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Medico-Legal Aspects of Abortion

Definitions

Abortion

Definitions:

- **Abortion:** termination of pregnancy before the fetus is viable (capable of survival outside the uterus).
- The term abortion is more commonly used as a synonym for medically induced abortion (the deliberate, medically indicated, interruption of pregnancy).
- **Miscarriage:** refer to spontaneous or natural loss of the fetus.
- **Criminal abortion:** termination of pregnancy by illegal intervention, undertaken when legal induced abortion is unavailable.

Abortion Definitions

- Spontaneous abortion:
- **Complete abortion:** complete expulsion of all the products of conception.
- **Incomplete abortion:** parts of the products of conception are retained in the uterus.
- **Inevitable abortion** a condition in which vaginal bleeding has been profuse, membranes usually show gross rupturing, the cervix has become dilated, and abortion is almost certain.
- **Threatened abortion** a condition in which vaginal bleeding is less than in inevitable abortion, the cervix is not dilated, and abortion may or may not occur
- **Missed abortion** retention of dead products of conception in utero.
- **Septic abortion:** associated with serious infection of the products of conception and endometrial lining of the uterus, leading to generalized infection.
- Induced abortion:
- **Therapeutic abortion:** induced legally by a qualified physician to protection of the health of the mother, by medication or instrumentation.
- **Criminal Abortion:** termination of pregnancy by illegal intervention, undertaken when legal induced abortion is unavailable.

Abortion

Basic Principles:

- Termination of Pregnancy (Abortion) is destruction of a human being and consequently it is:
 - Criminalized in the penal code (Basic Law)
 - Forbidden in Islamic Sharia law
- **Abortion basically is a crime** and it is performed in the medical practice as an exemption on legal and medical foundations.
 - Permissible by a special law. The Bahrain Medical Practice law number 7/1989
 - Medically indicated in accordance with the law (not based on literature, previous training, professional opinion, personal opinion, psychosocial reasons)

Abortion

Basic Principles:

- The followings **are not accepted medical indications** in our practice settings (Bahrain)
 - Moral reasons i.e. pregnancy result of rape or adultery
 - Economical reasons i.e. poverty
 - Contraception and family planning
 - Diagnosed congenital anomalies of fetus
 - Risk of congenital anomalies i.e. exposure to x-ray or drugs
- Induction of labor is not an abortion because it is medically indicated to preserve fetus life.

Legal Issues

Subject Matter of Protection:

Legislations are used to protect a subject matter

The subject matter in Criminal Abortion

- **Fetus or embryo life:** the crime will be established only by the fetus or embryo death
- **The right of fetus or embryo to live normally in the uterus.**

Legal Issues

Crime Definition:

Most people informally define a crime as an act that is deeply wrong, that is worthy of strong community disapproval, and that calls for a punitive sanction.

Definitions: A crime is any act or omission that is forbidden by law (penal code), and has a definite punishment.

Legal Issues

Crime Classifications:

Felonies:

جناية

Serious crime

Punishable by more than a 3 year of imprisonment or death.

Sentences usually served in prison.

Examples: homicide, rape, robbery, possession or distribution of illegal narcotics, arson

Misdemeanors:

جنحة

Less serious than felonies

Punishable by fines, penalties, or incarceration of less than three year

Sentences usually served in jail or alternative programs

Examples: shoplifting, disorderly conduct

Petty Offenses:

مخالفة

Insignificant crime involving minor misconduct

Punishable by fines and community service

Examples: traffic violations and other infractions

Legal Issues

Elements of Criminal Abortion Crime:

Subject matter of Protection:

Normal pregnancy (normal fetus or embryo in uterus وجود
حالة الحمل وهو الركن المفترض في الجريمة.

Elements

1. an act or physical element, known as the actus reus.
الركن المادي
2. mental state or intent, known as the mens rea. الركن
المعنوي
3. A concurrence: unity of actus reus and mens rea .
4. Resulting harm.
5. Causation.

Legal Issues

قانون العقوبات رقم 15 لسنة 1976

مادة – 321 –

تعاقب بالحبس مدة لا تزيد على ستة أشهر أو بالغرامة التي لا تجاوز خمسين ديناراً من تجهض نفسها بغير مشورة طبيب وبمعرفة.

