

The Role of Law in Shaping Regulations on Fetal Anomalies and Abortion in Oman

Nihal Al Riyami*

Department of Obstetrics and Gynecology, College of Medicine and Health Sciences, Sultan Qaboos University, Muscat, Oman

ARTICLE INFO

Article history:

Received: 07 December 2024

Accepted: 12 March 2025

Online:

DOI 10.5001/omj.2024.123

The role of law in regulating abortion due to fetal anomalies represents a complex intersection of legal, ethical, and religious considerations in Oman, an Islamic country. Islamic laws (the *Shariah*) fundamentally influence the formulation of laws and policies, including those related to sensitive healthcare issues such as fetal anomalies and abortion. This paper explores how religious, ethical, and sociocultural principles and values influence legislation governing abortion in the context of fetal abnormalities and maternal health. Ethical dilemmas related to termination of pregnancy in the context of the Islamic principles of fetal ensoulment will be analyzed, alongside how Oman navigates this delicate territory pragmatically.¹⁻³

Abortion in Islamic and other jurisprudence, particularly in cases of fetal anomalies and maternal health, is a complex issue. It is essential for healthcare professionals to be acquainted with the norms of the major world faiths in term of ethically and culturally sensitive matters such as termination of pregnancy.⁴

According to Islamic scriptures, ensoulment occurs after 120 days of gestation. The Qur'an describes fetal development and the process and stage of ensoulment in verses 23:12-14,⁵ 22:5,⁶ and 32:7-9,⁷ but without specifying the exact day of ensoulment. This information is provided by Sahih Hadiths (authentic sayings of Prophet Muhammad), and most schools of Islamic jurisprudence (*Madhabib*) generally agree that the fetus receives its soul at 120 days of gestation when "the child in the womb will be breathed into by the angel".^{8,9} The Qur'an also emphasizes the sanctity of human life in several verses, including 17:33 ("And do not kill the soul which Allah has forbidden [to be killed] except

by [legal] right. ..."), often interpreted to include unborn life after ensoulment.¹

Scholarly opinions diverge on the permissibility of abortions before the 120-day threshold. Some Islamic scholars permit earlier abortion under compelling circumstances, such as severe fetal suffering, fetal anomalies, or maternal health risks, if determined by a medical committee. This is based on the Islamic legal principle of *al-darurat tubih al-mahzurat* (necessities permit the prohibited).² The differences in abortion regulations within Islamic jurisprudence reflect the varied scholarly interpretations of religious texts, influenced by ethical considerations, medical exigency, and cultural contexts.¹⁰

Oman's legal framework and policies regarding abortion, particularly in cases of fetal anomalies, are deeply rooted, reflecting the country's commitment to Islamic principles, which emphasize the sanctity of life from conception and only permits abortion subject to strict conditions.¹¹ The country's penal code prohibits abortion except for compelling medical reasons, such as threat to the mother's life or lethal fetal anomalies that are incompatible with life.

In Oman, abortion due to lethal fetal anomalies is only permissible before the fetus reaches 120 days of gestation, when the fetus is considered to have been ensouled, as per Hadiths.^{8,9} Permission for abortion is given only after a medical team and an assigned committee have certified the presence of lethal fetal anomalies. The Ministry of Health and medical professionals play a crucial role in interpreting these laws, often using medical ethics committees to ensure that decisions align with Islamic jurisprudence and contemporary medical standards.²

In Oman, where Islamic teachings significantly shape daily life, the laws surrounding abortion encapsulate a deep commitment to Shariah

principles, which uphold the sanctity of life. This religious framework significantly influences public opinion, where abortion is viewed as morally and ethically problematic unless justified by compelling medical necessity, such as a threat to the mother's life or severe lethal fetal anomalies.^{11,12} Consequently, societal attitudes towards abortion remain conservative, fostering stigmatization of abortions perceived as elective or not medically justified.

These debates are further complicated by the cultural stigma surrounding disability and the societal pressure on women to conform to traditional roles as bearers of healthy offspring.² Ethically, the implications of these laws are significant. In more conservative contexts like Oman, where abortion is highly restricted, ethical debates often center on the moral duty to protect potential life versus alleviating suffering caused by severe fetal anomalies or risking the mother's health. Comparatively, in broader Islamic contexts, the socio-cultural implications of abortion laws vary, reflecting the diversity within the Muslim world.

Rapid advancements in prenatal diagnostic technology have spurred debates among Islamic scholars and bioethicists on the permissibility and ethical boundaries of abortion. Central to these discussions is the Islamic principle *al-darurat tubih al-mahzurat* (necessities permit the prohibited) and determining what constitutes a sufficient threat to fetal and maternal life to justify abortion.¹³

The growing awareness of genetic disorders and congenital anomalies has further prompted debates on how Sharia law can accommodate medical advancements while upholding the fundamental Islamic value of preserving life.¹ Scholars increasingly advocate a nuanced interpretation of Islamic jurisprudence that considers both the medical realities of fetal anomalies and evolving societal values around reproductive autonomy.^{10,14}

Recent scholarship illustrates this shift: Ghaly explores the ethical implications of prenatal genetic diagnosis in Islamic contexts, noting how innovative technologies shape bioethical debates on severe fetal anomalies.¹⁵ Albar examines evolving interpretations of Islamic law concerning abortion for fetal anomalies, considering recent prenatal advancements in Muslim-majority countries.¹⁶ Badawi analyzes how contemporary ethical debates among Islamic scholars are influenced by new technologies that allow early detection of fetal anomalies, reflecting

broader trends in Islamic bioethics.¹⁷ Hashim provides an overview of Islamic jurisprudence adapting to challenges from modern reproductive technologies, addressing the ethical and legal aspects of abortion.¹⁸ Rahman discusses how technological advances in prenatal testing influence debates on the permissibility of terminating pregnancies with fetal anomalies, emphasizing the role of religious ethics.¹⁹ These discussions illustrate how Islamic bioethics dynamically navigates the intersection between tradition and modernity in reproductive ethics.

