



# ABORTION, ISLAM AND MUSLIM MAJORITY COUNTRIES: BEYOND A UNITARY VISION

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Tackling the issue of abortion in Muslim majority countries is extremely difficult for many reasons; first and foremost, much depends on the diverse and heterogenous role that Islam plays in their legislations. There is, indeed, “a correlation between the inflexibility of the criteria for allowing abortion and the centrality given to the *Shari’a* as a source for legislation”<sup>1</sup>.

What is more, the same Islamic doctrine is far from being monolithic when it comes to the issue of abortion: as explained by Ekmekci, the different schools of Islamic thought “have their own interpretations to determine if a bioethical issue is acceptable, forbidden, discouraged or obligatory for the Muslim community

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<sup>1</sup> Asman, O. (2004). Abortion in Islamic countries - Legal and religious aspects. *Medicine and Law*, 23(1), 73–89, p. 83.



they address”<sup>2</sup>. In this sense, “Islam does not speak with one voice on the question of abortion”<sup>3</sup>.

Finally, when assessing the status of individual rights and freedoms in a country, there are also other variables to be taken into account besides religion. For instance, we could think of the influence of colonial laws – either French, British or Italian – on abortion policies<sup>4</sup>, or else the promotion of family planning policies and the attempt to curb demographic growth in countries such as Tunisia or Turkey.

Keeping in mind these assumptions is important to understand why the status of abortion in Muslim majority countries is extremely diverse, ranging from cases where it is theoretically permitted upon request – see, for example, Bahrain, Tunisia and Turkey, even if with some caveats – to cases where it is only allowed to save the mother’s life – as in Iraq, Lebanon or Afghanistan –, while also featuring many intermediate records<sup>5</sup>. Hence, it follows that we cannot deal with this topic through broad generalizations, claiming the existence of a common pattern in Muslim majority countries.

### **1. A diverse doctrinal background**

In order to clarify this statement, we will begin by quickly analyzing the issue of abortion within Islamic doctrine. First and foremost, there is no specific reference to intentional abortion in the Quran<sup>6</sup>; however, many Islamic thinkers claim that the principle of the

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<sup>2</sup> Ekmekci, P. E. (2017). Abortion in Islamic Ethics, and How it is Perceived in Turkey: A Secular, Muslim Country. *J Relig Health*, 56(3): 884–895, p. 885.

<sup>3</sup> Brockopp, J. E. (2003). Taking life and saving life: the Islamic context. In: Brockopp J.E. (ed). *Islamic Ethics of Life: Abortion, War and Euthanasia*. Columbia: University of South Carolina Press, p. 24.

<sup>4</sup> Hessini, L. (2007). Abortion and Islam: Policies and Practice in the Middle East and North Africa. *Reproductive Health Matters*, 15(29), 75–84, p. 78.

<sup>5</sup> Cfr. Shapiro, G. K. (2014). Abortion law in Muslim-majority countries: An overview of the Islamic discourse with policy implications. *Health Policy and Planning*, 29(4), 483–494.

<sup>6</sup> Cfr. Shapiro, G.K. (2014); Ekmekci, P.E. (2017).



sacredness of human life shall also be applied to this issue. As a matter of fact, the preservation of life is one of the purposes of Islamic law (*Maqasid al-Shari'a*) against which the legality of all acts should be proven<sup>7</sup>. Consequently, the debate in this context revolves around the character of fetal life: when is the fetus considered a living creature, so that its life should be preserved and protected?

There is general agreement to assert that all four main schools of Sunni Islamic thought (*Madahib*) as well as Shia Islam do consider it prohibited to abort after the ensoulment of the fetus, with the exception of those cases where the mother's life is in danger<sup>8</sup>. The occurrence of the moment of the pregnancy when the ensoulment takes place is not specified in the Quran, yet the issue is dealt with in several Sayings of the Prophet (*Ahadith*). Here, the most common position is the one fixing the limit to 120 days from the fecundation of the ovum<sup>9</sup>. Hence, in this context, the ensoulment acquires paramount importance because it allows to distinguish two main phases in the development of the fetus, "the first without a soul and the second with a soul: historically this distinction has taken on great importance in the attempts to determine the juridical value of the different abortive acts"<sup>10</sup>.