جنحة Misdemeanors

Legal Issues

قانون العقوبات رقم 15 لسنة 1976

مادة – 322 –

يعاقب بالسجن مدة لا تزيد على عشر سنوات من أجهض
امرأة دون رضاها.

وتكون العقوبة السجن إذا أفضت مباشرة الإجهاض إلى
موت المجني عليها.

جناية Felonies

Legal Issues

قانون العقوبات رقم 15 لسنة 1976

مادة – 323 –

لا عقاب على الشروع في الإجهاض.

- Attempting to commit criminal abortion is not criminalized in Bahrain
- Attempting in committing a Misdemeanors is not a crime
- Attempting in committing a Felonies is a crime

Legal Issues

قانون العقوبات رقم 15 لسنة 1976

مادة – 339 –

يعاقب بالحبس أو بالغرامة من اعتدى على سلامة جسم غيره بأية وسيلة وأفضى الاعتداء إلى مرضه أو عجزه عن أعماله الشخصية مدة تزيد على عشرين يوماً.
وتكون العقوبة الحبس مدة لا تزيد على سنة أو الغرامة التي لا تجاوز مائة دينار إذا لم تصل نتيجة الاعتداء إلى درجة الجسامة المذكورة في الفقرة السابقة.
وإذا نشأ عن الاعتداء على حبلى إجهاضها، عد ذلك ظرفاً مشدداً.

Subject matter of Protection

Normal fetus or embryo in uterus :

- If the woman is not pregnant there will be no crime even though the offender believes that she is pregnant.
- The crime is committed at any stage of pregnancy (0 to 40 weeks)
- The fetus or embryo should be viable.
- The crime is committed regardless whether the fertilization is natural or artificial.
- The crime is committed regardless whether the conception is the result of marital, or extramarital intercourse, or as a result of rape.
- The crime is committed regardless of the age of the pregnant woman.

Pregnancy

The beginning of the period of pregnancy:

- Ovulation
- Fertilization
- Implantation
- The infuses the soul 40 days 120 days

Pregnancy

pre-embryonic phase

- involves the first 3 weeks from fertilization of the ovum
- zygote (fertilized ovum) the one cell standing at the beginning of development of a human being; there is a result of a fusion of the male and female sex cells or gametes
- Morul; the solid ball consisting of 12 to 16 blastomeres
- blastomeres ; cells that result in process of cleavage of the zygote, blastomeres are genetic equal and they do not substantially differ each other,
- blastocyst; the stage with a cavity inside that is filled with fluid,

embryonic phase

- lasts from the beginning of the 4th week to the end of the 8th week
- all body organs are constituted by the end of it, the embryo is recognizable human in appearance and measures cca 2-3 cm from head to tail

fetal phase

- it lasts from the 9 week to delivery of fetus;
- during the fetal phase, development of organs rapidly continue, some of them enter their function, the fetus grows quickly in length and increases its weight gain, in particular during the terminal months

Pregnancy

The end of the period of pregnancy:

- Beginning of labor contractions
- Regular labor contractions
- Fully dilated cervix.
- Head of fetus out of vagina.
- Spontaneous breathing
- Full birth.
- Clamping of umbilical cord
- Delivery of placenta

Pregnancy

القانون المدني البحريني رقم 19 لسنة 2001

المادة 9

تبدأ شخصية الإنسان بتمام ولادته حيا، وتنتهي بوفاة،
وذلك مع مراعاة ما يقضي به القانون في شأن الحمل
المستكن والمفقود والغائب

Physical Element, actus reus

- **The physical activity** that leads to the death of fetus inside the uterus or expulsion of the fetus out of the uterus dead or alive.
- **Resulting harm:** termination of pregnancy before the normal expected date of delivery, and this harm will be achieved by:
 - Killing the fetus inside the uterus
 - Expulsion of dead fetus
 - Expulsion of alive but unviable fetus.
 - Expulsion of a live fetus.

Physical Element, actus reus

Abortifacient Drugs:

Essential oils and purgatives:

- These drugs really have no direct stimulating action on the uterine muscle, they act indirectly by causing marked pelvic congestion and irritation of the colon, which allegedly cause excitation and contraction of the adjacent uterus, followed by expulsion of the fetus.

