

**Journal of Religion & Society (JR&S)**

Available Online:

<https://islamicreligious.com/index.php/Journal/index>

Print ISSN: 3006-1296 Online ISSN: 3006-130X

Platform & Workflow by: [Open Journal Systems](#)<https://doi.org/10.5281/zenodo.21325659>**The Legitimacy of Abortion in Shariah: Balancing Fetal Sanctity, Maternal Health, and Contemporary Legal Challenges in Pakistan.****Amna Mumtaz**

Ph. D Law Scholar, Department of Law, International Islamic University Islamabad.

[amna.mumtaz11@gmail.com](mailto:amna.mumtaz11@gmail.com)**Pakeeza Shehzadi**

Ph. D Law Scholar, Department of Law, International Islamic University Islamabad.

[shehzadipakeeza4@gmail.com](mailto:shehzadipakeeza4@gmail.com)**ABSTRACT**

*Abortion remains one of the most contested issues at the intersection of Islamic jurisprudence, human rights, medical ethics, and state law. This article critically examines the legitimacy and regulation of abortion under Islamic law, with particular focus on cases involving rape, severe fetal abnormalities, and maternal psychological suffering within the Pakistani legal context. The study explores the classical Islamic jurisprudential approaches of the four major Sunni schools Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī by analysing the significance of fetal development, the doctrine of nafs al-rūḥ (ensoulment), and the distinction between isqāṭ-i-ḥaml (termination of an unformed fetus) and isqāṭ-i-janīn (termination of a formed fetus). It argues that while Islamic jurisprudence places strong emphasis on the sanctity of life, it does not represent a completely uniform prohibition and provides mechanisms for contextual reasoning through principles such as maqāṣid al-sharīʿah, maṣlaḥa (public interest), and darūra (necessity). The article further evaluates contemporary fatwā discourses and reformist approaches that attempt to reconcile traditional Islamic principles with modern medical realities and women lived experiences. Particular attention is given to the ethical challenges surrounding pregnancies resulting from rape, where the preservation of fetal life conflicts with considerations of dignity, psychological well-being, and prevention of harm. The study also critically analyses Pakistan's abortion framework under the Pakistan Penal Code, highlighting the tension between Islamic constitutional principles, restrictive statutory provisions, and emerging international human rights standards. Through comparative analysis with international abortion frameworks, including developments in the United States from Roe v. Wade (1973) to Dobbs v. Jackson Women's Health Organization (2022), the article demonstrates the broader global debate between reproductive autonomy and protection of potential life. It argues that Pakistan's existing framework requires a more nuanced interpretation that incorporates the higher objectives of Islamic law while addressing contemporary realities. The article concludes that a maqāṣid-based approach can provide a balanced pathway by protecting fetal life while recognizing exceptional circumstances involving severe harm, thereby promoting justice, dignity, and compassion within Islamic legal reasoning.*

**Keywords:** Abortion; Islamic jurisprudence; Maqāṣid al-Sharīʿah; Nafs al-Rūḥ; Ensoulment; Rape and Abortion; Pakistan Penal Code; Reproductive Rights; Islamic Bioethics; Human Rights; Maṣlaḥa; Darūra; Maternal Health.

**1. Introduction**

Abortion in Islamic jurisprudence refers to the intentional termination of pregnancy before the birth of the fetus. Within Islamic legal literature, abortion is discussed through various terms, including

al-inzāl, al-ikhrāj, al-isqāt, al-ilqā', and al-istijhād, each reflecting different aspects of the termination process (al-Marghīnānī, 2015). The issue of abortion raises significant ethical, legal, and religious questions, particularly concerning the point at which terminating a pregnancy constitutes a violation of the right to life. The protection of life is a fundamental principle recognized across religious, national, and international legal systems. International human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), affirm that every individual possesses an inherent right to life, liberty, and security (United Nations, 1948; United Nations, 1966). Similarly, the Constitution of Pakistan recognizes the sanctity of human life through Article 9, which guarantees that no person shall be deprived of life or liberty except in accordance with law (Constitution of the Islamic Republic of Pakistan, 1973).

Islamic teachings also place significant emphasis on the preservation and dignity of human life. The Qur'an states that Allah has honoured the children of Adam and granted them special blessings and superiority over much of creation (Al-Qur'an, 17:70). Therefore, discussions surrounding abortion in Islamic jurisprudence are closely linked with the fundamental question of when human life begins and at what stage the fetus acquires legal and moral protection. Central to this debate is the concept of rūḥ (soul), particularly the question of when the soul enters the fetus and whether termination after that point constitutes a violation of the right to life.

Islamic sources, particularly the Qur'an and Sunnah, provide detailed descriptions of fetal development. The Qur'an describes human creation through a series of developmental stages, beginning from a substance derived from clay, followed by the placement of sperm (nuṭfah) in the womb, transformation into a clot ('alaqah), development into a lump (muḍghah), formation of bones, and finally the creation of another form of life (Al-Qur'an, 23:12–14).

These stages form the basis for classical Islamic juristic discussions regarding the moral and legal status of the fetus.

The question of ensoulment is primarily derived from Prophetic traditions (ahādīth). A widely cited narration in Ṣaḥīḥ al-Bukhārī explains that human creation occurs in stages of forty days each, after which an angel is sent to breathe the spirit into the fetus and record matters concerning its lifespan, deeds, provision, and destiny (Ṣaḥīḥ al-Bukhārī, Hadith 3208). Based on this narration, many classical scholars concluded that ensoulment occurs after 120 days of pregnancy. Another narration reported by Ḥudhayfah ibn Asīd suggests that after forty-two nights, an angel is sent to shape the fetus and determine its characteristics, leading some contemporary scholars to consider an earlier stage of fetal recognition (Ṣaḥīḥ Muslim, Hadith 2645). These differing interpretations have contributed to diverse legal opinions regarding the permissibility of abortion before and after ensoulment.

Islamic legal schools have developed different approaches to abortion based on their interpretations of fetal development and the significance of ensoulment. The four major Sunni schools of jurisprudence the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools generally distinguish between three stages of pregnancy: before forty days, between forty and 120 days, and after 120 days. These distinctions influence whether abortion is considered permissible, discouraged, or prohibited.

The Mālikī school adopts one of the strictest positions, generally prohibiting abortion from the earliest stage of pregnancy. According to scholars such as al-Qarāfī, once the sperm develops into a clot ('alaqah), terminating the pregnancy becomes a serious offence, while abortion after

ensoulment is considered equivalent to taking a human life (al-Qarāfī, as cited in Musjidul Haq, 2015). Similarly, the Shāfi‘ī school generally regards abortion as prohibited (taḥrīm), although some scholars within the tradition have allowed limited exceptions under specific circumstances (Al-Bar, 2021).

The Ḥanbalī school presents a comparatively more flexible approach by allowing abortion before 120 days in certain circumstances, as recorded by Ibn Qudāmāh in al-Mughnī (Ibn Qudāmāh, as cited in Musjidul Haq, 2015). The Ḥanafī school also permits abortion before 120 days when the fetus has not yet reached the stage of complete formation, although this permission is generally conditional and should not be exercised without a legitimate reason (Darul Qasim, 2022). Al-Maḥbūbī, in Fath al-Qadīr, explains that the concept of complete creation (khalq) becomes legally significant after ensoulment, meaning that abortion before this stage may be legally tolerated by some jurists, although it remains morally discouraged (Darul Qasim, 2022). Similarly, Fatāwā ‘Ālamgīrī recognizes limited permissibility before 120 days where the fetus has not yet attained full development (Darul Qasim, 2022). However, there is broad scholarly agreement that abortion after 120 days is generally prohibited except in circumstances involving serious necessity, particularly where the mother’s life is at risk.