If the ensoulment is the latest limit, what happens before? The answer is not easy to be given and, once again, is not unequivocal. What we know from the Quran is that the life of the fetus is divided into different phases: this is what the Prophet Muhammad explains in the Sura of the Believers (*Surat al-Mu'miniin*). The way to consider the fetus throughout these progressive stages diverges from Sunni to Shia Islam, from one Sunni school of Islamic thought

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<sup>7</sup> Cfr. Alkaabba, A. F. (2016). Abortion for a Young Single Female: A Cultural and Islamic Perspective. *Journal of Clinical Research & Bioethics*, 7(3), 5–8.

<sup>8</sup> Cfr. Arci, A. (2015). *Islam e Bioetica: fecondazione assistita, contraccezione e aborto*, Università di Roma La Sapienza; Cfr. Shapiro, G. K. (2014).

<sup>9</sup> Cfr. Atighetchi, D. (2007). *Islamic Bioethics: Problems and Perspectives*, Springer.

<sup>10</sup> Ibidem, p. 93



to another. While most Malikis consider abortion prohibited (*haram*) even within the first 40 days of the pregnancy, most Hanifis are more permissive and would accept abortion until the 120<sup>th</sup> day; the Shafi'is and the Hanbalis instead adopt an intermediate position<sup>11</sup>. Overall, what we can retain is that even when abortion is allowed, it is never recommended within the framework of Islamic law<sup>12</sup>; when it is a feasible option, there must be valid reasons to carry it out<sup>13</sup>.

Bowen well clarifies this point by considering it a matter of “discouraging abortion while yet allowing for practical responses that safeguard an individual’s well-being”<sup>14</sup>. In this concern, in the last few decades, mainly thanks to scientific evolution, new valid reasons to carry out an abortion before four months have been outlined, such as fetal deformities or maternal physical and/or mental conditions. A concrete example in this regard is represented by Iran, that approved a new, more permissive law about therapeutic abortion in 2005<sup>15</sup>.

## **2. Changing the law without disobeying Shari’a**

These elements lead us to reflect upon the status of abortion in Muslim majority countries, where some legislations still allow it exclusively to save the life of the pregnant mother. Anyway, as explained above, allowing abortion does not forcibly mean disobeying *Shari’a*: there is room for manoeuvre to provide women with more protection against pregnancy-associated risks - whether on the health or on the socio-psychological side - within the

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<sup>11</sup> Cfr Bowen, D. L. (2003). Contemporary Muslim ethics of abortion. In: Brockopp JE (ed). *Islamic Ethics of Life: Abortion, War and Euthanasia*. Columbia: University of South Carolina Press.

<sup>12</sup> Cfr Shapiro, G. K. (2014) ; Bowen, D.L. (2003), p. 53.

<sup>13</sup> Except for some of the Hanafis, who constitute a narrow minority.

<sup>14</sup> Bowen, D. L. (2003), p. 52.

<sup>15</sup> Cfr. Hedayat, K. M., Shooshtarizadeh, P., & Raza, M. (2006). Therapeutic abortion in Islam: Contemporary views of Muslim Shiite scholars and effect of recent Iranian legislation. *Journal of Medical Ethics*, 32(11), 652–657.



framework of Islamic law, thus making abortion “religiously possible”<sup>16</sup>.

In order to practically understand what this means, we could mention the case of Tunisia, where abortion upon request in the first trimester of the pregnancy was made legal in 1973. This progressive choice, which was taken by President Bourguiba alongside other reforms that advanced the conditions of women in the country, does not respond to the teachings of the Maliki school, the majoritarian *madhab* in Tunisia, that claims for the prohibition of abortion even in the first 40 days of the pregnancy. Still, the legalization of abortion in Tunisia drew its legitimacy from religious tradition<sup>17</sup>, and it can be explained by resorting to the Hanafi doctrine.

This model has also been proposed for the case of Morocco: when advocating a reform of the abortion law in the country, Dialmy has been calling for its ‘de-malikization’ : “sortir du malekisme en matière d’avortement, et sortir du malikisme ne signifie sortir du droit musulman, et encore moins de l’Islam”<sup>18</sup>. This would mean, instead, adopting a more liberal legislation “au nom de l’*ijithad* islamique” in a country where attempts to reform the articles of the Penal Code to conditionally allow abortion in case of “rape, incest, mental disorder, and serious fetal malformation”<sup>19</sup> have been pending since 2015.

