an interdisciplinary approach. Rouhani (2016), in the book entitled "Medical Rulings," also explained jurisprudential views concerning medical issues, including abortion.

Milanlouei and Arab-Asadi (2025), in their study entitled "Developments in the Legal Systems of the United States of America and Iran Regarding Abortion," compared the approaches of the two legal systems. This study indicates that both countries have moved toward greater restrictions on abortion in recent years, although the foundations and contexts of these developments differ.

Furthermore, recent studies have been conducted on physicians' civil and criminal liability following the enactment of the 2021 law. For example, Shirmohammadi et al. (2021) examined the criminalization of abortion with an emphasis on the Youth Population Law. Firouzpour Bandpey (2023), in a specialized study, demonstrated how the jurisprudential principles of la-zarar and la-haraj can be applied to address the legal challenges of abortion resulting from rape. Regarding physicians' liability in these specific cases, Kazemi and Roustaei (2019) explained the jurisprudential and legal foundations permitting physicians' intervention in abortions resulting from illicit relationships.

1-4. Studies on Physicians' Civil Liability

Aslani (2015), in the article entitled "The Concept and Position of Fault in Tortious and Contractual Civil Liability," analyzed the theoretical foundations of fault-based liability. Safaei (2017), in two works entitled "Foundations of Physicians' Civil Liability" and "Medical Practitioner's Liability," provides a comprehensive examination of physicians' liability. Abbasi (2017), in the book entitled "Medical Liability," examined various aspects of this subject from the perspective of Iranian law. Katouzian (2018), in the book entitled "Civil Liability," explained the fundamental issues in this field, while Elahi-Manesh (2017), in "Criminal Law and Medical Violations," provided a specialized examination of physicians' criminal liability.

Despite numerous studies on abortion, a significant research gap remains concerning physicians' liability in cases of abortion resulting from illicit relations. Previous studies have primarily focused on general jurisprudential and legal principles, while a specialized analysis of the practical challenges physicians face in these specific cases has received less attention. This study aims to address that gap.

2. Research Methodology

This applied study employed a descriptive-analytical design. This type of research not only objectively, accurately, and systematically describes the characteristics of the subject under examination and presents the available information but also conducts an in-depth analysis to uncover the truth and propose solutions. Data collection in this study is library-based, relying on written documents and materials such as legal and jurisprudential books, scholarly research articles, theses, specialized quarterly journals, positive laws and regulations, and the opinions of contemporary jurists. The data collection instrument involved note-taking, through which relevant materials were extracted, recorded, and classified from various sources. During the analysis phase, the collected materials were first examined and thematically categorized; subsequently, through content analysis and comparison of different jurisprudential and legal perspectives, the research findings were extracted. Since the research topic intersects various fields—including jurisprudence, criminal law, and social ethics—an interdisciplinary approach was employed to provide a comprehensive analysis of its multiple dimensions. This approach drew on diverse jurisprudential sources, including fatwas from contemporary religious authorities, legal texts including the Islamic Penal Code and the Family and Youth Population Protection Law, as well as existing scholarly literature found in specialized articles and books.

Research

3. Challenges of Therapeutic Abortion in the Iranian Legal System

Therapeutic abortion legislation in Iran has evolved through various phases. Notably, two significant laws related to therapeutic abortion can be mentioned in the post-Revolution regulations: the Therapeutic Abortion Law of 2005 and the Family and Youth Population Protection Law of 2021. This section first examines these key laws and their differences, then addresses the issue of abortion in cases involving fetuses conceived through illicit relationships.

3-1. Therapeutic Abortion: From the Therapeutic Abortion Law to the Family and Youth Population Protection Law

Legislative developments regarding therapeutic abortion in Iran have followed a complex trajectory. Prior to the enactment of the single article on therapeutic abortion in 2005, the Iranian legal system, adopting a conservative approach, prohibited abortion under all circumstances except for very limited cases. The General Penal Code, enacted in 1925, criminalized abortion in Articles 181 to 183 and provided imprisonment as the penalty.[4] The single article of the Therapeutic Abortion Law enacted in 2005 constituted a significant turning point in this process. This article states: "Therapeutic abortion, upon the definitive diagnosis of three specialist physicians and the confirmation of the Legal Medicine Organization that the fetus suffers from a disease which, due to mental retardation or congenital malformation, causes hardship to the mother, or that the mother suffers from a disease accompanied by a threat to her life, shall be permissible before ensoulment (four months) with the woman's consent, and no punishment or liability shall be imposed on the physician directly performing the procedure."