The Ḥanafī tradition further emphasizes that abortion through medication or other means should not occur without a valid justification. Classical jurists recognized limited exceptions, such as circumstances where continuation of pregnancy could endanger the mother’s life or where breastfeeding another child would become impossible due to pregnancy and no alternative nursing arrangement existed (Association of Muslim Jurists of America [AMJA], 2022). Regarding pregnancies resulting from unlawful sexual relations (zinā), many Ḥanafī scholars maintain that abortion remains impermissible unless exceptional circumstances affecting the mother’s health or life are present (AMJA, 2022).

The situation of abortion following rape represents one of the most debated exceptions within Islamic jurisprudence. Many contemporary Islamic scholars acknowledge rape as a unique circumstance due to the severe psychological, emotional, and social harm experienced by victims. Scholars such as Muḥammad Ramaḍān al-Būṭī and Muḥammad Ṣāliḥ al-Munajjid have argued that abortion may be permitted before 120 days of pregnancy in cases of rape, provided that the decision is made voluntarily by the victim and not imposed by external pressure (Al-Bar, 2021). Some scholars associated with institutions such as al-Azhar University have extended this permission beyond 120 days in exceptional cases where continuing the pregnancy would cause extreme psychological suffering or serious harm to the woman (Al-Bar, 2021). However, other jurists, including scholars from Malaysia and Jordan, maintain that abortion should not be permitted after ensoulment because the fetus is regarded as possessing an independent right to life (Al-Bar, 2021).

These divergent perspectives demonstrate that Islamic jurisprudence does not approach abortion through a single absolute rule but through a complex balancing of competing values, including the preservation of life, protection of maternal health, prevention of harm, and consideration of exceptional circumstances. While the sanctity of life remains a central principle within Islamic law, the existence of differing juristic opinions illustrates the adaptability of Islamic legal reasoning in addressing contemporary ethical challenges. The debate surrounding abortion, particularly in cases involving rape, maternal health risks, and fetal development, therefore reflects the broader Islamic

legal objective of achieving justice ('adl) and preventing harm (dar' al-mafāsīd) while maintaining respect for human dignity.

## 2. Literature Review

Abortion is generally understood as the medical or surgical termination of pregnancy before the fetus reaches the stage of independent survival outside the womb. It involves an intentional intervention to end pregnancy and may occur due to several factors, including threats to maternal health, severe fetal abnormalities, pregnancies resulting from rape or incest, or other medical and social circumstances (Ilyas et al., 2009). Unlike spontaneous abortion or miscarriage, which occurs naturally due to biological factors such as genetic abnormalities, infections, hormonal disorders, or maternal health conditions, induced abortion involves deliberate medical action to terminate pregnancy (Ilyas et al., 2009). Although abortion is primarily considered a medical procedure, it remains one of the most contested issues globally due to the interaction between religious beliefs, ethical principles, legal frameworks, and human rights considerations (Padela, 2025).

Within Islamic law (Sharī'ah), abortion represents a complex jurisprudential issue involving the interpretation of religious texts, ethical reasoning, and evolving medical knowledge. Islamic legal discourse does not approach abortion through a single absolute prohibition; rather, it examines the permissibility of abortion through principles such as preservation of life (ḥifẓ al-nafs), prevention of harm (dar' al-mafāsīd), necessity (ḍarūrah), and consideration of social circumstances (Abu-Sahlieh, 1994). Classical Islamic jurists developed different positions regarding abortion depending on their understanding of fetal development, the concept of ensoulment (nafkh al-rūḥ), and the degree of legal protection afforded to the fetus at different stages of pregnancy.

The debate becomes particularly complex in cases involving rape because it creates a conflict between two significant ethical concerns: the protection of potential human life and the protection of the physical and psychological well-being of the woman. Islamic jurisprudence generally recognizes the sanctity of life and prohibits unjustified termination of pregnancy; however, contemporary scholars have increasingly examined whether exceptional circumstances, such as rape, constitute a valid justification for permitting abortion before ensoulment (Osman, 2022). Therefore, understanding abortion within Islamic law requires an examination of classical jurisprudence, contemporary Islamic scholarship, medical developments, and legal responses in Muslim-majority countries.

This literature review critically analyses the legitimacy of abortion under Islamic law, particularly in cases of rape, by examining classical Islamic jurisprudential approaches, contemporary scholarly opinions, and modern legal developments. It further explores Pakistan's legal framework, where abortion regulation is significantly influenced by Islamic principles, to assess whether existing laws adequately address the circumstances of rape victims and whether reform is required to reconcile Islamic legal objectives with contemporary human rights standards.

### 2.1 Abortion in Islamic Jurisprudence: A Complex Framework

Islamic jurisprudence (fiqh) provides a detailed but diverse framework for evaluating abortion. The major Sunni schools of law the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools differ in their interpretation of when the fetus acquires legal and moral status. Although the general principle within Islamic law is that abortion is discouraged or prohibited, many jurists recognize exceptions where continuation of pregnancy may cause significant harm to the mother or where serious fetal abnormalities exist (Abu-Sahlieh, 1994). The central factor influencing these differences is the

concept of ensoulment, referring to the stage at which the fetus is believed to receive a soul and therefore attain a higher level of legal protection.

## **2.2 The Role of Ensoulment**

The concept of ensoulment plays a fundamental role in Islamic discussions on abortion. Based on Prophetic traditions (ḥadīth), many classical scholars concluded that the soul enters the fetus after 120 days of pregnancy. A narration recorded in Islamic sources explains that human creation occurs through stages of development, after which an angel is sent to breathe the soul into the fetus and record aspects of its destiny (Rashid, n.d.). Consequently, many scholars distinguish between abortion before and after this stage, considering termination before ensoulment as a matter subject to juristic disagreement, while abortion after ensoulment is generally treated as a grave violation except where the mother's life is endangered (Rashid, n.d.).

The interpretation of ensoulment has significant implications for the permissibility of abortion. Scholars who adopt the 120-day threshold argue that before this point the fetus has not reached full human status, allowing limited exceptions under circumstances of necessity. However, after ensoulment, the fetus is considered to possess a protected status, and abortion becomes comparable to taking an innocent life (Osman, 2022). Contemporary debates have challenged whether the traditional 120-day framework should be reconsidered considering modern embryological knowledge, particularly because scientific evidence demonstrates significant fetal development before this period (Osman, 2022).

The Ḥanafī school is generally considered the most flexible among the four Sunni schools regarding abortion. Classical Ḥanafī scholars permitted abortion before 120 days in certain circumstances where the fetus had not yet developed identifiable human characteristics. Ibn al-Humām argued that before ensoulment the fetus had not attained complete personhood, allowing greater legal flexibility (Abu-Sahlieh, 1994). However, this permissibility was not considered unlimited, as many Ḥanafī jurists still regarded abortion without legitimate reason as morally problematic.

