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Abortion, Sharia, and the Modern Muslim State: Reassessing Pakistan's Legal Framework

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Abstract

Abortion remains one of the most contested issues in Islamic legal and ethical discourse, raising questions that extend beyond public health to religious interpretation and human rights. In Pakistan, abortion is governed by the Penal Code, yet its provisions remain ambiguous, particularly regarding the notions of "good faith" and "necessary treatment". This study employs a qualitative doctrinal legal analysis, drawing on primary sources of Islamic law, contemporary fatwas, constitutional provisions, and international legal instruments to evaluate the degree to which Pakistan's abortion laws align with the objectives of *maqāṣid al-sharīʿah*. Anchored in the principles of preserving life (*ḥifẓ al-nafs)*, faith, intellect, lineage, and property, the analysis adopts Jasser Auda's systems-based approach to demonstrate the dynamic capacity of *maqāṣid* in addressing modern bioethical challenges. Findings indicate that Pakistan's restrictive framework, largely shaped by colonial legacies, compels women to resort to unsafe abortions, thereby undermining the *maqāṣid* imperative of protecting life and dignity. Legal ambiguities concerning organ formation and the undefined criteria of necessity diverge from the Hanafi school's permissibility of abortion before ensoulment (120 days) under legitimate grounds. Comparative insights from Tunisia, Morocco, and Iran further reveal that more contextually

adaptive laws can reconcile religious ethics with women's health. The study concludes that substantive legal reform is essential to harmonise Pakistan's abortion laws with Islamic objectives and international human rights standards, ensuring legal clarity, safeguarding maternal health, and restoring coherence between Pakistan's Islamic identity and its global commitments.

[*Aborsi merupakan salah satu isu paling kontroversial dalam wacana hukum dan etika Islam, karena tidak hanya berkaitan dengan kesehatan publik, tetapi juga interpretasi agama dan hak asasi manusia. Di Pakistan, aborsi diatur dalam Kitab Undang-Undang Hukum Pidana, namun sejumlah ketentuan masih ambigu, terutama terkait istilah "niat baik" (good faith) dan "perawatan yang diperlukan" (necessary treatment). Penelitian ini menggunakan analisis hukum doktrinal kualitatif dengan memadukan sumber-sumber utama hukum Islam, fatwa kontemporer, ketentuan konstitusi, dan instrumen hukum internasional untuk menilai sejauh mana regulasi aborsi di Pakistan selaras dengan tujuan maqāṣid al-sharīʿah. Berlandaskan prinsip perlindungan jiwa (ḥifẓ al-nafs), agama, akal, keturunan, dan harta, kajian ini mengadopsi pendekatan sistem Jasser Auda guna menunjukkan kapasitas dinamis maqāṣid dalam menjawab tantangan bioetika modern. Hasil penelitian menunjukkan bahwa kerangka hukum Pakistan yang restriktif—banyak dipengaruhi warisan kolonial—mendorong perempuan melakukan aborsi tidak aman, sehingga bertentangan dengan maqāṣid perlindungan hidup dan martabat. Ambiguitas hukum mengenai batas "pembentukan organ" dan kriteria medis yang kabur juga berbeda dengan pandangan mazhab Hanafi yang membolehkan aborsi hingga 120 hari sebelum ensoulment dengan alasan sah. Perbandingan dengan Tunisia, Maroko, dan Iran memperlihatkan bahwa regulasi yang lebih adaptif dapat menyeimbangkan etika agama dengan kebutuhan kesehatan perempuan. Penelitian ini menyimpulkan perlunya reformasi hukum substantif agar regulasi aborsi di Pakistan selaras dengan maqāṣid al-sharīʿah sekaligus standar hak asasi manusia internasional, sehingga memberikan kepastian hukum, melindungi kesehatan ibu, dan menjaga konsistensi identitas Pakistan sebagai negara Islam dalam komitmennya terhadap komunitas global.*]

Keywords: *Maqāṣid al-Sharīʿah*, Abortion Law, Muslim Pakistan, Islamic Jurisprudence, Women's Rights.