This law introduced two significant innovations: first, the acceptance of the concept of "hardship" as a legitimate basis for abortion; second, the assignment of the determination of hardship to the mother herself.[2] Despite this progress, the single article on therapeutic abortion had significant limitations. First, the law was restricted to only two categories of cases: congenital malformation of the fetus and a threat to the mother's life. Second, the condition of "before ensoulment," considered equivalent to four months of pregnancy, prevented the diagnosis of certain serious abnormalities that are usually detected after this period.6 Third, the requirement for a definitive diagnosis by three specialist physicians, along with

confirmation by the Legal Medicine Organization, created a lengthy and complicated process that, in practice, faced significant challenges. The enactment of the Family and Youth Population Protection Law in 2021 introduced further developments in this area. Aimed at increasing the population and promoting childbearing, this law imposed new restrictions on therapeutic abortion. Article 56 of this law states: "Abortion is prohibited and constitutes a public crime and, in accordance with Articles (716) to (720) of the Islamic Penal Code and the provisions of this Law, is punishable by diyah, imprisonment, and revocation of the medical license. The mother may submit a request for abortion to the Legal Medicine Organization only if she believes that the following conditions may be met. All Legal Medicine Organization centers in provincial capitals are required to immediately refer received applications to the Legal Abortion Commission. This commission shall consist of a special judge, a committed specialist physician, and a forensic medicine specialist employed by the Legal Medicine Organization, and shall be convened within a maximum of one week. The judicial member of the commission shall issue the necessary decision, adhering strictly to the principle that abortion is impermissible in cases of doubt. Upon being satisfied that one of the following circumstances exists, the judicial member shall grant a legal abortion permit valid for a maximum of fifteen days: (a) when the mother's life is seriously endangered, and saving her life depends exclusively on abortion, provided the fetus is less than four months old and shows no signs or indications of ensoulment; (b) when, if the fetus is not aborted, both the mother and fetus will die, and saving the mother's life depends exclusively on terminating the pregnancy; (c) when, after obtaining the guardian's statements, all of the following conditions are met: the mother's consent; the presence of hardship (severe and unbearable difficulty) for the mother; the definitive diagnosis of incurable fetal abnormalities, where the hardship is related to the fetal disease or defect; no possibility of remedying or alleviating the hardship suffered by the mother; absence of signs or indications of ensoulment; and the fetus is less than four months old."

This change in approach and emphasis on "threat to life" constitutes an important development.[5] The Youth Population Law also imposed new duties on physicians; under this law, physicians are required to inform parents of the potential consequences before undertaking any diagnostic procedure related to fetal health and, if an abnormality is detected, to provide treatment options as well. In practice, these new requirements have increased the administrative and legal burdens on physicians and, in some cases, have discouraged them from performing necessary diagnostic procedures.[3] The conflict between the single article on therapeutic abortion and the Youth Population Law has created considerable legal ambiguities. While the single article refers to the "hardship of the mother," the new law primarily recognizes "threat to life" as a valid basis. This conflict has caused physicians and judges to face challenges in interpreting the circumstances under which therapeutic abortion is permissible.[1] Legal scholars maintain that, as the newer law, the Youth Population Law repeals the single article and that a more restrictive interpretation of permissible therapeutic abortion cases should be adopted.[5] In contrast, another group argues that the single article, as the special law governing therapeutic abortion, remains applicable and that the Youth Population Law merely establishes general population policies.[8] Although this latter view is incorrect—since the Youth Population Law expressly repealed the single article of 2005 through Article 73—this legal ambiguity has led many physicians, fearing legal prosecution, to refrain from performing therapeutic abortions even in cases where they are legally permissible.

Legislative developments concerning abortion in Iran, particularly in cases resulting from illicit relations, have followed a complex trajectory. Prior to the enactment of the single article on therapeutic abortion in 2005, the Iranian legal system generally prohibited abortion except in limited circumstances.[4] The single article on therapeutic abortion enacted in

2005 introduced two key innovations: the acceptance of the concept of "hardship" as a basis for permitting abortion and the assignment of the determination of hardship to the mother. However, this law imposed significant limitations, including its focus on congenital malformations of the fetus or threats to the mother's life, as well as the restriction to a four-month period (before ensoulment). This timeframe is insufficient in cases involving illicit relations, such as the psychological distress resulting from rape.

The enactment of the Family and Youth Population Protection Law in 2021 introduced additional restrictions, narrowed the definition of "hardship," and generally recognized only "threat to life" or severe fetal abnormalities as valid grounds for abortion. This restrictive approach imposed new obligations on physicians, such as informing parents about the consequences and available treatment options, which, in practice, increases their legal burden. The conflict between this single article and the new law has created ambiguities: although the current foundation of the Iranian legal system relies solely on the restrictions prescribed by the 2021 law, these ambiguities are particularly pronounced in cases involving illicit relations. Physicians often refrain from intervening due to fear of prosecution, which may lead to unsafe abortions. From a jurisprudential perspective, these developments are inconsistent with the principles of "la-haraj" and "la-zarar" and require revision to better protect victims.