In contrast, the Mālikī school adopts a stricter approach by emphasizing the protection of potential human life from the earliest stages of pregnancy. Mālikī scholars generally reject abortion except where continuation of pregnancy creates a serious threat to the mother's life. Al-Dardīr, a prominent Mālikī jurist, emphasized that the sanctity of life requires protection throughout pregnancy and that fetal existence should not be terminated without necessity.

The Shāfi'ī school occupies a middle position, permitting abortion according to some scholars before ensoulment while maintaining strict prohibition after 120 days. Like the Ḥanafī approach, some Shāfi'ī jurists considered the early stages of pregnancy different from later stages because the fetus had not yet reached complete development (Al-Bar, 2021). The Ḥanbalī school also recognizes limited permissibility during the earliest stages of pregnancy, particularly within the first forty days, but becomes increasingly restrictive as fetal development progresses.

## **3. Theoretical Foundations: Fetus, Life, and Maqāṣid al-Sharī'ah**

The legitimacy of abortion in Islamic law is inextricably linked to foundational principles about the sanctity of life, the moral status of the fetus, and the protection of maternal health. To critically engage with this issue, one must delve into the Islamic understanding of fetal development, ensoulment (nafkh al-rūḥ), and the broader ethical framework provided by the maqāṣid al-sharī'ah (objectives of Islamic law). This section critically reconstructs these theoretical pillars, considering

both classical interpretations and modern reform-driven discussions, with particular attention to the Pakistani legal context.

### 3.1 Stages of Pregnancy and the Concept of Nafkh al-Rūḥ (Ensoulement) at 120 Days

In Islamic jurisprudence, the fetus is not merely a biological entity but a developing creation of divine will, whose moral and legal status evolves across several distinct stages. The Qur'an outlines this progression in Surah al-Mu'minūn, where the stages of human development are described: *nuṭfah* (sperm-drop), *'alaqah* (clot), *mudghah* (chewed-like lump), *'izām* (bones), and *lahm* (flesh). These stages culminate in a "second creation" (*khalq ākhar*), which is associated with the presence of the *rūḥ* (spirit) (Qur'an 23:12–14, as cited in Abdel Haleem, 2004).

In line with Hadith literature, the first 40 days are described as the *nuṭfah* phase, followed by the *'alaqah* phase, and the final 40 days represent the *mudghah* phase, after which the angel breathes the *rūḥ* into the fetus, marking the onset of ensoulment. According to a well-known Hadith of the Prophet Muhammad (peace be upon him), this marks the point at which the fetus is considered fully human and endowed with the potential for moral status, rights, and legal protection (SeekersGuidance, 2026).

The 120-day doctrine has been canonized within mainstream Sunni jurisprudence, making abortion after this period categorically prohibited except when the mother's life is in serious, medically verified danger. However, some scholars, such as Ibn az-Zamlakānī, argue that the fetus achieves its full morphological form (*takhalluq*) much earlier, around 40–42 days, and the *rūḥ* enters a body already prepared for it. This points to the complex relationship between the medical understanding of embryogenesis and the theological doctrine of ensoulment, where the 120-day framework remains a juristic construction used to navigate the tension between protecting life and accommodating medical realities.

In contemporary settings, however, the rigid application of the 120-day rule poses challenges, especially as modern diagnostic technologies can identify severe fetal abnormalities far earlier in the pregnancy. Despite this, many fatwa institutions maintain that any stage before 120 days is morally equivalent, thus limiting the flexibility of Islamic jurisprudence in responding to cases of fetal anomalies, rape, or extreme maternal distress.

### 3.2 Classical Distinction Between Isqāṭ-i-Ḥaml (Unformed Fetus) and Isqāṭ-i-Janīn (Formed Fetus)

Classical Islamic jurisprudence makes an important distinction between *isqāṭ-i-ḥaml* (the abortion of an unformed fetus) and *isqāṭ-i-janīn* (the abortion of a formed fetus). This distinction, which the Pakistani Penal Code (PPC) reflects in its codification, is central to how abortion is treated within the Shariah framework. *Ḥaml* refers to the pregnancy in its early, unstructured phase, while *janīn* denotes a fetus that has developed to the point where it is morphologically complete and, in the view of many scholars, ready to receive the soul (Pakistan Penal Code, 1860; Center for Reproductive Rights, 2026).

The difference in moral and legal gravity between these two stages is reflected in the permissibility of abortion. The early Sunni schools, particularly Ḥanafī and Shāfi'ī, were generally more lenient about *isqāṭ-i-ḥaml* before 40 days, allowing abortion in cases of hardship, marital discord, or fear of an inability to raise a child, especially if both parents consented. Conversely, Mālikī jurisprudence took a more restrictive stance, forbidding any interference with the pregnancy once the womb had "contracted" the semen, effectively marking the transition from *ḥaml* to *janīn*. The

Ḥanbalī school, although it allowed abortion before 40 days, typically permitted it after that only under exceptional circumstances, such as rape or severe fetal abnormality.

This classical taxonomy of pregnancy stages and its legal ramifications, however, often gets oversimplified in modern legal frameworks, such as the PPC, which treats *isqāt-i-ḥaml* and *isqāt-i-ḥaml* as separate criminal offenses but neglects the underlying reasoning that defines their gradation in Islamic jurisprudence. The PPC does not engage with the *maqāṣid*-based rationale that guided classical scholars, and this omission limits the possibility of nuanced legal interpretation (Pakistan Penal Code, 1860; Center for Reproductive Rights, 2026).

#### 4. *Maqāṣid al-Sharī'ah* and the Islamic Ethical Framework on Abortion

The concept of *maqāṣid al-sharī'ah*, or the overarching aims of Islamic law, provides a robust ethical and legal foundation for addressing contemporary dilemmas, such as abortion. Derived from the Qur'an and Sunnah, *maqāṣid* emphasizes that the law is designed not merely to regulate behavior, but to promote justice, mercy, and human welfare (*maṣlaḥah*), while mitigating harm (*mafsadah*). Classical scholars like Abū Ḥāmid al-Ghazālī and Abū Ishāq al-Shāṭibī codified this into five essential principles (*ḍarūriyyāt*): the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). These principles form the moral backbone of Islamic law, with any legislation or decree that safeguards them being deemed legitimate, while those that compromise them are dismissed (Ismail et al., 2018).

Classical *maqāṣid* theory also categorizes human needs into three levels: *ḍarūriyyāt* (necessities), *ḥājiyyāt* (complementary needs), and *taḥsīniyyāt* (embellishments). Among these, the preservation of life (*ḥifẓ al-nafs*) occupies the highest status and is often considered paramount, superseding other goals when rights conflict. For instance, many jurists agree that abortion may be sanctioned to preserve the mother's life, as the *maqāṣid* principle of *ḥifẓ al-nafs* not only covers the physical survival of the mother but also her mental and social well-being (Ilyas et al., 2009).

In modern scholarship, Jasser Auda's systems-based approach to *maqāṣid* has provided a dynamic, adaptable framework to address complex contemporary issues, such as abortion, in ways that preserve the relevance of Islamic law. Auda's "systems theory" stresses openness, multidimensionality, and purposiveness, providing a coherent method for integrating traditional Islamic ethics with modern bioethics and reproductive rights (Auda, as cited in Ismail et al., 2018).