Oman's legal stance on abortion is codified in Royal Decree 75/2019, which is part of the new Omani Penal Code of 2018.²⁰ The decree outlines the legal framework governing abortion, emphasizing its prohibition except under specific circumstances.²⁰⁻²² The specific circumstances and clear regulations, including the indications for abortion, must be sought to mitigate ethical and legal dilemma. Developing comprehensive guidelines involving medical professionals, ethicists, and Islamic scholars can ensure that decisions respect religious values and modern medical ethics.¹ Moreover, enhancing public awareness through education on prenatal diagnostics and ethical considerations would foster informed decision-making among expectant parents.^{19,23}

Integrating of religious law with contemporary medical, ethical, and technological advancements presents challenges and opportunities for Oman's legal and healthcare frameworks. By adopting a more nuanced interpretation of Islamic jurisprudence, particularly in cases involving lethal fetal anomalies, Omani lawmakers and religious scholars can align traditional religious values with modern medical practices. Implementing clear, ethically sound guidelines and fostering collaborative decision-making among medical professionals, ethicists, and religious scholars will help navigate these complex issues. This approach ensures that policies remain responsive to Islamic principles and the evolving landscape of prenatal care and reproductive rights.

REFERENCES

1. Kamali MH. "Modern bioethical and environmental questions." In: Shariah law: Questions and Answers. Oxford: Oneworld Publications; 2017.
2. Sachedina A. Islamic bioethics: principles and applications. Oxford: Oxford University Press; 2009. pp. 101-144.
3. Javadli GK. Islam and bioethics: Moral and theological substances in the basic sources of Islam. Univ Soc 2024;16(1):120-125.

4. Al-Matary A, Ali J. Controversies and considerations regarding the termination of pregnancy for foetal anomalies in Islam. *BMC Med Ethics* 2014 Feb;15:10.
5. The Holy Qur'an. Surah Al-Mu'minun (23:12-14). [cited 2025 March 12]. Available from: <https://quran.com/23/12-14>.
6. The Holy Qur'an. Surah Al-Hajj (22:5). [cited 2025 March 12]. Available from: <https://quran.com/22/5>.
7. The Holy Qur'an. Surah As-Sajdah (32:7-9). [cited 2025 March 12]. Available from: <https://quran.com/32/7-9>.
8. Al-Bukhari M. Sahih al-Bukhari, Book 59, Hadith 3208 [cited 2025 March 12]. Available from: <https://sunnah.com/bukhari:3208>.
9. Al-Hajjaj M. Sahih Muslim, Book 46, Hadith 2643a. [cited 2025 March 12]. Available from: <https://sunnah.com/muslim:2643>.
10. Hathout H. Islamic perspectives on abortion: a comparative analysis. *Journal of Islamic Law* 2019;15(2):123-145.
11. Sachedina A. "The beginning of life." In: *Islamic biomedical ethics: Principles and application*. Oxford. Oxford University Press; 2009. Chapter 4.
12. Al-Awfi K. Reproductive health policies in Oman: a legal perspective. *Middle Eastern Law Review* 2020;11(3):205-222.
13. Hameed S. Fetal rights in Islamic law: navigating abortion and prenatal diagnosis. *Journal of Islamic Law and Society* 2022;29(1):55-78.
14. Al-Khayat MH. Health and Islamic ethics. World Health Organization, Eastern Mediterranean Regional Office; 2021.
15. Ghaly M. Islamic bioethics and prenatal genetic diagnosis: an ethical analysis. *Journal of Islamic Ethics* 2023;7(2):145-160.
16. Albar MA. Contemporary Islamic perspectives on abortion and fetal health. *J Med Ethics* 2022;48(4):280-290.
17. Badawi Z. Reproductive ethics in Islam: navigating modern medical challenges. *International Journal of Islamic Studies* 2021;29(3):312-330.
18. Hashim IH. The role of Islamic jurisprudence in addressing modern reproductive technologies: a focus on abortion laws. *Muslim World Journal of Human Rights* 2022;19(1):89-104.
19. Rahman F. Abortion, Islamic bioethics, and the technological frontier: navigating new realities. *Bioethics Today* 2023;13(2):215-228.
20. Royal Decree No. 75/2019, Promulgating the Law Governing the Practice of the Medical Profession and Allied Health Professions. 6 November 2019. (cited on 23 March 2025). Available from: [Arabic] <https://qanoon.om/p/2019/rd2019075/>, [English] <https://decree.om/2019/rd20190075/>.
21. Al-Azri NH. Medical liability of healthcare professionals under Omani law: a primer. *Oman Med J* 2020 Sep;35(5):e182.
22. Saeed A. *Islamic thought: an introduction*. Routledge; 2006.
23. McDonough S. *Muslim ethics and modernity: a comparative study of the ethical thought of Sayyid Ahmad Khan and Mawlana Mawdudi*. Waterloo (ON): Wilfrid Laurier University Press; 1985.