Since the Iranian legal system is based on Islamic jurisprudence, understanding two fundamental jurisprudential principles is essential for understanding the permissibility of abortion in specific cases. First, the principle of la-zarar states that, in Islam, no rule should cause harm to oneself or others. From a medico-legal perspective, if the continuation of a pregnancy—for example, in cases resulting from rape or incest—causes irreparable physical or psychological harm to the mother (such as major depression or an increased risk of suicide), then continuing the pregnancy constitutes "harm" and should not be imposed either religiously or legally.[23]

Second, the principle of la-haraj (negation of hardship) holds that hardship refers to "difficulty and distress to such an extent that it is ordinarily unbearable." This principle asserts that the sacred religion of Islam does not abandon individuals facing circumstances of necessity and unbearable pressure. Psychological distress, severe social stigma, and trauma resulting from an unwanted pregnancy (such as in cases of rape or incest) constitute clear instances of "difficulty and hardship," which are regarded as a jurisprudential basis for permitting abortion before ensoulment.[24]

3-2. Abortion of a "Fetus Resulting from Illicit Relations" in the Iranian Legal System

One of the most challenging jurisprudential and legal issues concerning abortion is the status of fetuses resulting from illicit relations. This issue includes pregnancies resulting from rape, incestuous adultery, and even consensual adultery, which have not yet been clearly defined within the Iranian legal system. Although the Islamic Penal Code enacted in 2013 provides general provisions concerning abortion in Articles 622 to 624, it does not distinguish between legitimate and illegitimate fetuses and holds physicians liable based on fault.4 This lack of distinction creates a legal challenge, as physicians face ethical dilemmas in cases involving illicit relations: on one hand, medical principles prohibit them from performing abortions, while on the other, the mother's psychological distress (such as severe hardship) may provide a jurisprudential basis for permissibility.

From a jurisprudential perspective, some religious authorities have expressed new views in recent years, indicating the development of jurisprudence in response to social issues. Ayatollah Sistani maintains: "Abortion after conception is not permissible unless continuation of the pregnancy causes a threat to the mother's life or entails severe hardship that is ordinarily unbearable. Even if this hardship arises after childbirth due to the need to care for and provide guardianship for the child, abortion is permissible in such a case

before ensoulment and the acquisition of life by the fetus." This interpretation defines "severe hardship" more broadly than a mere threat to life, encompassing psychological and social pressures as well as the burden of caring for an illegitimate child. Ayatollah Khamenei has also stated in a religious ruling concerning pregnancy resulting from rape: "Pregnancy resulting from sexual assault certainly imposes significant psychological pressure on the mother, such that both during pregnancy and after the birth of the illegitimate child, the mother experiences severe difficulty and hardship. Therefore, it is not unlikely that the permissibility of abortion may be accepted in this case." These fatwas are based on the principles of "la-haraj" (absence of hardship) and "la-zarar" (absence of harm) and demonstrate differences among jurists—some, such as the late Ayatollah Fazel Lankarani, consider the permissibility of abortion during the early stages (before ensoulment) plausible, while others impose greater restrictions.[9] Nevertheless, the Iranian legislator has not incorporated these jurisprudential views into codified laws; consequently, a legal gap remains, which may result in violations of religious principles.

In practice, women who become pregnant as a result of rape face a significant legal gap. The Islamic Penal Code, in Note 2 to Article 224 and Clause (t) of Article 114, imposes severe punishments on perpetrators of rape but offers no legal solution for pregnant victims.[10] This gap has serious consequences. First, many victims resort to illegal and unsafe abortions, endangering their lives and health and potentially resulting in maternal death or permanent complications. Second, children born from these pregnancies encounter legal challenges, such as difficulties obtaining birth certificates, and social problems, including deprivation of government support, thereby violating children's rights. Third, mothers endure severe social stigma, which may lead to depression, isolation, or even suicide. In addition to rape, incest poses a particular challenge: in such cases, the fetus, alongside the psychological harm caused to the mother, has a high probability of developing genetic disorders (such as hereditary syndromes), which contradicts the jurisprudential principle of "la-zarar". Unfortunately, as stated, the legislator has not established specific provisions or conditions to address these cases.

From a legal perspective, some scholars have proposed that, through analogical reasoning based on the Therapeutic Abortion Law and other laws (such as the Brain Death and Organ Transplantation Law), abortion resulting from rape could be considered lawful.[11] Their argument is that if abortion is permissible to preserve the mother's life or in cases of fetal congenital malformation, the same rationale should apply to pregnancies resulting from illicit relations that cause severe psychological hardship. This approach could also extend to pregnancies resulting from consensual adultery, which, although less severe, remain challenging. However, legislative revision is necessary to resolve these ambiguities. It is important to note that reliance on the "Brain Death and Organ Transplantation Law" is inappropriate due to the difference in subject matter, making it impossible to derive a common legal rationale or apply analogical reasoning from that law to abortion.

To address these challenges, revising the existing laws is necessary. First, explicitly permitting abortion in cases of rape and incest within the Islamic Penal Code and the Youth Population Law—based on the jurisprudential principles of "la-haraj" and "la-zarar,"as well as contemporary fatwas—could resolve the ambiguities. For example, defining "severe hardship" as a basis for permitting abortion and extending the time limit beyond four months, in accordance with differing jurisprudential opinions (such as that of Sheikh Saduq, who permits up to five months), would provide clearer guidance. Second, establishing specialized provincial commissions to review applications promptly (within two weeks) and reducing the required number of specialist physicians from three to two would facilitate access. Third, employing modern technologies such as telemedicine for remote assessment, particularly in rural areas, could reduce geographical inequality. Telemedicine involves the use of communication technologies (computer,

video, telephone) by medical specialists to diagnose and treat patients in remote locations. Available evidence indicates that medication abortion assisted by telemedicine, compared to in-clinic care, is safe, effective, and acceptable for women.[12] Additionally, judicial protection of victims is essential: issuing immediate permits for abortion in cases of rape (upon confirmation of the crime through forensic medicine), providing free psychological services, and issuing birth certificates for children born under these circumstances without social stigma. These measures not only address jurisprudential challenges (ensuring consistency with religious principles) and legal challenges (physicians' liability) but also have significant social consequences or effects, such as reducing illegal abortions and strengthening women's rights. Finally, comparative studies of Islamic countries, such as Turkey and Malaysia, may offer valuable models for reform.