### **3. Matters on the ground: Tunisia, Turkey and Morocco**

While taking into account the paramount importance of legislative reforms, a change in legislation alone is often not enough to

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<sup>16</sup> Bowen, D. L. (2003), p. 60.

<sup>17</sup> Cfr. Maffi, I., Affes, M. (2019). The Right to Abortion in Tunisia after the Revolution of 2011: Legal, Medical, and Social Arrangements as Seen through Seven Abortion Stories. *Health and Human Rights*, 21(2), 69–78.

<sup>18</sup> Dialmy, A. (2017). *Transition sexuelle. Entre genre et islamisme*. Editions L’Harmattan, p. 182.

<sup>19</sup> Capelli, I. (2019). Non-marital Pregnancies and Unmarried Women’s Search for Illegal Abortion in Morocco. *Health and Human Rights*, 21(2), 33–45, p. 38.



change or regulate matters on the ground; as mentioned in the beginning, many variables are to be taken into account when dealing with the issue of abortion, in Islamic countries as elsewhere. Indeed, as underlined by Maffi and Affes, “the existence of an abortion law is only one factor among many others affecting women’s ability to access abortion services; medical practices and women’s abortion itineraries are caught up within a complex configuration that entails multiple socioeconomic and cultural factors, political transformations, the variability of rules in medical and administrative institutions, and contradictory interpretations of the legal apparatus”<sup>20</sup>.

Such an observation can be related to different extents to Tunisia, Turkey and Morocco. In Tunisia, even if no change to the above-mentioned legislation was brought, women’s access to abortion has become increasingly difficult with the rise of religious conservatism in the 2000s and the political transformations that followed 2011’s Jasmine Revolution<sup>21</sup>.

Turkey liberalized abortion upon demand until the tenth week of pregnancy in the Eighties, in accordance with the stance of the country’s most followed Islamic school, the Hanifiyya. As a matter of fact, even if *Shari’a* is not an official source of legislation for the Turkish Republic, the compliance of laws with Islamic principles is still very relevant for the public opinion<sup>22</sup>. This bond with the religious tradition leads us to understand why the “pronatalist and conservative ideology”<sup>23</sup> that has been promoted by the Justice and Development Party (AKP) for the last two decades has succeeded into restricting access to abortion in the country, somehow modifying the attitude of Muslim physicians and

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<sup>20</sup> Maffi, I., Affes, M. (2019). The Right to Abortion in Tunisia after the Revolution of 2011..., p. 70.

<sup>21</sup> Cfr. Maffi, I., Affes, M. (2019).

<sup>22</sup> Ekmekci, P.E. (2017), p. 9.

<sup>23</sup> Dayi, A. (2019). Neoliberal Health Restructuring, Neoconservatism and the Limits of Law: Erosion of Reproductive Rights in Turkey. *Health and Human Rights*, 21(2), 57–68, p. 58.



citizens<sup>24</sup>, although the legislation – such as in the case of Tunisia – has remained the same.

Finally, Moroccan example well demonstrates how the legal access to abortion also depends on the national legal framework regulating sexual and reproductive rights. Since sex out of the wedlock in Morocco is punishable by law, the suitable conditions to legally resort to abortion are extremely difficult to attain: not only must the life of the pregnant woman be in danger, or her physical health put at serious risk by the pregnancy, but she also should be married. Hence, as underlined by Irene Capelli, in Morocco “unmarried women face specific challenges to sexual and reproductive rights”; it follows that “abortion is an emblematic example of the structural challenges faced by Moroccan institutional and noninstitutional actors when attempting to implement sexual and reproductive rights in the country”<sup>25</sup>.

### **Conclusion**

All in all, we can draw two main conclusions: firstly, studying the dyad “abortion-Islam” opens the way to a diversity of visions, opinions and interpretations, thus providing the observers with a way more flexible landscape than commonly expected. Secondly, and this reasoning could be applied to all countries in the world after a due contextualization, there are many factors to be taken into account when monitoring the status of abortion rights in Muslim majority countries: while the features of the abortion law and its intertwining with *Shari’a* undoubtedly are an important element, social norms, political discourse, historical influences, socioeconomic policies and ideologies cannot be set aside in this analysis.

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<sup>24</sup> Ekmekci, P.E. (2017), p. 11.

<sup>25</sup> Capelli, I. (2019), p. 35.



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