Introduction

Abortion continues to be one of the most divisive and intricate subjects in both world and Islamic legal discussions. This issue encompasses not only public

health but also a contentious debate on morality, religious authority, and women's rights. The discourse beyond medical safety delves into *maqāṣid al-sharīʿah*, where the safeguarding of life *(ḥifẓ al-nafs)*, dignity, lineage, and intellect is vital to Islamic ethical and legal reasoning (Ibrahim et al. 2019; Sathar et al. 2025). In Muslim-majority environments like Pakistan, abortion has a twofold challenge: the state defines itself as an Islamic Republic dedicated to sharia, yet its abortion laws are influenced by colonial legacies and characterised by legal uncertainty (Amjad et al. 2024; Gilla K. Shapiro 2014). This tension underscores a continual disparity between "law in books" and "law in action", wherein statutory wording lacks clarity for practitioners and, in practice, compels numerous women towards risky and illegal abortions.

The legal ambiguity is especially pronounced in the interpretation of critical statutory phrases like “good faith” and “necessary treatment”, as delineated in Pakistan’s Penal Code (Sections 338–338C) (Al-Matary and Ali 2014). These ambiguous phrases render physicians and legal experts unclear regarding the acceptable justifications for abortion, thereby establishing obstacles to safe medical care. Consequently, Pakistan exhibits one of the highest rates of induced abortions globally, predominantly conducted under dangerous conditions (Sathar et al. 2025; Health 2025). Such effects immediately violate the aims of *maqāṣid al-sharīʿah*, including the obligation to safeguard life, dignity, and familial well-being. This inconsistency highlights a broader socio-legal issue: although abortion is officially prohibited with limited circumstances, women persist in seeking it, frequently jeopardising their health and lives.

An increasing corpus of writing has addressed the topic of abortion within Muslim cultures. Research has investigated its public health ramifications (Popinchalk and Sedgh 2019), the ethical discussions over foetal personhood (Frohwirth et al. 2018), and the colonial legacies inherent in abortion legislation (Shaw 2010; Faraz et al. 2025). Recent work in Pakistan has examined the discrepancies between Islamisation strategies and international human rights standards, identifying legal ambiguity as a significant contributor to unsafe abortion practices (Abbasi 2017; Karim 2023). Comparative analyses of abortion legislation in other Muslim-majority nations, like Morocco, Tunisia, and Iran, demonstrate that more flexible regulations, rooted in religious and ethical considerations, can offer increased legal clarity and improve maternal health outcomes (Maffi and Tønnessen 2023). However, a distinct research vacuum persists: limited works rigorously examine Pakistan’s abortion regulations via the integrated perspective of *maqāṣid al-sharīʿah* and international human rights.

Rectifying this deficiency is essential for establishing a legal system that is both normatively Islamic and attuned to modern socio-medical realities.

This research is significant, as it seeks to address this gap. Abortion in Pakistan represents not merely a legal matter but also a litmus test for the Islamic Republic's assertion of adhering to sharia while fulfilling its international commitments under treaties like the ICCPR and CEDAW. This study illustrates that Jasser Auda's systems-based approach to *maqāṣid* offers a dynamic and purposeful framework within Islamic legal theory, adept at tackling intricate bioethical dilemmas (Auda 2022). This research presents two distinct novelties. Initially, it emphasises that the change of abortion laws in Pakistan should be regarded as an element of a comprehensive *maqāṣid*-orientated agenda that encompasses maternal health, social justice, and the dignity of women. Secondly, it contextualises the Pakistani example within a comparative framework, illustrating how other Muslim-majority nations have embraced adaptable interpretations of Islamic jurisprudence to harmonise religious principles with human rights and public health necessities (Osman 2022b; Hedayat et al. 2006).

This essay utilises a qualitative doctrinal legal approach that synthesises Islamic jurisprudence with international law. Primary sources encompass Pakistan's Penal Code, constitutional laws, classical Islamic legal texts, and modern fatwas. Secondary sources include contemporary scholarly research, international law documents, and reports from health organisations like the WHO and the Guttmacher Institute (Gilla K. Shapiro 2014; Karim 2023; Alberstein and Davidovitch 2017). A comparative methodology is employed to analyse the legal frameworks of Tunisia, Morocco, and Iran, which exemplify varied paths of Islamic legal reform. This methodological framework guarantees normative depth via *maqāṣid al-sharīʿah* and empirical breadth through comparative legal study.