Under Turkish law, abortion is permitted at the request of the pregnant woman up to the end of the tenth week of pregnancy. However, in practice, restrictions such as the requirement of the husband's consent for married women exist. After the tenth week, only emergency abortions for medical reasons are allowed. Malaysian law does not explicitly permit abortion in cases of rape; nevertheless, based on criteria established by Malaysian legislators, permissibility may be recognized. In 2002, the National Fatwa Council issued a fatwa permitting abortion up to 120 days of pregnancy in cases where the mother's life is at risk, the pregnancy resulted from rape, or the fetus is at risk.[11]

3-2-1. Challenges Related to Abortion of Fetuses with Congenital Malformations in Illicit Relations

Therapeutic abortion in cases of fetal congenital malformation is one of the conditions permitted under the single article of the Therapeutic Abortion Law and the recently enacted legislation. However, it presents greater challenges in cases involving illicit relations, particularly incest. The precise definitions of "congenital malformation" and "mental retardation" remain unclear, leading to different interpretations. In cases of incest, the likelihood of genetic disorders is high, which strengthens the permissibility of abortion under the principle of "la-zarar," but the four-month time limit is inconsistent with late diagnosis (after week 20).[13] A significant conflict exists between the fetus's right to life and the mother's autonomy. This conflict is especially pronounced when the mother faces social pressures.[14] Additionally, the lengthy authorization process—requiring the opinions of three physicians and the Legal Medicine Organization—restricts access.[14] The most effective solution would be to incorporate these cases into laws concerning illicit relations, prioritizing genetic and psychological hardships.

3-2-2. Procedural Limitations on Abortion Resulting from Illicit Relations

One of the practical challenges of obtaining an abortion under current regulations is the complexity of administrative procedures, which, in cases involving illicit relations (such as victims of rape), prevents access. The requirement for diagnosis by three physicians and confirmation by the Legal Medicine Organization is time-consuming and creates disparities, particularly in rural areas. The concept of a "definitive diagnosis" is ambiguous and makes physicians cautious; the four-month time limit and associated delays further increase risks. While the condition of "the woman's consent" is positive, it may become problematic under family pressure.

From a practical perspective, the best solution is to reduce the number of physicians involved to two, establish provincial commissions, set a two-week time limit for issuing permits, and use telemedicine to improve access. Additionally, measures should be implemented to ensure the independence of the woman's consent and provide judicial protection for victims, such as issuing immediate permits. This balance between protection of the fetus and the mother addresses the challenges and leads to a

more efficient system.[7] From a jurisprudential perspective, these solutions align with religious principles and can help reduce unsafe abortions.

3-2-3. Therapeutic Abortion of a Fetus with Congenital Malformation

Therapeutic abortion in cases of congenital malformation of the fetus is explicitly permitted under the single article of the Therapeutic Abortion Law and the Family and Youth Population Protection Law. However, the implementation of this provision has encountered numerous challenges. The primary challenge lies in the precise definition of "congenital malformation" and "mental retardation." The legislator has not provided specific criteria for determining the severity of these abnormalities, resulting in different interpretations in practice.[6] Some fetal abnormalities, such as Down syndrome, neural tube defects, and severe genetic diseases, despite having a significant impact on quality of life, do not necessarily result in certain death. In such cases, determining the "hardship of the mother" becomes crucial. The fundamental question is whether the mother has the right to request an abortion solely based on the determination that giving birth to a child with a congenital malformation would cause her hardship, or whether specific medical criteria must also be met?

Specialist obstetricians and gynecologists believe that many serious fetal abnormalities can only be accurately diagnosed after the twentieth week of pregnancy. However, Clause (c) of Article 56 of the Youth Population Law limits the permissible period to "before ensoulment," defined as four months (approximately 17–18 weeks). This temporal restriction is inconsistent with current medical science and has resulted in many cases eligible for abortion falling outside the scope of the law.[13] To address this issue, some jurists believe that the four-month period for ensoulment is an interpretation that can be reconsidered. Sheikh Saduq, in Man La Yahduruhu al-Faqih, has stated that the time of the soul's descent is five months, which exceeds twenty weeks. This difference in jurisprudential opinion provides a basis for revising the legal provisions.[15] Another significant challenge in this field is the conflict between the fetus's right to life and the mother's right to autonomy. From a human rights perspective, women should have the right to make decisions concerning their bodies and lives. However, the Iranian legal system, with its emphasis on Islamic principles, places particular importance on the fetus's right to life. Finding a balance between these two rights is one of the most important theoretical challenges in this field. Article 716 of the Islamic Penal Code, enacted in 2013, determines the diyah for abortion at different stages. According to this article, the diyah for a fetus in which the soul has entered is a full diyah if the fetus is male and half of the full diyah if the fetus is female. This gender-based distinction in diyah raises another challenge concerning gender equality, which is beyond the scope of this discussion. In practice, the process of obtaining a therapeutic abortion permit for a fetus with congenital malformation is lengthy and costly. Families must secure the opinions of three specialist physicians and then refer to the Legal Medicine Organization for final confirmation. This process usually takes several weeks, during which the gestational age increases, thereby raising both the medical risks of abortion and the possibility of exceeding the legal four-month limit.