##### 4.1 Balancing the Sanctity of Nascent Life with Maternal Well-being

The application of *maqāṣid al-sharī'ah* to abortion necessitates balancing the sanctity of nascent life with the preservation of maternal health and well-being. A key ethical debate in Islamic jurisprudence surrounds the notion of ensoulment (*nafkh al-rūḥ*), which is generally believed to occur at 120 days of gestation, according to hadith traditions documented in Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Muslim (Ṣaḥīḥ al-Bukhārī, Hadith 3208). This belief holds significant moral weight, as it is commonly understood that after 120 days, the fetus is considered a fully human life with divine rights, and abortion is categorically forbidden, except in cases where the mother's life is in danger. However, before this point, Islamic jurisprudence offers a more nuanced approach, with the four major Sunni schools providing varying degrees of permissibility. The Ḥanafī school, for example, allows abortion up to 120 days with valid reasons, such as preserving the mother's life or alleviating significant hardship, while the Mālikī school is far more prohibitive, generally forbidding abortion at all stages except to save the mother's life. The Shāfi'ī school provides a spectrum of views, allowing abortion up to 42 days post-conception, while the Ḥanbalī school permits it only in the

first 40 days. These differing positions illustrate the flexible, context-sensitive nature of Islamic jurisprudence when it comes to reproductive matters (Musjidul Haq, 2015).

In contemporary fatwas, there is growing recognition of the need to adapt the classical approach to modern realities, where early medical technology allows the identification of severe fetal abnormalities or conditions that threaten the mother's health well before 120 days. Yet, many fatwa institutions still maintain a rigid interpretation that equates the 120-day boundary with the full moral status of the fetus, without fully accounting for the complexities of modern medical diagnostics or the psychological and social consequences of forced pregnancies.

### **5. Ethical Considerations in Cases of Rape or Severe Fetal Abnormalities**

Maqāṣid-based reasoning plays a significant role in addressing cases of abortion arising from rape or fetal abnormalities. The principle of ḥifẓ al-naḥs (the protection of life) mandates safeguarding both the physical and psychological health of the mother (Al-Haj et al., 2019). In cases of rape, where the mother is coerced into pregnancy, Islamic legal scholars such as Ibn Qudāmah have emphasized that women who are coerced into such acts hold no moral or legal responsibility for the resulting pregnancy. This concept of coercion applies not only to physical harm but also to the psychological harm caused by the trauma of rape (Ibn Qudāmah, as cited in IslamWeb, 2026).

Modern fatwas have expanded this rationale, allowing abortion in cases of rape to protect the victim's dignity (ḥifẓ al-ʿird) and mental well-being. For instance, in 1998, Sheikh Muḥammad Sayed Ṭanṭāwī of Al-Azhar issued a fatwa allowing abortion for rape victims (Dar al-Ifta' al-Misriyya, 2013). This aligns with the broader maqāṣid principle of ḥifẓ al-ʿaql (protection of intellect), which encompasses the psychological well-being of the woman. Moreover, fatwas from countries like Sudan (1991) have acknowledged abortion within 90 days of gestation in cases of sexual abuse, further reflecting the application of maqāṣid principles in contemporary legal contexts.

These decisions emphasize the ethical principle of maṣlaḥa (public interest), where the harm of carrying an unwanted pregnancy outweighs the benefit of preserving the fetus. This approach recognizes that protecting the mother's mental and emotional health is an integral part of Islamic law's objectives.

### **6. Role of Maṣlaḥa and Darūra in Justifying Abortion in Extreme Circumstances**

The classical tools of maṣlaḥa (public interest) and darūra (necessity) play a crucial role in contemporary interpretations of abortion. Maṣlaḥa refers to the promotion of public good, and darūra refers to actions taken in cases of necessity when the harm of prohibition outweighs the benefits.

In cases of extreme circumstances, such as a threat to the mother's life or severe fetal anomalies, both maṣlaḥa and darūra can provide justifications for abortion, even after the 120-day mark. However, the application of these principles remains geographically and institutionally uneven. Some countries have adopted more permissive interpretations of maṣlaḥa to allow abortion in cases of rape, severe fetal abnormalities, or psychological distress, while others maintain a more restrictive stance (Singh, 2014).

In the Pakistani context, the PPC's narrow exception for abortion to save the life of the mother reflects the darūra principle but fails to fully engage with the broader maṣlaḥa-sensitive categories that could allow for abortion in cases of rape or severe social and psychological hardship. This lack



of integration between maqāṣid-driven reasoning and statutory law creates a gap that needs to be addressed through comprehensive legal reform.

### **7. Classical and Contemporary Fatwā Discourse on Abortion**

Abortion is a deeply debated issue within Islamic jurisprudence, with classical and contemporary interpretations providing differing perspectives. While the sanctity of life remains a cornerstone across Islamic schools of thought (madhāhib), the interpretation of when abortion becomes permissible has evolved, especially as new medical knowledge has emerged. The following analysis critically examines the opinions of classical and contemporary jurists on abortion, considering their grounding in Islamic principles, their alignment with modern medical knowledge, and their ethical implications.

### **8. Classical Positions on Abortion Across Madhāhib**

The four main Sunni madhāhib Ḥanafī, Shāfi‘ī, Mālikī, and Ḥanbalī—have distinct views on abortion, with each school offering nuanced rulings based on the protection of life and the sanctity of the fetus. A critical reading of these positions reveals both shared principles and significant differences.

#### **1. The Ḥanafī Position**

The Ḥanafī school, particularly through the views of Ibn al-Humām, permits abortion before 120 days of pregnancy. This permissibility is based on the view that the fetus has not yet been ensouled, and thus, the termination of pregnancy does not equate to the taking of a life. However, this permissibility is not unconditional. Ibn ‘Ābideen highlights that abortion before 120 days may be permissible without the husband's consent, but some Ḥanafī scholars, like the author of al-Khāniyah, contend that abortion is not lawful without an acceptable excuse. This illustrates a degree of flexibility within the school, contingent upon circumstances such as maternal health or fetal abnormality (Rahman, 2026).

#### **2. The Mālikī Position**

In contrast, the Mālikī school is more restrictive, forbidding abortion at any stage of pregnancy unless the mother's life is in danger. Al-Dardeer's statement is clear: the fetus is considered sacred once conception occurs, and no abortion is allowed before ensoulment, let alone after. This absolute prohibition places a strong emphasis on the sanctity of life and reflects a conservative approach to the protection of the fetus, even in cases of maternal distress or fetal abnormality (Eich, 2021).

#### **3. The Shāfi‘ī Position**

The Shāfi‘ī school generally permits abortion before ensoulment (120 days), with the stronger position holding that it becomes unlawful once the soul enters the fetus. However, some Shāfi‘ī scholars, such as Abū Ishāq al-Marwazī, have held that abortion may be permissible only before 40 days (not just “before ensoulment”), after which it becomes prohibited. This indicates a more flexible interpretation than that of the Mālikī school but still places significant restrictions on abortion after the first 40 days (Dallal, 2014).

