

جريمة الإجهاض في القانون الوضعي والفقہ الإسلامي

()

:

2007

-

:

-

2010

بسم الله الرحمن الرحيم

{13} {12} :

{{14}}

14 13 12

() :

93

() :

33

-:

)

.(

-: ()

-:

.....

.....

.....

.....

.....

.....

1.....

3..... :

4..... :

5..... :

8..... :

9..... :

12..... :

15..... :

19..... :

24..... :

26..... :

29..... :

34..... :

36..... :

37..... :

42..... :

44.....	:	
46.....		:
47.....	:	
53.....	:	
61		:
62.....		:
		:
63.....		
66....		:
68.....		:
69.....	:	
72.....	:	
74.....	(-)
78.....		

Abstract

Tag Alsir Ahmed Algizuli Mohamed

The Crime of Abortion between the Positive law and Islamic (Sharia) (A comparative Study)

This thesis is the crime of abortion as in the positive legislations. specifically in the Sudanese, Egyptian, English and Islamic legislations.

The study mainly aims to reveal the definition of abortion crime and the differentiation between the abortion crime and the similar acts. It also explains the provisions of abortion crime both positive legislations and the Islamic jurisprudence.

It is found that the Islamic legislation is characterized with depth and reality and therefore it overtops the positive legislations especially in respect of the embryo protection. there is no legislation providing any provisions in respect of embryo assault. **But** the Sudanese legislation is insufficient in respect at determination of the pregnancy commence and has no express provisions in respect of initialing and contribution to the abortion crime. In addition, it stresses no special penalty for those in certain relevant jobs. such as the workers in the medical field when they commit such crime.

)

.(

(2)

(1)

(3)

. 1861

. 1991

137 136 135

¹

264-260

²

59-58

³

) :

.(

.

.

.

- :

.

.

.

.

⋮

⋮

(1)

(2)

(3)

(4)

				. 1991	135	1
	.295	- 2005 -		-		2
	.29	- 1996		-	-	3
. 2000		-	- 314	-	-	4

/2

/3

(1)

/4

(2)

.34	-	-	. ¹
.297	-	-	. ²

(1)

-:

:

:

:

:

. 1993

-510 -

-

1



- 1985	- 227-226	-	-	1
	- 1402	-347	-	2
	- 1948	-815	-	3
-	1398 -31	-	-	4
	- 1948	- 579	-	5

(1)

(2)

-

(3)

(4)

(5)

.197	-	-	1
.531	-	-	2
.316	-	-	3
.316	-	-	4
.301	-	-	5

:(2) (1)

For the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more shall be prime facie proof that she was at that time pregnant of a child capable of being born a live.⁽¹⁾

(2)

:

(3)

Archbold's - 1929 ()¹
pleading, Evidence and practice: in crimnal cases, 33 Edition by Butler and Garsia, sweet and
.maxweel- ltd 1954.

.Glanville Williams .p.249²
.p.249³

(1)

(2)

(3)

	.	- 269	- 4	-					1
. 1390	-	- 778	-		-				2
					.294	-	-		3

(2)

(1)

(3)

1991

(4)

.197	-	-	. 1
.317	-	-	. 2
512	-	-	. 3
.210	-	-	. 4

(1)

(2)

)

(3) (

It impossible to formulate any general theory of causation so for as the law is concerned ... all can be done there is to state number of general rules which determine the issues of causation.⁽⁴⁾

(5)

.542	-	-	1	
		.543	-	2
.318	-	-	3	

Cross and jones, intraduction to criminal law- Eight, edition, Butter Worth, London, 1976. ⁴
.p136.

Gross and jone -p136 ⁵

(1)

(2)

(3)

(4)

(5)

) :

: (7) 135 (6) ()

-	-	-	-	1995	723	-	1
					.542	-	2
						1991	3
					. 1991		3 4
					.215	-	- 5
					. 1991		3 6
					. 1991		145 7

.(

:

.1

.2

.3

(1)

)

(2)

136

.(

:

.1

.2

.3

135

136

(3)

(4)

(5)

.301	-	-	.	1
. 1991			136	2
. 1991		136 -135		3
. 1991		136 -135		4
.327	-	-	.	5

(1)

.519 - _____ 1

⋮

·
-:
:
:

-:

.