3-4. Maximum Procedural Restrictions on Therapeutic Abortion

One of the most important practical challenges in implementing therapeutic abortion is the complexity of administrative procedures and legal requirements. The mandate for a definitive diagnosis by three specialist physicians, followed by final confirmation from the Legal Medicine Organization, has created a time-consuming and costly process that, in many cases, effectively prevents individuals from exercising their legal right to therapeutic abortion. In Iran's healthcare system, access to specialists is not equal in all regions. In many small cities and rural areas, access to three independent

specialists capable of providing a definitive assessment of the fetus's condition is extremely difficult. This geographical limitation results in unequal access to therapeutic abortion services.[16] Furthermore, the concept of a "definitive diagnosis" is inherently ambiguous. In medicine, many diagnoses are based on probabilities and clinical evidence, and absolute certainty is not always possible. In practice, this ambiguity leads physicians to avoid issuing definitive opinions, opting instead for more cautious terms. Such cautious opinions are usually not accepted by the Legal Medicine Organization, resulting in the rejection of abortion requests.[17] The role of the Legal Medicine Organization in this process also faces challenges. As the final authority for confirmation, the Legal Medicine Organization must examine the validity of the three specialists' opinions. However, it generally does not conduct independent clinical examinations and bases its decisions solely on the submitted documentation. This approach may result in the rejection of legitimate requests due to administrative deficiencies in the documents.[17] Time is another critical factor. Although the legal period for therapeutic abortion is four months, the authorization process often takes several weeks. In many cases, by the time the final permit is issued, the gestational age has approached or even exceeded four months. This delay not only increases the medical risks associated with abortion but may also result in individuals being denied their legal rights. To address these challenges, several reform proposals have been put forward. First, reducing the number of specialist physicians required from three to two could facilitate access. Second, establishing specialized therapeutic abortion commissions in provincial centers could enable centralized review of applications and decision-making. Third, setting a maximum statutory period for issuing permits (for example, within two weeks) could prevent unnecessary delays.[18] The use of modern technologies, such as telemedicine, could also improve access. Specialist physicians could examine ultrasounds and fetal tests and express their opinions through videoconferencing, without the need for physical presence at a particular location.[12] Another important limitation is the requirement of "the woman's consent" stated in the single article. Although this condition appears positive at first glance, it may create practical limitations. In some cases, women may be pressured by their families or husbands either not to consent to abortion or, conversely, to consent to it. The legislator should adopt measures to ensure the freedom and independence of the woman's decision in this regard.

Finally, it should be noted that simplifying procedures should not mean lowering medical or legal standards. The objective is to establish a balance between protecting the rights of the mother and the fetus, adhering to medical principles, and facilitating access to legal services. Achieving this balance requires close cooperation among the legislators, the medical community, and judicial institutions to establish an efficient and fair system that addresses the actual needs of society.[7]

4. Remedies for Exempting Physician from Liability in the Abortion of an Illegitimate Fetus

In the previous sections, the approach of the Iranian criminal legislator concerning the abortion of an illegitimate fetus was discussed. It was established that a physician involved in abortion—whether through perpetration, causation, or aiding and abetting—would be liable and subject to punishment. However, even under the current criminal provisions, certain legal provisions (specifically Article 152 and the Note to Article 718 of the Islamic Penal Code, as well as Article 623 of the Ta'zirat Book of the Islamic Penal Code, which provide for obstacles to the criminal liability of physicians) suggest that a physician's involvement in the abortion of a fetus resulting from an illicit relationship may, in certain cases, be considered permissible and would not entail liability for the individual performing the act.

4-1. Conflict Between the Life of the Mother and the Illegitimate Fetus

The phrase "abortion for the sake of preserving the life of the mother" is frequently cited in jurisprudential and legal sources. Among both early and contemporary jurists, abortion for the purpose of preserving the

mother's life has been examined at two stages: before and after ensoulment. Before ensoulment, almost all jurists, despite variations in their formulations, have ruled that abortion is permissible when the fetus's life conflicts with the mother's life. However, after the ensoulment of the fetus, the prevailing view is that abortion is impermissible, and neither the life of the mother nor that of the fetus is to be preferred.19 Although some differing opinions exist among contemporary jurists, the general position in criminal jurisprudence is to prohibit abortion unless the lives of both the mother and fetus are at risk, in which case abortion may be performed to save the mother's life. Nonetheless, even when both lives are endangered if no action is taken, some jurists maintain that abortion is impermissible and that the outcome should be left to divine providence.[20]

