Journal of Iranian Medical Council, Volume 9, Issue no. 3
http://dx.doi.org/10.18502/jimc.v9i3.21817

Review Article

Abortion Tourism: Extraterritorial Application of Criminal Laws, a Narrative Review

Fatemeh Ghodrati*

Department of Islamic Jurisprudence and Law, Hazrat-e-Masoumeh University, Qom, Iran

Abstract

Although the laws of some countries, including Iran, contain regulations regarding the entry and exit of Iranian and foreign nationals, there is no specific law regarding the purposes of tourist travel. Legal abortion tourism can be interpreted as fraud against the law. The aim of this study is to examine the extraterritorial application of criminal laws for abortion tourism. In this narrative review, the extraterritorial application of criminal laws for abortion between 1990 and 2023 was investigated using the keywords of "abortion, law, jurisprudence tourism, and criminal law". Abortion tourism is a travel abroad with the intention of participating in an abortion that is prohibited in one's own country but permitted in the destination country. In response to the question of whether the country of origin has allowed or obliged to extend its existing criminal prohibition extraterritorially, three perspectives are examined: 1. Considering legal punishment 2. Passing shield laws, and 3. Applying the rule of tolerance in the decisions of the actors of the criminal process.

Considering the negative functions of abortion tourism, such as violating the mother's right to life, physical integrity and maternal deaths in inappropriate logistical conditions, supporting the right to life of the fetus, it is necessary to try to draw the attention of countries to each other's ethical and legal considerations in order to reduce the grounds for the emergence of illegal tourism in the field of abortion.

Keywords: Abortion, Criminal, Extraterritorial, Jurisprudence, Laws, Tourism

*** Corresponding author**

Fatemeh Ghodrati, PhD

Department of Islamic Jurisprudence and Law, Hazrat-e-Masoumeh University, Qom, Iran

Tel: +98 2532012

Email: fatima.arta2@gmail.com

Received: 5 May 2025

Accepted: 21 Jul 2025

Citation to this article

Ghodrati F. Abortion Tourism: Extraterritorial Application of Criminal Laws, a Narrative Review. *J Iran Med Counc.* 2026;9(3):593-99.

Introduction

Medical tourism or global cross-border health care is a new phenomenon that has a great impact as an active industry in the development and dynamism of the economy, and offers the potential of treatment, rehabilitation, and prevention, as well as treatment facilities (1). Also, studies have shown that this type of tourism can contribute to economic growth and profitability by increasing employment (2,3). Countries with developed economies always form a competitive market in this field, which can be effective in health care budgets and civil liberties (4). Medical tourism may have moral and ethical concerns about specific treatment methods in destination countries. Also, the aspects related to legal issues, the risk of medical procedures and exposure to unprofessional and non-specialized actions of mediators or legal agents (companies), responsibility, compensation in accidents, medical and nursing malpractice, can be proposed (5). Abortion tourism is a subset of medical tourism, and the term "Circumvention tourism" was first used by legal researcher Glenn Cohen in 2012 to analyze travel for running away from the law. Tourism involves patients traveling abroad for services that are legal in the destination country but illegal in the home country, to circumvent domestic bans on access to certain medical services. Four common examples are: circumventing medical tourism for Female Genital Cutting (FGC), abortion, use of reproductive technology, and assisted suicide (6). Some consider "abortion tourism" to be a unique type of medical tourism and consider it as anti-choice, similar to underground practices. For women in Ireland, where abortion is illegal, the term is more familiar, as thousands of Irish women travel to Britain for abortions every year (7). It divides medical tourism into three categories: (1) tourism for services that are legal in both the patient's country of origin and destination country [(FGC), abortion]; (2) tourism for services that are illegal in either country (such as organ sales tourism) and (3) tourism for services that are illegal in the patient's home country but legal in the destination country. For instance, the implementation of a surrogacy contract, where a surrogate is used in the destination country (8). The question under consideration is;

- whether the "home country" has permitted or obliged to extend its existing criminal prohibition extraterritorially
- whether governments attempt to criminalize activities of these patients are justified.