:

(1)

(2)

:

(3)

59-58

261-260

1991

135136

¹

.1861

257 240 236

1991

133-130

²

61 1991

/1/145

³

. 1967

∴
(1)

(2)

(4)

(3)

(5)

∴

(6)

(7)

(8)

	357	240	236	1991	<hr/>		133-130	1
				261-260	91		136-135	
		261-260	1991				136-135	2
		.268	- 4	-				3
				.519	-	-		4
59-58		261-260	1991				135136	5
						.1861		
							264	6
						- 57	-	7
	1974	246	-			- 59	-	8

(1)

(2)

) : (3)

(5) () : (4) (

(6)

(7)

	.504	-	-	1
. 1929	-			2
	.23	-	-	3
	.32	-	-	4
	.67	-	-	5
-	-	1985 -12	- 12	6
	.253	-	-	7

(1)

(2)

1925

(3) 253 251

:

(4)

.1

.297	-	-	.	1
. 1991		135		2
. 1925				3
.6	-	1966		4

(1)

.2

(2)

.3

/253

) :

1974

(3)

(4)

.(

-. /253

.1

.2

.146 - 1961

1

.92 - 1962

2

.(1) 1974

/253

3

.(2) 1974

/253

4

.3

-: 1938

())

(1) (

(2)

(3)

) : 137 (4)

(5) (

(6) 266

-:(7)

.1

.2

(1)	1974		/253	1
.	1974/1925	1991		2
	.302	-		3
		. 1991		4
	. 1991		137	5
	. 1983/1974			6
		-		7

.3

.4

.5

(1)

(3)

(2)

(4)

(5)

267

)

(6)

.(

	.83/74	266	1991	137	1
. 1979	-	1974	-		2
					3
. 1974		266	1991	137	4
		.(3) 1974	246	5
			.307 - 1974		6

:

(1)

-:

.1

.2

.3

:

:

:

:

:

-:

.

:

:

.

-:

:
:
:

.(1)

(2)

.(3)

.(4)

.(5)

.(6)

.126-121	-	-	.	1
. 1991			135	2
.301	-	-	.	3
. 1991			135	4
.261	-	-		5
. 1991			136	6



.206	-	-	.	1
.1991			137	2
.261	-	-		3
.261	-	-		4
.262	-	-		5
.262	-	-		6
.262	-	-		7
			260	8
			260	9

(1)

.(2)

(3)

.(4)

.(5)

.(6)

(7)

(8)

				.518	-	-		1
						.1991		2
.	1961						58	3
.	261	1861					58	4
.	1961						59	5
				.66	-	-		6
.		- 160		-	-		-	7
.	-			- 260	267	- -		8

.(1)

.(2)

.108	-	-	-	1
	.812	-	-	2

.(1)

(2) 135 . 1991

(3)

.(4)

.(5)

.109-108	-	-		1
	. 1991		135	2
.301	-	-		3
			262	4
.522	-	-		5

.(1)

.

.301 - - - 1

(1)

:

:

:

.373 - - - 1

(1)
 .
 (2) (
 1983 1974

)

93
 1974
 1983

(3)

(4)

(5)

.547	-	-	. 1
. 1991		19	2
. 1993		19	3
. 1983/74		93	4
. 1991		133	5

Awicked Result

(1) by accident

(2)

(3)

-:

() (4)

S.G V Spiro papa Joanidis

(5)

1861

(6)

		Glanville williams -		
261-260	1991		146-135	1
	-		-	2
	.114	-	-	3
	1991		136-135	4
1861			58	5
				6

(1)

-:

Every woman being with child who with intent to procure her own miscarriage, shall unlawfully administer to herself any poison, or other noxious thing, or shall unlawfully use any instrument, or other means what so ever with the like intent and who so ever with intent to procure the miscarriage of any woman whether she be, or be not with child shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument, or other means what's ever the like intent shall be guilty of aflony.⁽²⁾