As previously stated, under the Therapeutic Abortion Law, authorization for abortion is limited exclusively to the period before ensoulment. This law does not provide specific regulations concerning the period after ensoulment. However, the Islamic Penal Code appears to adopt a different approach through two provisions that use ambiguous expressions and terms. Article 623 of the Ta'zirat Book of the Islamic Penal Code explicitly states: "Whoever causes a woman to miscarry through the administration of medicines or other means shall be sentenced to imprisonment from six months to one year. If a person knowingly and intentionally directs a pregnant woman to use medicines or other means that result in the abortion of her fetus, they shall be sentenced to imprisonment from three to six months, unless it is established that this action was undertaken to preserve the life of the mother. In every case, a judgment shall be issued for the payment of diyah in accordance with the relevant provisions." Furthermore, the Note to Article 718 of the Islamic Penal Code goes further by providing: "Whenever a fetus whose continued existence poses a danger to the life of the mother is aborted for the purpose of preserving the mother's life, no diyah shall be established."

As evident from the provisions above, although Article 623 exempts a person who performs an abortion to preserve the mother's life from ta'zir punishment (imprisonment), the Note to Article 718, reflecting the latest legislative intent, goes further by eliminating the obligation to pay diyah in such cases. Moreover, neither provision references the stages of fetal development or the presence or absence of ensoulment. It appears that abortion at any stage, when performed to preserve the mother's life, is immune from liability and punishment (for a contrary view, see Abbasi et al., 2013, p. 110). Although this interpretation may conflict with some jurisprudential fatwas, given the explicit wording of the law and the principle of interpreting ambiguities in favor of the accused—an extension of the presumption of innocence—this view is preferable. Additionally, it should be noted that, under current global conditions, virtually no country refuses to permit abortion when the mother's life is at risk.[21] The basis for excluding liability under Article 623 and the Note to Article 718 of the Islamic Penal Code lies in the principle of necessity; the legislator has accepted abortion performed to preserve the mother's life as a permissible act (an objective ground excluding criminal liability) and as an instance of the principle of necessity under Article 152 of the Islamic Penal Code. Some scholars, however, regard legitimate defense as the basis for permitting abortion to preserve the mother's life in such cases.[22]

Accordingly, under the two provisions contained in the Islamic Penal Code, if a physician involved in the abortion of an illegitimate fetus can demonstrate that the procedure was performed to preserve the mother's life, the physician will be exempt from liability and punishment. The concept of preserving the mother's life is subject to interpretation and may include cases where the mother might attempt suicide if the illegitimate fetus is not aborted. The "Implementing Directive of the Therapeutic Abortion Law," adopted in 2005, defines "maternal disease" in Paragraph 6 of Part A as follows: "Maternal disease means the clinical and medical condition of the mother in which continuation of the pregnancy is considered a threat to her life. The criterion is medical practice and confirmation by the relevant specialists." As indicated by this definition, the disease may be physical or psychological. In other words, a condition threatening the mother's life may result from her physiological and physical inability to continue the pregnancy, or from psychological pressures (including severe depression) resulting from unwanted sexual relations and the ensuing pregnancy (for the view that "disease" may also encompass psychological illnesses, see Abbasi et al., 2015, p. 111).

For example, if a specialist psychiatrist determines that a pregnancy resulting from rape or incest has caused such distress and pressure that the mother may attempt suicide, this would, in principle, be sufficient to exempt the physician. In this regard, there is no difference between the presence or absence of ensoulment in the fetus resulting from the illicit relationship.

4-2. Illegitimate Fetus with Congenital Malformations

The Single Article of the Therapeutic Abortion Law, enacted in 2005, regarded "fetal disease which, due to mental retardation or congenital malformation, causes hardship for the mother" as one of the permissible grounds for abortion. Similarly, Paragraph (c) of Article 56 in the Youth Population Law considers "the definitive presence of incurable fetal abnormalities, in cases where the hardship is related to a disease or defect in the fetus" as one of the permissible grounds for abortion. This provision also applies to fetuses resulting from illicit relationships; specifically, if a special commission definitively diagnoses that a fetus conceived through rape or adultery is mentally retarded or has a congenital malformation such that its birth would cause hardship for the mother, abortion may be performed before ensoulment with the mother's consent. In such cases, the physician's involvement would not entail liability or punishment. However, if the conditions outlined in this provision are not met—such as when the fetal disease is not among the enumerated cases—the physician may be subject to legal consequences. For a detailed list of permissible grounds for therapeutic abortion based on fetal indications, see Badiian Mousavi, Nazila et al. (2018), "Study of Fetal Indications in 548 Cases of Therapeutic Abortion Certificates Issued by the Legal Medicine Organization of Razavi Khorasan," Journal of Women, Midwifery and Infertility, Vol. 21, No. 5, pp. [6–13]. If the abortion is performed after ensoulment, the physician who performs it will bear criminal liability, even if the mother has consented to the procedure.

