



Investigating the Inheritance of Fetus in the Civil Law of Iran and France

Mohammad Reza Mohammadzadeh Rahni¹, Peyman Kavousi², Reza Emami Rad³

¹Department of Humanities, Shirvan Branch, Islamic Azad University Shirvan, Iran

²Graduated student, Department of Humanities, Shirvan Branch, Islamic Azad University Shirvan, Iran

³MA student, Department of Humanities, Mashhad Branch, Islamic Azad University Mashhad, Iran

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ABSTRACT

The fetus or unborn child that is in the womb in Iran's civil law is called Haml. In Iran's civil law, alike that of France, Haml has no civil right, because, the capacity of having civil rights begins with the birth of the human being and ends with his death. Human being can't have rights either before the birth or after the death. For example, in case of having the necessary conditions, the legacy in favor of an unborn child is valid, but the proprietary rights only pass if the child is born alive. According to the Article 957 of Iran's civil Law, "Haml will enjoy civil rights provided that it comes into the world alive". Here, there is a difference between the Civil Law of Iran and France so that according to the Iran's civil law, if Haml is born alive then he/she would have his/her civil rights, but in France civil law in addition to this requirement, it is said that the born child must have also the chance of continuing his life.

KEYWORDS: Fetus, Haml, Rights, Islamic Republic of Iran, France.

INTRODUCTION

The word 'Haml' is derived from the word 'GNE', which means covered and hidden, because the child, in fact, is covered and hidden in the womb of his mother. In Iran's civil law to refer to the word fetus, the word of Haml has been used.

The evolution trend of fetus suggests that the fetus after passing the evolution stages in the womb would be born as a living babe and then would continue his life outside the womb. However, in some cases, for some reasons the fetus would be stillbirth or aborted.

In this study, we have investigated the rights of fetus, or in legal terms Haml, and have tried to answer the question that whether fetus could have any right, including civil rights, or not?

For example if the fetus is in a condition, which qualifies him as an heir, whether the legacy can be given to him or not?

If yes, how his share and share of others would be determined? How about its rights if the fetus is born stillbirth or dead immediately after birth? To answer to these questions, the Civil Law of Iran and France have been investigated.

Legally, the existence of any human being begins with his birth. Although, from the perspective of biologists, the fetus is an independent creature and is considered a human being, but legally, until he is not born alive would not be considered as an independent human and, therefore cannot have any right or duty. Nevertheless, in some exceptional cases, fetus can possess rights even prior to his birth, provided that he is born alive (Safayi, 2004: 30/1). In this case, Article 957 of Iran's civil code stipulates that "Haml possess civil rights, provided that it is born alive". So, it can be said that fetus has a kind of personality or an incomplete legal personality and he can possess rights. For example, it is possible that someone to device in favor of the fetus and this way, some rights would be given to him (Article 851 of civil code). Also, according to law, fetus will be inherited (Article 875 of civil code), provided that it is born alive so that its being alive should be proved by its movement or voice (Shahid Sani, 1992: 547/11; Helli, 1990: 260/13; Kashani, 1990: 316/3).

The difference between the two civil laws is that in Iran's civil law, being alive of Haml is enough to he possess rights and the capability of being kept alive is not needed. It means that it will be inherited if its living is approved by its crying or movement of hands or feet, even if it died immediately after birth. But, in France law, in addition to that his life must be continued for some times and accordingly, if fetus was born alive, but due to any disease, it is clear that he would soon die, no inheritance would belong to him (Safaei, 2004: 30/1).

*Corresponding Author: Mohammad Reza Mohammadzadeh Rahni, faculty member, Department of Humanities, Shirvan Branch, Islamic Azad University Shirvan, Iran

According to this precept, in Iran's civil code, fetus will be inherited even in case that abortion takes place as the result of a crime, provided that it was born alive even for second after exit from the womb (Isfahani, 1985: 434.15).