Materials and Methods

The information sources in this narrative review included relevant Persian and English articles from Iranian and foreign databases (Scopus, Cochrane, PubMed, Science Direct, Medline, Ovid, and Google scholar SID and Magi ran), using the keywords of "abortion, law, jurisprudence tourism, and criminal law". Jurisprudential texts were also reviewed to complete the process of searching for sources. Articles from 1990 to 2023 were searched for among which, 32 articles that contained the mentioned keywords in their titles or abstracts were selected. First, the titles of the articles were reviewed, and the articles that were most similar as reviews were included in the study. If there were multiple reports of a study, the most complete one was considered. The process of selecting articles was carried out by two of the authors, and in case of disagreement, the articles were reviewed by a third party, and any discrepancies were resolved through discussion between the authors. After evaluating and eliminating irrelevant studies, the full text of 16 articles related to the study topic that met the inclusion criteria was extracted by one of the authors and provided to another researcher for review and correction. The exclusion criteria for studies were insufficient data in the study and unavailability of full text of the relevant articles.

Results

Findings demonstrated that some legal systems have limited the privileges and laws related to abortion to nationals and residents of their country in order to prevent the development of the abortion tourism process. In the Iranian legal system, although the rules governing the prescription or prohibition of abortion and the conditions for its implementation have been explained, there is no specific rule or law that specifies the legal aspects of legal tourism regarding abortion (9). Therefore, in order to reduce the complications caused by abortion, government control over the implementation of fertility laws, and reduced induced abortions on the reproductive health

of the society, three perspectives have been proposed in this regard, which are presented in detail.

Considering legal punishment

Dealing with the legal policy of societies in interaction or dealing with the phenomenon of abortion and passing different and sometimes conflicting laws in the field of criminal law, family law and inheritance law is one of the important causes of abortion tourism (9). Abortion tourism is generally common in countries where abortion is legally free. Abortion laws in Europe are different due to the religious and cultural diversity of this continent. For example, the Netherlands allows abortion on demand, while Sweden allows abortion up to the 18th week. Britain, France and Belgium have also passed liberal abortion laws, and other European countries have more conservative laws (10). Differences in abortion laws meant that in 2017, 65,000, or roughly 8%, of all people who had abortions in the United States traveled out of state for abortion care (11). In 12 states of the U.S., more than a quarter of patients traveled outside their state of residence for abortions. Four states-Mississippi, Missouri, South Carolina, and Wyoming-had more than half of their patients leave their state for abortion (12). It should be noted that 95% of the foreign women who had an abortion in Britain traveled from the Republic of Ireland, and the rest traveled from Malta, Poland, Italy, France, Germany and Denmark (13). And many of cases in the 14 European countries have traveled to England or Wales (14).

In 2019, France recorded 232,000 abortions, the highest number since 1990 (15). England, the Netherlands, France, and Spain are among the countries that are destinations for abortion tourism from other countries or states (16-18). In Islamic countries such as Turkey and Tunisia, abortion is completely legal on request (19). This is in stark contrast to many other Muslim countries. The laws of three Muslim countries, Egypt, Kuwait and Tunisia, are somewhat liberal (20). On the other hand, in 18 of the 47 countries with Muslim-majority populations, including Iraq, Egypt, Indonesia, Afghanistan, Bangladesh, Yemen and 13 others, abortion is only permitted if the mother's life is at risk due to the pregnancy (21). Therefore, official data on abortion tourism have not been found even in Muslim countries where abortion is somewhat more liberal. Under West German law, abortion was a crime in 1976 unless the mother's health was at risk or, in cases involving pregnancies resulting from criminal activity, incurable genetic problems in the unborn child, and inappropriate social conditions that would have negatively affected pregnancy. It was recorded in the penal sources of this country that abortions abroad would be punishable by up to three years in prison, unless the women had obtained a Beratungsschein counseling certificate before the abortion (for Abortion in Germany, in a state-approved center, the applicant is given a "counseling certificate"), then doctors can provide medication (22). From the point of view of Shia jurists in Islamic countries, the fetus has the right to life and spiritual rights. Several verses of the Holy Qur'an have been cited in discussing the prohibition of abortion. Of course, in many Islamic countries, abortion is considered according to the principles of Islam.

However, the legal issues related to abortion and the prevalence of legal and illegal abortions are different in various Islamic countries (23-25).