The general application of the exemption for abortion resulting from an illicit relationship has been qualified by the 2023 directive issued by the Head of the Judiciary, titled the "Implementing Directive of Article 56 of the Family and Youth Population Protection Law." As previously noted, the commission's referral requesting authorization for therapeutic abortion must include identification information for identity verification, along with a copy of the identity document and documents establishing the spouses' identities. However, in cases of pregnancies outside marriage, submitting documents to establish the spouses' identities is irrelevant. The absence of these formal requirements may undermine the exemption granted to physicians who perform abortions on fetuses with congenital malformations. Therefore, to reconcile Article 56 of the Youth Population Law with the aforementioned directive, this formal requirement should apply only to malformed fetuses resulting from marriage.

Conclusion and Recommendations

The findings of this study indicate that, within the Iranian legal system, abortion of a fetus resulting from illicit relations, particularly in cases of sexual assault and incest, faces significant jurisprudential and legal challenges. Under the Islamic Penal Code and related jurisprudential principles, abortion before ensoulment is, in principle, considered a crime. However, where severe hardship or distress, such as psychological or social pressures resulting from illicit relations, is objectively established, abortion may be considered permissible. This finding is consistent with the results of Taherbakht and Mohaghegh Damad (2023), who emphasized the central role of the concept of "hardship" in legitimizing abortion. In cases involving illicit relations, this concept may be interpreted more broadly to include the psychological harm suffered by victims. From a jurisprudential perspective, an examination of contemporary views reveals that the principles of "la-haraj" and "la-zarar" may provide a basis for permitting abortion in such cases. However, differences among jurists—such as Sistani's emphasis on "severe hardship" beyond a mere threat to life, and Khamenei's allowance for abortion in cases of rape—introduce important nuances that the legislator has yet to address. This legislative omission has serious consequences, including an increase in illegal and unsafe abortions that endanger victims' lives and violate human rights. Regarding physicians' liability for performing abortions in cases of illicit relations, the study found that, pursuant to Note 1 of Article 495 of the Islamic Penal Code of 2013, no liability attaches to a physician who acts without fault in knowledge and practice, even if a release is not obtained. This confirms the acceptance of a fault-based liability standard in the new law. Nevertheless, in practice, physicians face professional challenges because the absence of a legal distinction between legitimate and illegitimate fetuses places them in complex situations. Comparing this finding with the study by Barghi and Rasti (2023), which criticized the legislator's aggravating approach, highlights the conflict between strict criminal policy and the practical realities of medical practice. For example, physicians may hesitate to assist victims of rape for fear of prosecution, which can exacerbate psychological and social harm. One of the most significant findings is the absence of a legal distinction between legitimate and illegitimate fetuses from the perspective of medical liability. Under Article 624 of the

Islamic Penal Code, physicians who directly perform abortions or provide the means for them face imprisonment of two to five years and payment of diyah.

This finding aligns with the results of Nayebzadeh and Ashraf (2023), who pointed to legal gaps; however, regarding illicit relations, this gap is more pronounced because it does not address specific cases such as consensual adultery, which involves less hardship but remains challenging. Compared to the study by Milanlouei and Arab-Asadi (2025), which examined developments in the legal systems of Iran and the United States, the present findings indicate that both systems have moved toward restriction, though their foundations differ: in Iran, the basis is jurisprudential (with potential flexibility through religious rules), whereas in the United States, it is political and social. This comparison provides important considerations: drawing on the approaches of Islamic countries such as Turkey—where abortion is permitted in cases of rape—may be useful for revising Iranian legislation. From a jurisprudential perspective, reliance on the principles of "la-haraj" and "la-zarar," along with contemporary fatwas, supports the permissibility of abortion in cases of rape and incest; however, the failure to reflect these views in legislation has created a gap, resulting in victims being deprived of legal protection and an increase in social stigma. For example, in cases of incest, fetal genetic disorders create an additional nuance that is consistent with "la-zarar," but the law remains silent. This study faced limitations, including the scarcity of specialized sources on the jurisprudential challenges of illicit relations, the limited publication of judicial practices, and the recent emergence of the Family and Youth Population Protection Law, which has few interpretations. Furthermore, the conflict between the Single Article of the Therapeutic Abortion Law (2005) and the Youth Population Law (2021) has created ambiguities in interpreting permissible cases, which are more pronounced in illicit relations due to the elimination of the concept of "hardship."

The results of this study offer practical guidance for physicians managing complex cases and can serve as a foundation for legislative reform. It is recommended that legislators revise provisions to explicitly permit abortion in cases of rape and incest, based on contemporary jurisprudence; simplify procedures by reducing the required number of physicians to two and incorporating telemedicine; and establish provincial commissions for the expedited review of challenges. These measures would yield positive outcomes, including a reduction in unsafe abortions, enhanced judicial protection for victims, and greater alignment between legislation and jurisprudential principles. Overall, the present study demonstrates that the jurisprudential and legal challenges surrounding abortion of a fetus resulting from illicit relations in the Iranian legal system are significant. Physician liability, when fault is established, is punishable in the same manner as in cases involving a legitimate fetus, as the legislator has made no distinction. However, this lack of differentiation creates ambiguities that operate to the detriment of victims. Nevertheless, under specific circumstances—such as congenital malformations of the fetus (particularly in incest cases involving genetic risk), threats to the mother's life, or severe hardship (including psychological trauma resulting from rape) — abortion is permissible, provided that legal procedures are followed. These procedures include diagnosis by two specialist physicians, confirmation by the Legal Medicine Organization, the mother's consent, and extension of the time limit based on jurisprudential opinions. Under these conditions, the physician bears no liability.