This article is structured into three main sections. The first section examines Pakistan's constitutional identity as an Islamic state and its legal framework on abortion, analysing the tension between statutory provisions, colonial legacies, and human rights guarantees. The second section explores the theoretical and ethical foundations of *maqāṣid al-sharīʿah*, drawing on both classical jurists and contemporary scholars, and evaluates how these principles apply to issues such as unsafe abortions, cases of rape, and the debate on ensoulment. The third section provides comparative insights from other Muslim-majority countries, highlighting diverse trajectories of Islamic legal reform and their relevance for

Pakistan. The article concludes by proposing a *maqāṣid*-based model of legal reform that seeks to harmonise sharia principles with maternal health imperatives and international human rights commitments.

Method

This study employs a qualitative doctrinal legal analysis, synthesising classical and modern Islamic jurisprudence with international human rights frameworks. The primary objective is to evaluate the extent to which Pakistan's abortion legislation corresponds with the principles of *maqāṣid al-sharīʿah,* while also considering international legal norms and bioethical discussions. The doctrinal approach is especially appropriate for this research, since it facilitates a systematic interpretation of statutory provisions, case law, and fatwas in accordance with normative concepts derived from both Islamic and international law (Elyamany et al. 2025; Shaw 2010).

The theoretical framework is based on *maqāṣid al-sharīʿah*, specifically the five essentials *(ḍarūriyyāt)*: preservation of life *(ḥifẓ al-nafs)*, religion *(ḥifẓ al-dīn),* intellect *(ḥifẓ al-ʿaql),* lineage *(ḥifẓ al-nasl),* and property *(ḥifẓ al-māl),* as delineated by classical scholars like *al-Ghazālī and al-Shāṭibī* (Al-Ghazali 2006; Al-Shatibi 1997). The analysis employs Jasser Auda's systems-based methodology to improve contextual relevance, highlighting multidimensionality and adaptability in the application of Islamic law aims to modern difficulties. This approach facilitates a transition from literal interpretations to a purposeful engagement with abortion as a contemporary bioethical and socio-legal matter (Auda 2008).

The comparative method is utilised to position Pakistan within a wider Muslim legal framework. The four jurisdictions—Tunisia, Morocco, Iran, and Sudan—were chosen intentionally, as they exemplify diverse paths of Islamic law reform (Maffi and Tønnessen 2019). Tunisia exemplifies an early post-independence model of liberal abortion legislation within an Arab-Muslim context; Morocco showcases recent incremental reforms based on sharia principles; Iran embodies a Shia-based legal framework that integrates both *fiqh* and state law in abortion regulation; while Sudan presents a case of reform in Islamic criminal law with conditional provisions for abortion in instances of rape (Gilla K Shapiro 2014). These jurisdictions offer a significant range for comparison, emphasising interpretive variation in Islamic law and practical frameworks for legislative flexibility.

Data sources comprise both primary and secondary materials. Primary sources including the Pakistan Penal Code (Sections 338–338C), pertinent constitutional provisions, traditional Islamic scriptures, and authoritative fatwas from prominent Islamic institutions. Secondary sources include academic publications on Islamic bioethics and abortion legislation, international agreements like the ICCPR and CEDAW, and studies from global health entities such as the WHO and the Guttmacher Institute (Awang 2018; Jaffal et al. 2022). The data were examined using content analysis and systematic interpretation, ensuring that the textual material was assessed according to Islamic jurisprudential principles and international legal norms.