#### **4. The Ḥanbalī Position**

The Ḥanbalī school also allows abortion during the early stages of pregnancy, particularly within the first 40 days, based on the view that ensoulment has not yet occurred. Al-Mardāwī outlines this permissibility in the first 40 days, citing an understanding of embryogenesis that aligns with the Prophetic traditions. However, after this period, the Ḥanbalī view prohibits abortion unless the mother's life is at risk, which is consistent with the stance of other madhāhib (Dallal, 2014).

## 9. Contemporary Fatwā Institutions and Their Rulings

In contemporary Islamic legal discourse, fatwā institutions such as the Islamic Fiqh Academy of the Muslim World League have upheld traditional rulings but have also acknowledged emerging medical and societal challenges, particularly in the context of rape, incest, and fetal abnormalities. Despite significant medical advancements and a broader understanding of embryogenesis, these modern fatwā bodies often maintain a rigid stance on abortion, particularly in cases of rape. For example, mainstream fatwās typically hold that abortion is impermissible even if the pregnancy results from rape, unless the mother's life is in danger. This rigid stance emphasizes the sanctity of life and the concept that the fetus is innocent, regardless of how it was conceived. While this view is deeply rooted in theological principles, it overlooks the psychological trauma and social stigma that women, especially those subjected to wartime rape (such as Bosnian women during the 1992–1995 conflict), may face (Association of Muslim Jurists of America [AMJA], 2026). The insistence on the sanctity of the fetus and the prohibition of abortion, even in the case of rape, can be seen as a failure to address the nuanced realities of women's suffering.

## 10. Reformist Approaches: Balancing Theological Principles with Lived Realities

Reformist scholars have increasingly called for a more flexible interpretation of abortion rulings considering modern medical knowledge and the evolving social and psychological realities faced by women. These scholars often appeal to principles such as *maṣlaḥa* (public interest), *istiḥsān* (juridical preference), and *ʿurf* (customary law) to advocate for abortion in cases of rape, incest, severe fetal abnormalities, or mental health crises.

The *maṣlaḥa* principle justifies abortion to protect the social and psychological welfare of the mother. For example, in cases where carrying the pregnancy to term would cause severe emotional and psychological distress, abortion may be permitted as a lesser harm. Similarly, *istiḥsān* allows for a departure from strict legal interpretations when the consequences of adhering to them would cause undue harm. *ʿUrf*, the principle of acknowledging local customs and evolving societal norms, supports adapting Islamic legal rulings to modern realities, recognizing that the burden of forced pregnancies, especially in cases of rape, may cause more harm than good.

These reformist positions challenge the traditional stance that abortion is always impermissible, especially in cases where the mother's health is at risk, or the fetus is diagnosed with a condition incompatible with dignified life. The Fiqh Assembly of the Muslim World League has supported abortion in cases of severe fetal abnormality within the first 120 days, and some scholars have also argued for abortion in cases of rape during the 41–120-day window (Islamic Fiqh Council of the Muslim World League, 1990).

## 11. A Tension Between Sanctity of Life and Real-World Consequences

Islamic jurisprudence places the sanctity of life as a central ethical concern, and abortion is considered haram (forbidden) in most cases. The traditional understanding of ensoulment at 120 days is a pivotal moment in Islamic rulings on abortion, as it marks the point at which the fetus is considered a living being with rights. However, this theological understanding often clashes with the lived realities of women facing difficult circumstances, such as rape or severe fetal abnormality. The traditional view that abortion is prohibited after 120 days is grounded in the belief that ensoulment occurs at this stage, with the fetus gaining full human status. Yet, this ruling fails to sufficiently consider the psychological and emotional impact on women who are forced to carry a pregnancy to term under traumatic circumstances, especially in cases of rape or incest. Moreover,

the limited exceptions for abortion, such as the mother's life being at risk, do not adequately address the broader social and mental health consequences that may arise from forced pregnancies.

### **12. The Bosnian War: An Example of State Responsibility and Human Rights Violations**

The Bosnian War serves as a tragic example of the intersection between Islamic law, human rights, and state responsibility. During the war, Bosniak women were subjected to systematic rape, often resulting in pregnancies that these women were unable to terminate. Despite Bosnian law permitting abortion, many women were denied access to safe abortion services, either due to being detained or being released too late for an abortion to be performed safely (Bakhtari, 2006).

From an Islamic legal perspective, fatwās continued to uphold the prohibition of abortion after ensoulment, even in cases of rape. This rigid interpretation ignores the profound trauma faced by women who gave birth to the children of their rapists, a trauma that persists long after the child's birth. The Islamic emphasis on the sanctity of life, while ethically consistent, does not provide adequate support for the women who are the victims of violence, leaving them with limited legal recourse (Bakhtari, 2006).

Furthermore, state responsibility in the Bosnian context highlights the failure of both the Bosnian government and the international community to provide medical, legal, and social support to the victims of war crimes, including access to abortion. The lack of recognition and protection of war-born children exacerbates the injustice faced by these women, reinforcing the need for a more compassionate and nuanced approach to abortion within Islamic law.

### **13. Abortion in the Pakistani Penal Code: Shariah–State Interface**

The issue of abortion in Pakistan is a complex intersection of Islamic law, state law, and medical ethics. The Pakistan Penal Code (PPC) criminalizes abortion in most cases, but provides specific exceptions, particularly when the life or health of the mother is at risk. This regulatory framework is influenced by Islamic jurisprudence, which historically shapes Pakistan's legal structure, and it is important to critically examine how the Shariah-state interface operates in the context of abortion.

#### **13.1 Historical and Doctrinal Backdrop**

The foundations of Pakistan's criminal law, including abortion regulations, trace back to the Indian Penal Code (IPC), which was inherited from British colonial rule. However, post-independence, Pakistan undertook an Islamic reform era, incorporating elements of Islamic law (Shariah) into the legal framework. These reforms aimed to align Pakistan's laws with the teachings of Islam, particularly in matters such as family law and reproductive rights.

The reform era saw significant legal changes, especially in the early 1990s, when Pakistan's abortion law was modified to reflect Islamic principles. For instance, abortion was criminalized under the Pakistan Penal Code (PPC), but exceptions were introduced for cases where the mother's life was in danger. However, despite these reforms, the law remained restrictive, offering little room for broader exceptions, such as those for rape or severe fetal abnormality.

Thus, abortion in Pakistan became a highly regulated act with limited provisions, influenced both by Islamic rulings on the sanctity of life and by colonial-era criminal laws.

#### **13.2 Analysis of Sections 338–338-C**

The main provisions governing abortion under the PPC are outlined in Sections 338 to 338-C, which distinguish between *isqāt-i-ḥaml* (abortion of an unformed fetus) and *isqāt-i-jaṇīn* (abortion of a formed fetus). These sections codify abortion as a criminal offence, but with certain exceptions. *Isqāt-i-ḥaml*: This refers to causing the miscarriage of a fetus before it is fully formed. Under Section 338, the punishment is up to three years' imprisonment if the abortion is performed with the

woman's consent. If the abortion is done without her consent, the punishment can increase to up to ten years. This provision reflects an understanding that abortion is a serious matter, but it is not an absolute crime when the woman's life or health is at risk (Pakistan Penal Code, 1860).