It is recommended that future research empirically examine judicial practice of courts in cases involving illicit relations and conduct broader comparative studies with Islamic countries, such as Malaysia and Turkey. This would help identify appropriate legislative models, including the incorporation of contemporary fatwas into legislation and providing psychological support. Such an approach addresses relevant considerations, such as balancing the fetus's right to life with the rights of the mother, and leads to a more effective legal system.

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References:

1. Nayebzadeh, & Ashraf. (2023). A jurisprudential-legal study of abortion in the Iranian legal system and its legal gaps. Jurisprudence and Fundamentals of Islamic Law, 16(2), 163-179.
2. Taherbakht, Mohaghegh Damad, & Maryam Al-Sadat (2023). Jurisprudential-legal challenges of therapeutic abortion in the light of the law on the protection of the family and youth of the population. Jurisprudence and family law.
3. Shariati, Nasab (2022). Abortion due to maternal distress, in the law on the protection of the family and youth of the population. Research on deviations and social issues, 4(2), 127-155.
4. Barghi, Mohammad Mehdi, & Rasti (2023). An analysis of the criminal policy of the law on the protection of the family and youth of the population approved in 1400 regarding criminal abortion and related crimes. Scientific Research Journal of Medical Law, 17(58), 311-324.
5. Akrami Seyed Mohammad, Parvin Khairallah & Razmjoo Mohaddeseh. (2021). Legal study of fetal health screening and therapeutic abortion in the Youth Population and Family Support Project.
6. Moghaddasian, Delara, Shojaei & Saini (2023). Conditions of abortion from the perspective of medicine, jurisprudence and criminal law in the light of maternal health. Comparative Criminal Jurisprudence, 9(3), 102-111.
7. Aslani, Hamid Reza (2015). The concept and position of fault in compulsory and contractual civil liability, Specialized Journal of Theology and Law, Vol. 15-14, pp. 52-51.
8. Milanloui, Shaghayegh & Arab Asadi (2025). Developments in the legal systems of the United States of America and Iran in the field of abortion. Comparative Law Research Journal, 9(2), 141-167.
9. Katouzian, Naser (2018). Civil Liability, Vol. 1, Tehran, 11th Edition, Tehran University Press, p. 48.
10. Beigi, & Jamal (2022). Feasibility of Criminalizing In vitro Abortion in Iranian Criminal Law. Jurisprudence and Penal Law Teachings, 1(1), 21-36.
11. Elahimanesh, Mohammad Reza (2017). Criminal Law and Medical Malpractice, Tehran, Majd Publishing, p. 22.
12. Golduzian, Iraj (2017). Specialized Criminal Law, Volume 1, Issue 12, Tehran, p. 163.
13. Hosseini, Ali. (2017). Methods of Patient Treatment, Savalan Publishing, Tehran, p. 17.
14. Abbasi, Mahmoud (2017). Medical Liability, Part 2, Legal Publications, p. 23.
15. Rouhani, Mohammad. (2016). Medical Laws, Tehran, Ferdows Publication, p. 77.
16. Safaei, Hossein (2017). Physician's Guarantee, Tehran, Jame'e-Nagar Publication, p. 154.
17. Michel, Lorraine (2016). Civil Liability, translated by Mohammad, Ashtari, Part 2, Tehran. Dadgostar Publications, p. 24.
18. Shirazi, Mohammad Ali (2017). Fundamentals of Civil Liability, Physicians, Farda Publications, Tehran, Part 3, p. 89.
19. Ismaili, Hossein (2015), The study of abortion in case of endangering the lives of mothers and fetuses, Quarterly Journal of Medical Jurisprudence, seventh year, No. 22 and 22, Spring and Summer, pp. 106-75-75.
20. Khomeini, Ruhollah (1372), Clarification of Issues, Tehran, Publishing Organization of the Ministry of Culture and Islamic Guidance.
21. Mostafa Groom Researcher (2005), Research on Abortion and Its Effects, Journal of Medical Ethics, No. 5, pp. 156-170.
22. Nemati, Zahra: Omani Samani, Reza (2012), Elimination of the four-month restriction in medical abortion law: compliance of the law with medical ethics, bi-monthly journal of medical ethics and history, Medical Ethics and History Research Center of University of Medical Sciences and Health Services, 2 31, pp. 22-39.
23. Zand, Bahram; and Almasi, Ali (2023). Jurisprudential and legal analysis of the civil liability of physicians in therapeutic abortion after the approval of the Family and Youth Protection Law. Medical Law Quarterly, 17(62), 45-68.
24. Ghasemi, Javad; Shams Natri, Mahmoud; and Rezaei, Mehdi. (2022). Iran's criminal policy towards abortion with emphasis on the 1400 Youth Protection Law and the challenges of the criminal liability of physicians. Journal of Comparative Law Studies, 25(3), 112-135.