(3)

59

-:

Who so ever shall unlawfully supply or procure any poison or other noxious thing or any instrument or thing what so ever knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman whether she be or be not with child shall be guilty of misdemeanour.⁽⁴⁾

1861	58	1
.1861	58	2
.1861		3
.1861	58	4

(1)

(2)

. 346 - 1984

-

-

.350

-

-

1

2

(1)

(2)

(3)

(4)

.513	-	-	1
.554-553	-	-	2
.344	-	-	3
.555	-	-	4

(1)

-:

(2)

-:

)

21

.(

(3)

(4)

	. 1991	21	¹
. 2003	-	- 2003/276 / /	²
.	-	2/39	³
.560	-	-	⁴

(1)

(2)

(3)

(4)

(5)

1991

(6)

(7)

.Abortion: medical and social implication – Mason and Mccol 1991- p161 ¹

.281	-	-	.	²
.568	-	-	.	³
.346	-	-	.	⁴
.346	-	-	.	⁵
. 1991			23	⁶
. 1983/74				⁷

(1)

(2)

(3)

(4)

(5)

) :

(6)(

) :

(7)(

(8)

			. 1991		23	1
	.218	216	-	-	-	2
.1910		-180	-	-		3
		.347	-	-		4
		.347	-	-		5
	.(1)	1991			25	6
	.(3)	1991			25	7
	.(4)	1991			25	8

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

	(3)	1991			1
	(4)	1991		25	2
				171	3
		.347	-	-	4
. 1861				59	5
		.347	-	-	6
		. 1991		26	7
		. 1991		26	8

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

			264	1
.1991			26	2
.8	-	-		3
.354	-	-		4
.763	-	-		5
.331	-	-		6
.180	-	-		7
.217	-	-		8
.217	-	-		9
.330	-	-		10

(1)

(2)

.372-371	-	-	1
. 1991		24	2

⋮

⋮

⋮

⋮

.

.

.

-:

:

:

.(1)

.(2)

.(3)

.(4)

.(5)

. 1991	2/135	1
. 1991	136	2
.1983/74	265	3
. 1991	137	4
. 1983/74	266	5

.(1)

.(2)

.(3)

.(4)

(5)

.(6)

.(7)

.(8)

.(9)

.(10)

.(1)

. 1991	20	1
. 1991	21	2
. 1991	22	3
. 1991	23	4
. 1991	2/25	5
. 1991	/2/25	6
. 1991	/2/25	7
. 1991	26	8
.	261	9
.	260	10
.	263	1

.(1)

.(2)