*Isqāt-i-Janīn*: This refers to abortion of a fetus that has developed organs and is closer to the point of ensoulment. Section 338-B provides for higher punishments for abortion at this stage, reflecting the fact that the fetus is seen as more developed. If the fetus is aborted and born dead, the offender must pay blood money (*diyat*). The higher penalties indicate the state's increasing recognition of the fetus as a life deserving of protection (Pakistan Penal Code, 1860).

The law, however, is narrow in its exceptions. The abortion must be done in good faith to save the woman's life or to provide necessary medical treatment. Thus, even if abortion is performed for medical reasons, it is still treated as a criminal act unless it falls within the narrowly defined exceptions of "good faith".

### **13.3 Punitive Structure and Its Normative Implications**

The punitive structure under Sections 338 to 338-C of the PPC differentiates between the stages of pregnancy (unformed vs. formed fetus) and consent, reflecting both medical and moral considerations in the legal framework.

For *isqāt-i-ḥaml* (miscarriage of an unformed fetus), the penalty ranges from three years for consensual abortion to ten years for non-consensual abortion. This reflects a gradual approach to punishment, since the fetus is not yet fully formed (Pakistan Penal Code, 1860).

Under Section 338 of the Pakistan Penal Code (PPC), if *isqāt-i-janīn* occurs, the offender is liable to one-twentieth of the *diyat* if the fetus is born dead, full *diyat* if the fetus is born alive but dies due to the offender's actions, and imprisonment for up to seven years as *ta'zir* for the offense. These penalties aim to address the moral and legal consequences of causing harm to the fetus (Pakistan Penal Code, 1860).

This punitive structure aims to balance the sanctity of life with the reproductive rights of the mother. It reflects an attempt to preserve the fetus' life while considering the health and autonomy of the mother. However, there are significant gaps in the law, especially in cases of rape or severe fetal abnormality, where no clear legal exceptions exist.

## **14. International Law Perspective on Abortion: Comparative Analysis with Pakistan**

The international legal perspective on abortion reflects a complex interaction between human rights principles, reproductive autonomy, women's health, and the authority of states to regulate pregnancy termination. Globally, abortion has been approached through competing legal and ethical frameworks, with some jurisdictions recognizing abortion as part of women's fundamental rights while others emphasize the protection of fetal life based on religious, moral, or constitutional principles. The debate demonstrates a continuing tension between individual autonomy and state responsibility to protect potential human life. A comparative examination of developments in the United States, international human rights discourse, and Pakistan's legal framework illustrates the different approaches adopted towards abortion regulation.

### **14.1 Abortion Rights in the United States: From *Roe v. Wade* to *Dobbs v. Jackson***

The United States provides one of the most significant examples of the changing legal status of abortion rights. In *Roe v. Wade* (1973), the United States Supreme Court considered whether the Constitution protected a woman's right to terminate her pregnancy. The case arose from a challenge to Texas laws that criminalized most abortions except where the life of the mother was at risk. The Supreme Court held that the constitutional right to privacy, protected under the Due Process Clause

of the Fourteenth Amendment, extended to decisions relating to pregnancy, family planning, and reproductive choices.

The decision in *Roe v. Wade* represented a major development in reproductive rights by establishing that abortion was constitutionally protected at the federal level. The Court attempted to balance the woman's right to privacy against the state's interest in protecting potential life. It introduced a trimester-based framework, under which the first trimester provided stronger protection for the woman's decision to obtain an abortion, while the state could impose increasing restrictions as pregnancy progressed. After fetal viability, the state's interest in protecting potential life became stronger, allowing greater regulation of abortion.

For almost five decades, *Roe v. Wade* served as the foundation of abortion law in the United States and influenced reproductive rights debates internationally. However, this constitutional protection was significantly altered by the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022).

In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court examined the validity of Mississippi's law prohibiting most abortions after fifteen weeks of pregnancy. The legislation directly challenged the principles established in *Roe v. Wade* and *Planned Parenthood v. Casey* (1992), which had protected abortion rights before fetal viability. A central issue in the case was the concept of fetal viability, referring to the stage at which a fetus may survive outside the womb with medical assistance.

Mississippi's legislation prohibited abortions after fifteen weeks except where the woman's life was at risk or where the fetus had severe physical abnormalities. The Supreme Court, by a majority of five justices, held that the United States Constitution does not expressly recognize a constitutional right to abortion. The majority concluded that abortion regulation should be returned to individual states because the Constitution did not provide federal protection for abortion rights.

The decision in *Dobbs* significantly transformed abortion regulation in the United States by allowing individual states to establish their own abortion laws. Unlike the approach under *Roe*, where abortion rights were protected through constitutional interpretation, *Dobbs* emphasized state authority and removed abortion from the category of federally protected constitutional rights.

#### **14.2 International Human Rights Perspective on Abortion**

International human rights organizations, including Human Rights Watch and Amnesty International, approach abortion primarily through the framework of reproductive autonomy, healthcare rights, equality, and protection from discrimination. These organizations argue that access to safe and legal abortion relates to internationally recognized human rights principles, including the rights to life, health, privacy, dignity, and equality.

The international human rights approach relies upon instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). According to this perspective, women's ability to make decisions concerning pregnancy and reproduction forms part of their personal autonomy and right to participate equally in social, economic, and personal life.

International organizations argue that restrictive abortion laws may contribute to discrimination against women by limiting their ability to control decisions relating to their bodies and reproductive health. This argument is particularly connected with CEDAW, which requires states to eliminate discrimination against women and ensure equal access to healthcare services. From this

perspective, denying abortion access, especially in cases involving rape, severe fetal abnormalities, or serious threats to maternal health, may place unequal burdens on women and undermine gender equality.

Furthermore, international organizations argue that criminalizing abortion does not eliminate the practice but instead increases the risk of unsafe procedures. According to this view, restrictive abortion laws may result in preventable maternal injuries, health complications, and deaths by forcing women to seek unsafe alternatives. Therefore, access to safe abortion services is considered necessary to protect women's right to health and life.

#### **14.3 Pakistan's Legal Framework and Its Relationship with International Abortion Standards**

The application of international abortion standards within Pakistan is shaped by Pakistan's dualist legal system, constitutional framework, and Islamic legal principles. Unlike monist legal systems where international treaties may automatically become part of domestic law, Pakistan follows a dualist approach. This means that international treaties do not automatically create enforceable domestic rights unless Parliament incorporates their provisions through legislation.

Therefore, although Pakistan has ratified international human rights treaties, including CEDAW, these obligations do not automatically override domestic laws or constitutional principles. International organizations and non-governmental organizations argue that Pakistan's commitments under CEDAW require legal reform to strengthen women's rights, particularly regarding reproductive healthcare, equality, and protection from discrimination.

However, reform of abortion law in Pakistan is complicated because abortion regulation is closely connected with Islamic principles and constitutional requirements. The Constitution of Pakistan establishes that sovereignty belongs to Allah and requires the legal system to operate according to Islamic teachings. Article 227 of the Constitution provides that all laws must be brought into conformity with the injunctions of Islam, and no law may be enacted that contradicts the Qur'an and Sunnah.

Similarly, the Shariah Implementation Act 1991 reinforces the requirement that legal interpretation must remain consistent with Islamic principles. Therefore, abortion law in Pakistan cannot be examined solely through the framework of international human rights but must also consider Islamic jurisprudential principles concerning the sanctity of life, fetal status, and necessity.