Passing shield laws

Amid concerns about protecting patients who travel abroad for treatment, abortion protection laws have been established for physicians who provide reproductive health care. Abortion protective laws in the U.S. have been enacted in states where abortion is legal to protect health care professionals who provide abortion services to patients from states where abortion is illegal (26,27). California, Colorado, Maine, Massachusetts, New York, Vermont, and Washington have enacted laws to protect telemedicine practices when a provider prescribes abortion pills to a patient in an anti-abortion state (28,29). In anticipation of the extraterritorial application of anti-abortion laws, many states in the US have enacted laws that attempt to protect the medical team of abortion providers, assistants, and patients from professional or criminal liabilities associated with legal abortion care. Each state has a broad definition of reproductive health care and specifically lists abortion as a covered service. "Statutory protected health care" is defined to include reproductive health care provided "regardless of the patient's location," and this definition supports the

provision of cross-border care. In the field of telehealth, it is based on the fact that the place of care is where the patient is based. They also prohibit the use of state resources to support another state's investigation into the provision, receipt, or support of protected care in the shield state. For example, New York prohibits its police officers from cooperating with out-of-state investigations that seek to criminalize legal abortion (27).

Applying the rule of tolerance in the decisions of actors in the criminal process

Since legal variation exists even among jurisdictions that generally allow abortion, women may travel for types of abortions that are not permitted in their home countries. For instance, Barcelona has been called "Europe's abortion center" because it is the place where women can travel to avoid restrictions (30). Importantly, the authors emphasize the importance of including the "rule of tolerance" in the decisions of different actors of the criminal process, namely courts, prosecutors and juries, as well as in the process of legal education. This means that countries cannot change the standard of their internal laws, especially in Islamic countries, which are in accordance with Sharia and jurisprudence principles, and on the other hand, there are no standard international laws in this regard. Also, the choice of countries is scattered in a wide range of substantive differences from absolute permission to absolute prohibition. Therefore, the use of the international legal cooperation system is a mechanism to prevent conflicts in the legal field (9,31). As a result, this principle forms an essential element in the criminal system, which protects freedom against deprivation in cases where the law is unclear (31).

Discussion

In legal tourism, through the free or less restricted travel beyond the political and legal borders of countries, people have gained the opportunity to free themselves from the application of laws that govern their behavior and expose themselves to the application of laws that are more in line with their desires. This review article aims to examine abortion tourism and the extraterritorial application of criminal laws.

In the field of criminal law, this question is also raised from the first point of view: Does the city prosecutor have the authority to prevent the departure of women who intend to leave the country for abortion? Or that he should wait until the abortion occurs and after her return, arrest her legally. Assuming the acceptance of such a possibility, has today's criminal and legal policy of a country moved towards the effective prosecution of this issue? The answer is negative (9). The rules governing the prescription or prohibition of abortion are explained in the Islamic Penal Code and the Medical Abortion Law, but there is no specific rule or law that specifies the legal aspects of legal tourism. In this regard, the implementation of the rule contained in Article 7 of the Islamic Penal Code, which stipulates that "any Iranian citizen who commits a crime abroad, if found in Iran or returned to Iran, will be tried and punished according to the laws of the Islamic Republic of Iran, provided that: A- The behavior committed according to the law of the Islamic Republic of Iran is a crime..." although this issue will not have any result other than the inflation of the criminal files (9). Shield laws in the United States are designed to protect reporters' privilege or prevent prosecution when state laws differ, particularly on the issue of abortion. Of course, not everything is clear about this new reality. For example, one question after the Supreme Court's ruling is to what extent an anti-abortion state can restrict people from getting abortions in other states where they remain legal? On the one hand, it might allow states with abortion bans to enforce their laws across the state. States might also try to use existing civil or criminal laws against someone in another state, arguing that a patient who gets an abortion where it is legal might have a negative impact in the patient's home state. Legislators in anti-abortion states might try to pass new laws on out-of-state travel for abortions or try to criminalize the conduct of people in other states who provide care to residents of anti-abortion states (26,32). Regarding the application of the rule of tolerance of criminal procedure in legal conflicts of human relations in the international environment, it is easier if there are fewer moral conflicts, but when the legal issue is abortion, which is at the center of moral issues, it is usually accompanied by complications. Questions will arise that require further investigation.