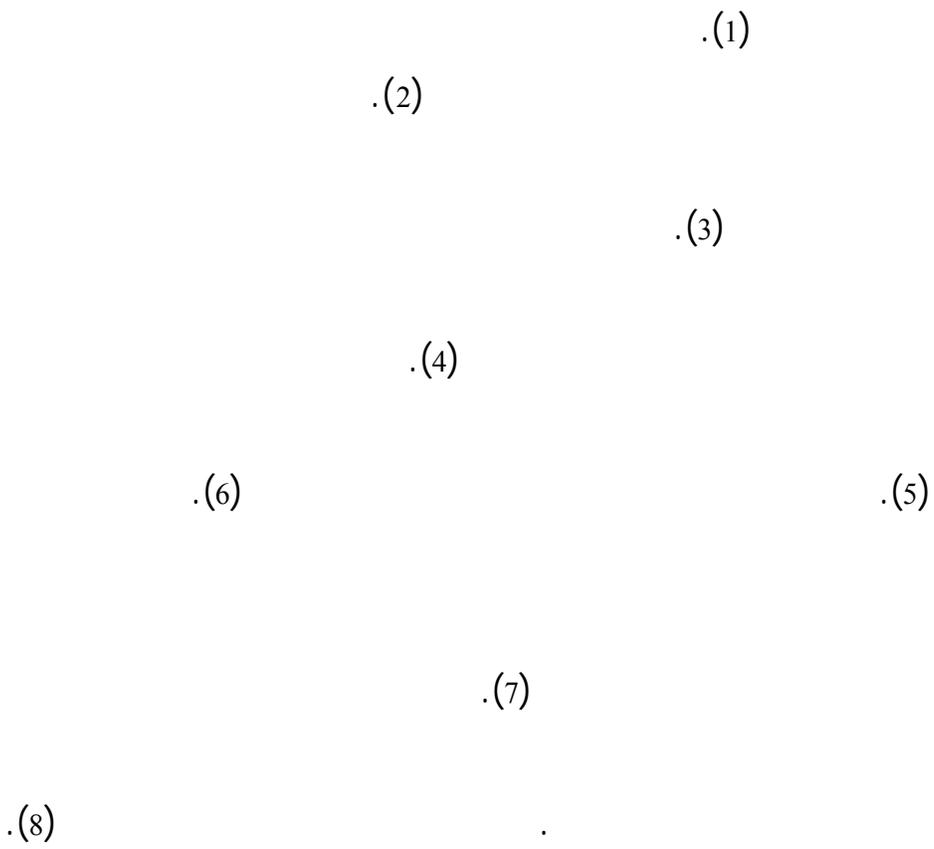
.(3)

.(4)

.1861

.1861

.	262	1
.	264	2
	58	3
	59	4



.	1322	- 107	-	-	1
		.299	-	-	2
		.107	-	-	3
		.806	-	-	4
		.301	-	-	5
.	1292	-100	- -	-	6
		.297	-	-	7
	.297	-	-	-	8

.

-:

.

:

:

.(1)

135

.(2)

. .(3)

.(4)

.(5)

.(6)

-:

.

.1

. 1991		15	¹
. 1991	()	120	²
.	1991	135	³
.()	1991	135	⁴
	.258 - -		⁵
.()	1991	135	⁶

.2

.3

.(1)

.(2)

.(3)

.(4)

.(5)

.305	-	-	.	1
			61	2
.268	-	-	.	3
.552	-	-		4
. 1967				5

·
:

/1

(1)

.(2)

:

/2

.(3)

. 1966

- 183	-					1
- 53	-	-	-			2
- 602	-	-	-	-		3

) :

.(1) (

.(2)

.440 -439 - -1984 . 1967 - - - 1
2

()

-:

.

.

.

.

-:

.1

.2

.3

.4

.()

				:	:
-		- 1985 - 12	-	-	
				-:	:
			-		.1
				.	
	-	-4	-		.2
			.	1373	
		.	- 1948	-	.3
	-		-		.4
			.	1390	
	-	1402	-	-	.5
				.	
-	-	-	-		.6
				.	1983
	-	-	-		.7
			.	-1984	
.	-	-			.8
		.	1292	-	-
				-:	:
	-		-		.1
				.	1992

	-	-	. 1984	-	.2
		-:			
-	-			. 2005	.1
	-	-	. 1988	-	.2
-	-	-			.3
			. 1995	-	
1985	-	-			.4
	-				.5
			. 1996		
		- 1991			.6
			. 2005-		
-191	-	. - 1991			.7
		. 2008	-		.8
			. 1974		
-	- ()				.9
		. 1993			
-	-	-			.10
		. 1983	-		
-	-				.11
		. 2000	-	-	

-	-	-	.12
		. 2000	
-	-	-	.13
		. -1975	
-	-	-	.14
		. 1996	
		-:	:
		. 1991	.1
		.	.2
	. 1861		.3
	. 1929		.4
		-:	:
	. 1961		.1
	. 1962		.2
	. 1966		.3

1. -Archbold's pleading, Evidence and practice in criminal cases, 33 Edition by Butler and Garsia, sweet and maxwel- ltd 1954.
2. Cross and Jones, introduction to criminal law- 1976 .
3. Glanville Williams textbook of criminal law- London - Stevens @ sons 1968.p.252.