The legal regulation of abortion in Pakistan is primarily contained within Sections 338 to 338-C of the Pakistan Penal Code. These provisions distinguish between *isqāṭ-i-ḥaml* (abortion of an unformed fetus) and *isqāṭ-i-janīn* (abortion of a formed fetus). While abortion is generally criminalized, exceptions exist where the procedure is performed in good faith to save the woman's life or provide necessary medical treatment.

This framework reflects the Islamic legal principle of *darūra* (necessity), under which actions that are normally prohibited may become permissible to prevent greater harm. However, compared with international human rights approaches, Pakistan's legal framework remains restrictive because it does not expressly provide broader exceptions for circumstances such as rape, psychological suffering, or severe fetal abnormalities.

#### **14.4 Comparative Analysis Between International Standards and Pakistan's Approach**

The comparison between international abortion perspectives and Pakistan's legal framework reveals a fundamental difference in legal reasoning. International human rights approaches primarily emphasize individual autonomy, reproductive choice, gender equality, and access to

healthcare. From this perspective, abortion restrictions may violate women's rights by limiting their control over reproductive decisions and exposing them to health risks.

In contrast, Pakistan's approach places greater emphasis on the protection of fetal life, Islamic principles, and constitutional obligations. Abortion is viewed primarily through the concepts of sanctity of life, necessity, and protection of human creation. While Pakistani law recognizes limited exceptions based on maternal health, it does not adopt the broader reproductive rights framework promoted by many international organizations.

However, there are areas where reconciliation between these approaches may be possible. Islamic legal principles such as *maqāṣid al-sharī'ah* (objectives of Islamic law), *maṣlaḥa* (public interest), and *darūra* (necessity) provide mechanisms for addressing exceptional circumstances. These principles allow consideration of maternal physical and psychological well-being while maintaining respect for the sanctity of life.

The challenge for Pakistan is therefore not simply whether abortion should be permitted or prohibited, but how a balanced legal framework can be developed that protects fetal life while recognizing the exceptional circumstances faced by women. A contextual interpretation of Islamic law, combined with consideration of international human rights standards, may provide a pathway towards a more comprehensive approach that addresses women's dignity, health, and protection while remaining consistent with Pakistan's constitutional and religious foundations.

#### **14.5 My Body, My Will: A Western Concept vs. Islamic Perspectives on Body Ownership**

The principle of "My Body, My Will" is a cornerstone of modern Western human rights discourse, emphasizing individual autonomy and the right to make decisions regarding one's own body, including reproductive choices. This concept asserts that individuals should have the right to determine what happens to their bodies without interference from the state or any external force. In the context of abortion, this principle champions a woman's autonomy to choose whether to continue or terminate a pregnancy, aligning with the broader ideals of personal liberty and bodily integrity that underpin many Western legal frameworks. However, this perspective is rooted in secular, individualistic values, which may not align with the religious and legal traditions of non-Western cultures, particularly in Islamic law.

In Islamic jurisprudence, the ownership of one's body is not considered an individual right but rather a trust (*amānah*) from God (Allah). The Qur'an and Hadith emphasize that all aspects of human life, including the body, belong to the Creator. As such, the principle of *ḥifẓ al-naḥs* (protection of life) is paramount, yet it is framed within the belief that human life is a gift and a responsibility under divine will. The Islamic perspective does not support an absolute right to bodily autonomy in the same way as Western human rights law does. Instead, decisions regarding the body, including abortion, are subject to Islamic ethical principles and the overarching notion that human beings are stewards of their bodies rather than absolute owners (Ahmad, 2026).

This understanding means that while the sanctity of life is protected, decisions regarding life and death, including abortion, must align with Islamic teachings that prioritize the preservation of life in accordance with divine law. Thus, the concept of "My Body, My Will" presents a conflict when applied within an Islamic framework, as it contrasts with the belief in the ultimate sovereignty of God over human affairs. Islamic law places strict guidelines on the permissibility of abortion, recognizing the body as belonging to God, and allows abortion only in circumstances that align with divine will and the protection of life, health, and moral integrity (Ahmad, 2026).

This difference highlights the tension between Western secular notions of individual autonomy and Islamic legal principles that emphasize divine authority over human choices, illustrating the complexity of reconciling Western human rights laws with Islamic ethical and legal traditions.

## **15. Recommendations**

### **i. Expand Legal Provisions to Include Psychological Health of the mother**

While the PPC permits abortion when the mother's life is at risk, it is essential to extend this protection to include mental health and psychological well-being. The law should explicitly recognize that if the pregnancy causes severe psychological distress or trauma, such as in cases of rape or incest, abortion should be permissible. This would align with the *maqāṣid al-sharī'ah*, which prioritizes the protection of *ḥifẓ al-'aql* (protection of intellect) and *ḥifẓ al-'ird* (protection of honour), ensuring that the mother's emotional and psychological well-being is safeguarded.

### **ii. Broaden Exceptions to Cover Severe Fetal Abnormalities**

The PPC should be amended to recognize a narrow exception for cases of severe fetal abnormality. Where prenatal diagnosis shows that the fetus has a condition incompatible with life, or a condition certain to cause extreme and prolonged suffering, termination of pregnancy should be permitted before the 120-day threshold. This position is consistent with the *maqāṣid al-sharī'ah*, particularly the preservation of life and the prevention of harm, and is further supported by *maṣlaḥa*, because continuing such a pregnancy may offer no meaningful benefit while imposing grave physical and emotional hardship on the mother and child. It also accords with *al-ḍarar yuzāl* (harm must be removed), and with *al-ḍarūrāt tubīḥ al-maḥẓūrāt* (necessities permit prohibited matters), which allows necessity to justify what would normally be prohibited, especially before ensoulment.

This approach is reinforced by contemporary fatwas and juristic opinions. The American Muslim Jurists Association (AMJA) states that between 40 and 120 days, abortion may be allowed for a major fetal deformity incompatible with normal life and notes that the majority of contemporary scholars permit it during that period (American Muslim Jurists Association [AMJA], 2019). The position of the *Majma' al-Fiqh al-Islami*, as cited by the Malaysian fatwa authority, similarly permits abortion before 120 days in cases of extreme malformation, while after 120 days it restricts permissibility to situations where the pregnancy threatens the mother's life (Mufti Wilayah Persekutuan, 2020). The Islamic World League, or Makkah resolution, is widely cited for allowing abortion before 120 days where the fetus is severely malformed with an untreatable condition confirmed by competent physicians (Hamdard Islamicus, 2021). By contrast, Egypt's Dar al-Ifta reflects a stricter position, maintaining that fetal deformity alone is not sufficient after ensoulment unless the mother's life is at risk, thereby defining the limits of the exception (Dar al-Ifta Egypt, 2004).

### **iii. Abortion for Rape Victims Within the First 120 Days**

The PPC does not currently offer clear provisions for abortion in the case of rape. It is recommended that abortion should be permissible for rape victims, particularly within the first 120 days of pregnancy, where the fetus is not yet ensouled. This recommendation is grounded in Islamic jurisprudence, where scholars such as Muḥammad Ramaḍān al-Būṭī and Muḥammad Ṣāliḥ al-Munajjid have argued for exceptions in such cases, given the psychological trauma that rape imposes on the victim. Allowing abortion in such cases would also reflect the Islamic understanding of *ḥifẓ al-'ird*, recognizing the victim's right to dignity and protection from further harm.