- Is the unification of cross-border laws, which is a legal action, achievable with regard to the principle of independence of countries?
- The moral roots of the laws of countries regarding abortion may be different or in conflict with each other. Accordingly, if abortion is accepted for the purpose of treatment, which legal system determines the limits of such permission, the law of the country where the abortion is performed or the law of the country of residence? In other words, can an abortion that is permitted under the law of the country of action and prohibited under the law of the woman's country of nationality be considered a crime?

Conclusion

Western scientists have different criteria for the individuality of the fetus, since conception, placenta formation, brain wave activity and embryo reliability have been proposed. Respecting the fetus and preventing the unwanted abortions on the one hand and embryos not having human characteristics, on the other hand, has led scientists to these very different opinions. But this problem did not arise in Islam because its rich jurisprudence has blocked the way to create this problem from the beginning. The comparison between the answer of the jurists and the supreme wisdom validates the harmony of this school with the Shia jurisprudence.

Therefore, it seems that considering the negative functions of unprocedural abortion outside the scope of a person's life (and apparently tourism) such as the violation of the mother's right to life, her physical integrity and the death of mothers in inappropriate logistical conditions and the occurrence of unsafe abortions from the place of residence is protected by law enforcement. Also, the following conditions may help to reduce these trips.

1. Plans should be made for the legal restriction of such abortions.
2. Supporting the right to life of the fetus will naturally have fewer complications than the widespread freedom of abortions in tourism for individuals, families and society.
3. It is also recommended that judicial prosecutors evaluate the causes of such a problem and try to reduce it.
4. Perhaps judicial authorities can use Articles 56 to 61 of the Family and Youth Protection Law and Articles 716 to 720 of the Islamic Penal Code regarding the prohibition of abortion. This crime is one of the crimes with a general aspect so that follow-up and preparation of appropriate legal mechanism can be provided.

Ethical considerations

In all stages of writing this research, while respecting the originality of sources and information, honesty and trustworthiness have been observed.

Funding

No finding was found to assist with the preparation of this manuscript.

Conflict of Interest

There was no conflict of interest in this manuscript.

References

1. Woźniak-Holecka J, Romaniuk P, Holecki T, Frączkiewicz-Wronka A, Jaruga S. Health promotion development in the spa treatment. Perspectives for the European countries learned from Poland's experiences. Front Pharmacol 2017;8:29.

2. Pocock NS, Phua KH. Medical tourism and policy implications for health systems: a conceptual framework from a comparative study of Thailand, Singapore and Malaysia. Global Health 2011 May 4;7:12.

3. Jakovljevic M, Potapchik E, Popovich L, Barik D, Getzen TE. Evolving health expenditure landscape of the BRICS nations and projections to 2025. Health Econ 2017 Jul;26(7):844-52.

4. Vovk V, Beztelesna L, Pliashko O. Identification of factors for the development of medical tourism in the world. Int J Environ Res Public Health 2021 Oct 25;18(21):11205.

5. Freyer W, Kim BS. [Medical tourism and travel - an interdisciplinary approach]. Gesundheitswesen 2014 Jan;76(1):65-8. German.

6. Cohen G. Circumvention tourism. Cornell Law Rev 2012 Sep;97(6):1309-98.

7. Sethne C, Doull M. Accidental tourists: Canadian women, abortion tourism, and travel. Women Stud 2012;41(4):457–75.

8. Cohen, I. Glenn, Protecting patients with passports: medical tourism and the patient protective-argument (June 9, 2010). Iowa Law Rev 2010;95(5).

9. Tabatabaei Nejad SM, Erfanmanesh MH, Abbasi M. [Legal tourism, ethical considerations and applicable law in abortion.] Quarterly J Med Ethics 2016;9(34):77-106. Persian.

10. Blinken AJ. Europe's abortion wars: womb for debate. Conscience 1991 Sep-Oct;12(5):18-9, 39.

11. Abbasi M, Rezvani S, Ghasemipour S. [Comparative study on conditions of therapeutic abortion.] Sci J Forens Med 2015;21(2):107-16. Persian. https://sjfm.ir/browse.php?a_id=697&sid=1&slc_lang=en

12. Smith MH, Muzyczka Z, Chakraborty P, Johns-Wolfe E, Higgins J, Bessett D. Abortion travel within the United States: an observational study of cross-state movement to obtain abortion care in 2017. Lancet Reg Health Am 2022 Mar 4;10:100214.