In all these cases, the child will be inherited provided that he/she is born alive and then dies. In this case, properties will be inherited to the fetus' heirs; as a result, the way of distribution of inheritance will be changed partially or totally, because, in cases where the fetus is one of the heirs, e.g. fetus was a child of a deceased who has other children, then the portion of two son must set aside for the fetus and the rest of the estate must be divided among the heirs equally (Shahid Sani, 1992: 260/13, Ardebili, 1982: 547/11, Bohrani, 1994: 408.14, Ameli, 1995: 98/8).

After the fetus comes into the world stillbirth, his portion will be divided among the other heirs (if he comes alive, he will be inherited). In this case, if the fetus is a boy, half the portion goes to him (cause portion of two sons was set aside) and the rest of the estate will be divided among the other heirs including the fetus itself. On the other hand, if the fetus is a girl, one daughter portion is set aside and goes to her. The rest of the estate will be divided among the other heirs. In third case, in case the fetus is a twin (two girls), half of one son portion is set aside (as daughter's portion is half of the son's, so portion of two girls is equal to one boy) and the rest of the estate will be divided among the other heirs.

In the fourth case, the number of infants is equal to the estate; for example, four daughters and two sons. In such a case, that estate will be divided among them. In fifth case, the number of infants is more than the estate and the estate is insufficient for them. In such a case, other heirs must put some of their portions and meet the infants' one.

In sixth case, supposed that the fetus is the only heir of the deceased person and other heirs are in other classes of the succession (in case there is no fetus, they will be inherited). In such a case, if the fetus comes alive, all the estate will go to him/her; there is no division until the approval of fetus living. So, if it comes alive even for one second, all the estate goes to him/her and the other classes will not be inherited.

In all the above cases, the estate will go to fetus' heirs after its death; fetus heir is his/her mother or the wife of the deceased person; mother of the fetus who was inherited little portion as the wife, will inherited more or in case of the latter one all the estate. This is how the distribution of the estate changes.

We should note that in Islamic rights, there is no need for the fetus to reach a specified stage of the evolution at the moment of his estate leaver; even if it is in conception or even before it and then proved to be, it will be inherited (Isfahani, 1983: 233.23).

Also, it should be noted that if the fetus comes stillbirth such that part of its body exited from the womb alive and then it dies, it will not be inherited, because it must come into the world alive completely to be inherited (Shirazi, 2008: 162.1, Bohrani, 1995: 408.14).

Conclusions

The word Haml is derived from Jinn. It means covered and hidden; the child is hidden in the womb. The word fetus (plural fetuses) is from the Latin *fētus* ("offspring"). Haml is not included in Iran's civil rights alike the France one, because, the capacity to possess rights begins with the birth of a human being and ends with his death. One can't have rights either before birth or after death. For example, in case of having the necessary conditions, the legacy in favor of an unborn child is valid, but the proprietary rights only pass if the child is born alive; th portion of two sons set aside until it comes into the world. If it is alive, it will be inherited the foresaid portion. In this case, if the portion is more than the number of the infants, rest of the estate will be divided among the other heirs including infants themselves, after the infants' portion was delivered to them. If the foresaid portion is sufficient for the infants, there is no need for any division else. If infants' portion is more than the foresaid portion, then other heirs must meet the shortage from their shares. As it is said in Article 957 of Iran's civil code, "a child in the womb will enjoy civil rights provided that it comes into the world alive".

The difference between the two civil rights is that in Iran's civil rights, if Haml is born alive, he/she will be inherited. But, in France civil rights, the beneficiary must be alive, and must be able to be the proprietor of the thing which is left to him.

We should note that in Islamic rights, there is no need for the fetus to reach a specified stage of the evolution at the moment of his estate leaver; even if it is in conception or even before it and then proved to be, it will be inherited. Also, it should be noted that if the fetus comes stillbirth such that part of its body exited from the womb alive and then it dies, it will not be inherited, because it must come into the world alive completely to be inherited.

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