### **iv. Provide Adequate Legal Support for Rape Victims**



Given the unique challenges faced by rape survivors, legal and medical support systems should be established to guide women through the abortion process. This would include access to confidential counselling, medical consultations, and legal advice on their rights to abortion under the law. These services should be designed to protect the dignity of rape victims and ensure they make informed and voluntary decisions regarding their pregnancy. This initiative aligns with Islamic ethical principles, which emphasize the protection of *ḥifẓ al-ʿird* (honour) and *ḥifẓ al-ʿaql* (intellect).

#### **v. Implement Comprehensive Public Awareness and Education Campaigns**

Given the stigma surrounding abortion, especially in the context of rape and fetal abnormalities, there is a need for public education campaigns that provide accurate, compassionate, and balanced information about abortion under Islamic law. Such campaigns should also educate women about their legal rights and the resources available to them, including access to healthcare professionals who can provide confidential advice and guidance.

By emphasizing the *maqāṣid al-sharīʿah* framework of justice and mercy, these campaigns can promote a more informed and empathetic approach to this sensitive issue.

#### **vi. Monitor and Evaluate Abortion Practices Under Islamic Law**

A monitoring system should be implemented to track abortion cases, ensuring that abortions are being conducted in accordance with legal provisions and ethical guidelines. The evaluation should also assess the mental health of women seeking abortions and ensure that their rights are respected. By regularly reviewing the impact of abortion policies and ensuring compliance with Islamic principles, Pakistan's legal system can maintain a compassionate and just approach to abortion.

### **16. Conclusion**

The current state of abortion law in Pakistan reflects a complex tension between Islamic principles and state legal norms. The PPC criminalizes abortion with narrow exceptions for saving the mother's life but offers limited recognition of the mental health, psychological trauma, and human rights of women, particularly in cases of rape. The punitive structure based on the fetus' developmental stage reflects a balance between medical and moral considerations but leaves significant gaps, especially for women facing rape or severe fetal abnormalities.

A more compassionate and comprehensive legal framework is needed in Pakistan, one that provides greater protection for women's reproductive rights and ensures that children born through rape receive the legal and social support they deserve. Drawing on Islamic ethical principles and international human rights standards, Pakistan's abortion laws should evolve to respect the dignity of both the mother and the child, ensuring that legal reform is in line with the *maqāṣid al-sharīʿah*, the higher objectives of Islamic law that prioritize justice, mercy, and the protection of life.

### **Bibliography**

#### Articles and Books

- Ahmad, M. M. (2026). *Isqat-e-Hamal aur Huqooq-e-Insani Ka Qanoon*. AlSharia.org. <https://alsharia.org/2026/apr/isqat-e-hamal-aur-huqooq-e-insani-ka-qanoon-dr-muhammad-mushtaq-ahmad>
- Al-Bar, M. A. (2021). Abortion: Shafi'i perspective. In *Abortion: Global positions and practices, religious and legal perspectives* (pp. 147–153).
- Al-Farghānī al-Marghīnānī, B. al-D. (2015). *Al-Hidāyah: The Guidance* (Vol. 2, I. A. K. Nyazī, Trans.). Federal Law House.

Ilyas, M., Alam, M., Ahmad, H., & Ghafoor, S. (2009). Abortion and protection of the human fetus: Religious and legal problems in Pakistan. *Human Reproduction & Genetic Ethics*, 15(2), 55–59. <https://doi.org/10.1558/hrge.v15i2.55>

Osman, A. (2022). Abortion laws in Muslim countries: Modern reconfiguration of pre-modern logic. *Muslim World Journal of Human Rights*, 19(1), 19–52. <https://doi.org/10.1515/mwjhr-2021-0007>

Padela, A. I. (2025). *Maqasid al-Shariah and biomedicine: Bridging moral, ethical, and policy discourses*. International Institute of Islamic Thought.

Rizvi, A., Javed, K., Qureshi, H. I., & Watto, M. (2022). Legislative role of sources of Islamic law in modern Islamic state: A Pakistani perspective. *Webology*, 19, 7964–7979.

Sathar, Z., Singh, S., Shah, I. H., et al. (2025). Abortion and unintended pregnancy in Pakistan: New evidence for 2023 and trends over the past decade. *BMJ Global Health*, 10(1), e017239. <https://doi.org/10.1136/bmjgh-2024-017239>

Singh, N. (2014). Abortion law in Muslim-majority countries: An overview of Islamic jurisprudence and policy debates. *Health Policy and Planning*, 29(4), 483–494. <https://academic.oup.com/heapol/article/29/4/483/653159>

#### Statutes and Legal Instruments

Constitution of the Islamic Republic of Pakistan. (1973).

Criminal Law (Amendment) (Offences Relating to Rape) Act, No. XLIV of 2016. National Assembly of Pakistan. [http://na.gov.pk/uploads/documents/1475761256\\_380.pdf](http://na.gov.pk/uploads/documents/1475761256_380.pdf)

Pakistan Penal Code, Act XLV of 1860, §§ 338, 338A, 338B.

Protection of Women (Criminal Laws Amendment) Act, 2006. Pakistan Law Site. <http://pljlawsite.com/html/ppc376.htm>

#### Case Law

Masood, Nadeem v. The State, 2015 LHC 4524 (Lahore High Court).

#### Religious Sources and Fatwas

Association of Muslim Jurists of America. (2022). Advice on abortion (Fatwa No. 83806). Al-Fiqh Center. <https://www.amjaonline.org/fatwa/en/83806/advise-on-abortion>

Dar al-Ifta' al-Misriyya (Egyptian Dar al-Ifta). (2013). How does Islam deal with abortion in cases of rape or incest? (Fatwa No. 6634). <https://www.dar-alifta.org/en/fatwa/details/6634/how-does-islam-deal-with-abortion-in-cases-of-rape-or-incest>

Ibn Qudāmah. (n.d.). Al-Mughnī. Cited in Rape and fornication are totally different categories in Islamic law (Fatwa No. 326548). IslamWeb. <https://www.islamweb.net/en/fatwa/326548/rape-and-fornication-are-totally-different-categories-in-islamic-law>

Islamic Fiqh Council of the Muslim World League. (1990). Qarārāt al-Majma' al-Fiqhī al-Islāmī (12th session, Makkah, 1410H/1990 CE, Resolution No. 139: On abortion of a deformed fetus). In A. A. Al-Badr, Permissibility of prenatal diagnosis and abortion for fetuses with severe congenital abnormalities. *Annals of Saudi Medicine*, 30(6), 509–516. <https://doi.org/10.4103/0256-4947.72259>

Majlis al-Fiqhī al-Islāmī (Islamic Fiqh Council, Rabitat al-Ālam al-Islāmī). (n.d.). Advice on abortion (Fatwa No. 83806). Al-Fiqh Center, Association of Muslim Jurists of America. <https://www.amjaonline.org/fatwa/en/83806/advise-on-abortion>

Ṣaḥīḥ al-Bukhārī. (n.d.). Ṣaḥīḥ al-Bukhārī (Hadith No. 3208, Book 59, Hadith 19; M. M. Khan, Trans.). USC-MSA Web Arabic–English Edition.