13. National statistics, abortion statistics for England and Wales: 2017, statistics and commentary on abortions carried out in 2017, Department of Health and Social Care, 2018.

14. Garnsey C, Zanini G, De Zordo S, Mishtal J, Wollum A, Gerdts C. Cross-country abortion travel to England and Wales: results from a cross-sectional survey exploring people's experiences crossing borders to obtain care. Reprod Health 2021 May 22;18(1):103.

15. Jubert A, Bayen M, Serman F, Robin G, Catteau-Jonard S, Ollivon J, et al. Medical tourism for late abortion: women's profile and circumstances. A quantitative study among women who travelled within Europe for late abortion. Sex Reprod Healthc 2023 Jun; 36:100824.

16. Rahm L, De Zordo S, Mishtal J, Garnsey CL, Gerdts C. Inter-departmental abortion travels in metropolitan France: a mixed-methods analysis of women's experiences, access, and barriers to abortion care. PLoS One 2022 Oct 4;17(10): e0273190.

17. Holten L, de Goeij E, Kleiverda G. Permeability of abortion care in the Netherlands: a qualitative analysis of women's experiences, health professional perspectives, and the internet resource of Women on Web. Sex Reprod Health Matters 2021 Dec;29(1):1917042.

18. De Zordo S, Zanini G, Mishtal J, Garnsey C, Ziegler AK, Gerdts C. Gestational age limits for abortion and cross-border reproductive care in Europe: a mixed-methods study. BJOG 2021 Apr;128(5):838-45.

19. Hessini L. Islam and abortion: the diversity of discourses and practices. IDS Bullet 2008;39(3):1-10.

20. Asman O. Abortion in Islamic countries—legal and religious aspects. Med Law 2004;23(1):73-89.

21. Shapiro GK. Abortion law in Muslim-majority countries: an overview of the Islamic discourse with policy implications. Health Policy Plan 2014 Jul;29(4):483-94. https://pubmed.ncbi.nlm.nih.gov/23749735/

22. Crabbs Karen Y. "The German Abortion Debate: Stumbling Block to Unity," Florida J Int Law 1991;6(2):213-31.

23. Ghodrati F, Saadatmand N, Gholamzadeh S, Akbarzadeh M. Investigation of the prevalence and causes and of legal abortion of teenage married mothers in Iran. Int J Adolesc Med Health 2018 Feb 5;32(1):/j/ijamh.2020.32.issue-1/ijamh-2017-0091/ijamh-2017-0091.xml. https://pubmed.ncbi.nlm.nih.gov/29397381/

24. Ghodrati F. Controversial issues of abortion license according to religious and jurisprudential laws in Iran: a systematic review. Curr Women Health Rev 2020;16(2):87-94.

25. Tayebi N, Radmehr Z, Ghodrati F. Contemporary jurisprudence and legal abortion in Asian Muslim countries: the

politics of global abortion rights. Curr Women Health Rev 2025 May;21(3):E200224227186.

26. Cohen DS, Donley G, Rebouché R. Abortion shield laws. NEJM Evid 2023 Mar 28;2(4):EVIDra2200280.

27. Cohen DS, Donley G, Rebouché R, Aubrun I. Understanding shield laws. J Law Med Ethics 2023;51(3):584-91.

28. Shira S. The unexpected opponent to telehealth abortion shield laws: planned parenthood. 2024.

29. Roth LM, Lee JH. Undue burdens: state abortion laws in the United States, 1994-2022. J Health Polit Policy Law 2023 Aug 1;48(4):511-43.

30. Connell, J. Medical tourism. Wallingford; 2011. Extremes, Ethics, and Inequalities; p. 137-58.

31. Donelson R. Forbidden purposes: a new path for limiting criminalization. J Crim L Criminol 2024;113(4):771-801.

32. Cohen DS, Donley G, Rebouché R. The new abortion battleground. Colum L Rev 2023;123:1.