Particular emphasis is placed on ethics and quality assurance. Despite the absence of human participants in the research, ethical integrity is upheld by precise legal interpretation, transparent citation practices, and equitable representation of differing scholarly and juristic perspectives (Soomro et al. 2025). Methodological rigour is enhanced by triangulating sources—utilizing legislative texts, classical juristic publications, and contemporary academic literature—to reduce interpretation bias (Suparman and Hersi 2024). Reliability is augmented through the cross-referencing of legal provisions with fatwas and case law, whilst validity is bolstered by contextualising Pakistani law within comparative Muslim frameworks. The study adheres to international academic norms by employing many interpretive frameworks, including Islamic jurisprudence, statutory analysis, and human rights discourse, to maintain objectivity.

This analytical methodology facilitates a comprehensive assessment of Pakistan's abortion legislation. This study establishes a normative and practical framework by anchoring the analysis in *maqāṣid al-sharīʿah* and utilising comparative views, thereby evaluating the alignment of Islamic legal aims with maternal health priorities and international human rights obligations.

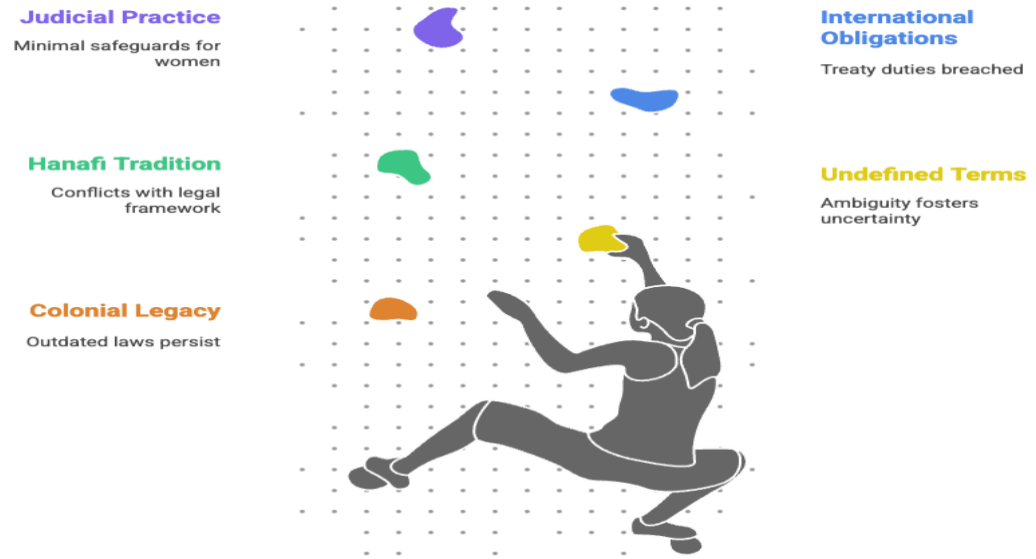
Constitutional and Jurisprudential Foundations of Abortion in Pakistan

Pakistan's constitutional identity as an Islamic state has consistently been a nuanced debate between the normative primacy of sharia and the colonial legal legacy integrated into its statutory structure. The 1973 Constitution designates Islam as the state religion and stipulates that no law may be passed that contradicts the injunctions of Islam as prescribed in the Qur'an and Sunnah (Rizvi et al. 2022). This notion is substantiated by Article 227, which mandates

adherence to Islamic law. The Constitution simultaneously guarantees fundamental rights, including the right to life and dignity under Article 9, and equality before the law under Article 25 (Soomro et al. 2025). Consequently, abortion policy should concurrently embody Islamic ethical principles and uphold constitutional safeguards of women's fundamental rights. In practice, these goals are undermined by legal uncertainties and colonial legacies that persist in regulating reproductive health (Ilyas et al. 2009).

The Penal Code, derived from British India (Act XLV of 1860), continues to be the primary basis of criminal legislation in Pakistan. The abortion provisions, outlined in Sections 338–338C, were established during colonial governance and saw very minor modifications in the 1990s as part of General Zia ul-Haq's Islamization initiative. These sections differentiate between *isqāṭ-i-ḥaml*, characterised as miscarriage prior to foetal organ development, and *isqāṭ-i-janīn*, miscarriage subsequent to organ development (Ahsan Nyazee 2025). Both actions are deemed unlawful, unless executed in "good faith" to preserve the woman's life or to administer "necessary treatment." However, both "good faith" and "necessary treatment" remain undefined, resulting in considerable interpretation ambiguities (Abbasi 2017; Azmat et al. 2012). According to Karim, this indeterminacy has fostered an environment of legal uncertainty that deters physicians from undertaking even medically essential operations (Karim 2023).

