



## Jurisprudential and Legal Challenges of Therapeutic Abortion in Light of the Law on Family Protection and Population Growth<sup>1</sup>

Elahe Taherbakht<sup>2</sup> Maryam Sadat Mohaghegh Damad<sup>3</sup>

Doi:

10.30497/flj.2023.244347.1900



### 1. Introduction

High-risk pregnancies accompanied by severe fetal abnormalities and genetic disorders have become one of the major medical and legal challenges of contemporary societies. Ensuring the birth of healthy children is an essential component of public health and sustainable population policies. Consequently, legislators are expected to enact effective laws that simultaneously protect maternal health, fetal rights, and public interests. In Iran, the **Law on Family Protection and Population Growth** was enacted to encourage population growth; however, several of its provisions have introduced significant restrictions on prenatal screening and therapeutic abortion. These restrictions have generated considerable legal and practical challenges, including reduced access to lawful medical services, increased maternal anxiety, and the potential expansion of illegal abortions. This study aims to examine the jurisprudential and legal dimensions of therapeutic abortion under this legislation, with particular emphasis on Articles 56,

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<sup>1</sup>. The current article is extracted from a master's thesis in Family Law titled "*Therapeutic Abortion of the Fetus in Iranian Statutory Laws with an Approach to the Family Protection and Youth Population Law*" from Imam Sadegh University (AS).

<sup>2</sup>. PhD student in Jurisprudence and Fundamentals of Islamic Law, Farabi College, University of Tehran, Qom, Iran. e.taherbakht@ut.ac.ir

<sup>3</sup>. (corresponding author) Assistant Professor, Department of Law, Imam Sadegh University (AS), Tehran, Iran. m.mohaghegh@isu.ac.ir

61, and 73. It further analyzes the legal ambiguities and criticisms associated with these provisions in light of Islamic jurisprudence and Iranian law.

## **2. Literature Review**

Previous studies have extensively examined the jurisprudential, legal, medical, and ethical aspects of therapeutic abortion. Existing research has addressed issues such as fetal and maternal indications for therapeutic abortion, the legal foundations of abortion under Iranian law, the application of the doctrines of hardship (*Haraj*) and necessity, criminal liability arising from unlawful abortion, and the impact of genetic abnormalities on abortion rulings. More recent studies have also evaluated the legal implications of the Law on Family Protection and Population Growth, particularly regarding prenatal screening policies. Nevertheless, few studies have comprehensively investigated the jurisprudential and legal challenges created by this legislation through an integrated analysis of its substantive provisions. This research seeks to address this gap.

## **3. Research Method**

This study employs a descriptive-analytical approach based on documentary research. Relevant data were collected from classical and contemporary Islamic jurisprudential sources, statutory laws, judicial regulations, medical literature, and scholarly publications. The collected materials were then analyzed to evaluate the compatibility of the Law on Family Protection and Population Growth with Islamic jurisprudential principles governing therapeutic abortion.

## **4. Research Findings**

The findings indicate that the jurisprudential basis for permitting therapeutic abortion in Islamic law primarily rests

upon secondary rulings derived from the doctrine of undue hardship (*Haraj*). Despite longstanding ambiguities in the implementation of the Therapeutic Abortion Act, the recently enacted Law on Family Protection and Population Growth has not adequately addressed several important legal situations. Significant gaps remain regarding pregnancies resulting from rape, illicit sexual relations, mistaken intercourse, severe maternal psychiatric disorders, and other exceptional circumstances.

Furthermore, the restrictive provisions governing prenatal screening and therapeutic abortion may unintentionally undermine maternal and fetal health while encouraging clandestine and unlawful abortions. The study also identifies several procedural and substantive shortcomings within the legislation, including uncertainty regarding fetal ensoulment, inadequate recognition of paternal hardship in exceptional cases, and excessive reliance on judicial discretion where objective medical criteria are unavailable. These deficiencies may result in inconsistent judicial decisions and reduced legal certainty.

## **5. Conclusion**

The study concludes that several provisions of the Law on Family Protection and Population Growth suffer from both procedural and substantive weaknesses that reduce its practical effectiveness. Restrictive regulation of therapeutic abortion may inadvertently increase illegal abortion practices while exposing women and healthcare professionals to greater legal uncertainty. Accordingly, legislative revision through interdisciplinary cooperation among Islamic jurists, legal scholars, obstetricians, genetic specialists, and medical ethicists is recommended.

Public education concerning lawful therapeutic abortion procedures should also be strengthened to reduce criminal abortions and improve maternal awareness. Additionally, healthcare providers should ensure timely diagnosis and referral in pregnancies involving fetal abnormalities or maternal disease to prevent the expiration of the legally permissible period for therapeutic abortion. Finally, the study argues that greater attention should be given to paternal hardship in appropriate cases and that the legal criterion based upon fetal ensoulment requires clearer jurisprudential and legislative clarification to ensure consistency and legal certainty.

**6. Keywords**

Therapeutic Abortion, Criminal Abortion, Family Protection and Population Growth Law, Prenatal Screening, Genetic Disorders, Ensoulment, Islamic Jurisprudence