Ecboic Drugs:

- Have a direct stimulating action on the uterine muscle. Examples would be ergot, quinine, and oxytocin.
- Quinine in healthy women rarely produced abortion.
- Oxytocin was generally used by physicians.
- In the case of ergots, while they may cause abortion, more frequently they cause ergot poisoning, with a possible fatal outcome.
- These abortifacient drugs might cause contraction of the uterine muscle, they do not relax or dilate the cervical canal and external cervical os, which is a necessary preliminary step to expel the fetus. Thus, usually, these drugs did not cause abortion.

Physical Element, actus reus

Local Abortifacient:

- This involves the introduction of a certain chemical intravaginally or in the cervix. Potassium permanganate was commonly used. The tablet was inserted in the cervix, causing ulceration of the cervix or vaginal fornix with bleeding. This method of abortion was not very effective.

Physical Element, actus reus

Instrumentation:

Douching:

- a stream of water, hot or cold, with or without an irritant soap or antiseptic solution (Lysol®), was injected forcefully into the vagina at the external cervical os.
- The water was usually delivered by a household enema can or bag with attached rubber tubing and a long, slender, hard nozzle

Syringing:

- Same principle as that of douching. A large-capacity syringe or douche syringe is used, with the nozzle inserted into the cervix. This was a favorite self-induced method of abortion.
- Deaths due to abortion by douching or syringing:
 - Cardiac arrhythmia
 - Sepsis
 - Air embolism
 - Perforation of the uterus or vagina

Physical Element, actus reus

Instrumentation:

induction by instruments:

- This was usually not self-induced, though in some instances women, especially multiparous women, were able to do so using knitting needles and coat hangers.
- Essentially, this method is a variation on dilatation and uterine curettage.
- Catheters, soft or hard, and other instruments were used to dilate the cervical os or at least to pass through the cervical os into the uterine cavity.
- The experienced non-physicians would typically insert a soft or hard catheter into the cervix and uterus

- Deaths due to abortion by instruments
 - Primary cardiac arrest caused by a vagal reaction
 - Complications of anesthesia
 - Hemorrhage
 - Sepsis caused by perforation of the uterus, cervix, or vagina
 - Air embolus
 - Thrombotic embolus

Physical Element, actus reus

Violence:

Local Violence:

- Beating or applying pressure locally in the lower abdomen, wearing tight clothes and belts, and electrocution.

General Violence:

- Jumping, excessive exercise or dancing, pushing heavy objects.

Psychological violence:

- Terrorizing the pregnant woman
- Threatening
- Intimidating
- Yelling on her
- Exposure to stressful situations.

Legal Issues

Missing Elements of Criminal Abortion Crime:

- **Subject matter not existing:** the woman is not pregnant.
- **Subject matter is not in the expected location:** the pregnancy is not in the uterus.
- **The physical act is unable by any means to produce the harm.**
- **The physical act is used in the wrong way.**

Intent, mens rea

- The offender should have knowledge that the woman is pregnant.
- He should have intention and determination to terminate the pregnancy before due date.
- The offender should have knowledge that the criminal physical activity he is using is capable of inducing abortion.
- Abortion resulting from **intentional physical harm** is not a crime if the offender does not know that she is pregnant.
- Abortion resulting from **accidental physical injuries** is not a crime.

Legal Issues

قانون رقم 7 لسنة 1989 بشأن مزاولة مهنة الطب البشري وطب الأسنان

مادة -19 لا يحق لأي طبيب وصف دواء بقصد إجهاض امرأة حامل، أو إجراء عملية إجهاض لها إلا إذا كان في استمرار الحمل خطر على حياة الحامل، وبشرط أن يقرر ذلك ثلاثة أطباء استشاريين مصرح لهم بمزاولة المهنة في البحرين، وفي هذه الحالة يجب أن تتم عملية الإجهاض أو وصف دواء بقصد الإجهاض في مستشفى حكومي أو أي مستشفى خاص مصرح له بذلك وعلى يد طبيب اختصاصي في أمراض النساء والولادة وبعد أخذ موافقة ولي أمر المرأة الحامل.