Figure 1
Information on the Pakisan's Abortion Law Challenges



Source: Researcher's illustration based on field data (2025).

The ramifications of this ambiguity are significant. Data indicate that Pakistan possesses one of the highest global rates of induced abortions, with an estimated 2.2 million procedures conducted yearly, the majority of which are unsafe (Sathar et al. 2025; Health 2025). Women, especially those from marginalised families, are compelled to resort to illicit and perilous practices, frequently leading to maternal mortality or enduring difficulties. The statutory law contravenes the *maqāṣid* principle of *ḥifẓ al-nafs* (protection of life), which it purports to support. A notable disparity arises between the law as codified, which prioritises criminalisation under the pretext of Islamic morality, and the law as practiced, which subjects women to perilous circumstances (Shaw 2010; Jaffal et al. 2022).

From a legal perspective, Pakistan's statutory framework is irreconcilable with the prevailing Hanafi legal tradition. Hanafi jurists, representing the predominant school in South Asia, have traditionally sanctioned abortion up to 120 days of gestation, contingent upon valid justifications such as threats to the mother's life, significant foetal abnormalities, or great hardship (Hussain 2023) . In contrast, the legal focus on "organ formation," commencing at eight weeks of gestation, effectively restricts the allowable timeframe to around two months, so contradicting Hanafi leniency. This undermines adherence to indigenous *fiqh* and disregards the interpretive pluralism that Islamic law has historically provided. Modern academics like Auda emphasise the necessity for a *maqāṣid*-oriented interpretation of Islamic law that is adaptable, goal-oriented, and attuned to current realities; yet, Pakistan's legal framework remains inflexible and insufficiently developed in this aspect (Auda 2022).

Judicial practice demonstrates the perils of this statutory ambiguity. In Kubra Bibi v. The State (2004 YLR 1544 LHC), a lady perished following an unsafe abortion, resulting in her grandmother being incarcerated on murder charges. The court hearings highlighted how stringent abortion rules, combined with ambiguous legal terminology, had a deterrent effect on medical professionals while providing minimal safeguards for women (Naqvi and Edhi 2013; Bozorgian et al. 2025). Rather than discouraging abortion, criminalisation has engendered circumstances that compel women to resort to risky treatments, so compromising public health and legal consistency.

The discrepancy is further exacerbated when evaluated in light of Pakistan's foreign commitments. Pakistan, as a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW), is obligated to safeguard reproductive rights as integral to the rights to life, health, and dignity (OHCHR 1966; Bustelo 1994). International jurisprudence progressively acknowledges the right to safe abortion in circumstances including threats to mother health, instances of rape and incest, and significant foetal malformations. Pakistan's inability to offer legal clarity in these instances not only breaches its treaty duties but also contravenes the Qur'anic principle: *yurīdu Allāhu bikum al-yusr wa-lā yurīdu bikum al-ʿusr*—"Allah intends ease for you and does not intend hardship" (Qur'an 2:185). The law compels women to engage in perilous practices, so inflicting the very hardships that Islamic law aims to mitigate.

The constitutional and jurisprudential underpinnings of abortion law in Pakistan exhibit a complex contradiction. The Constitution asserts a dedication to Islamic principles and fundamental rights; nonetheless, statutory law is still constrained by colonial frameworks, only disguised with Islamic nomenclature (Sandoval et al. 2023). The statutory text neglects the interpretive diversity present in ancient Islamic jurisprudence and modern *maqāṣid*-oriented frameworks that prioritise public welfare and human dignity. The resultant legal system neither accurately represents *fiqh* traditions nor sufficiently safeguards women's lives. According to Abbas, Latif, and Anjum, these conflicts have engendered a "shadow system" of perilous abortions, highlighting the pronounced disparity between Islamic ideals and actual experiences (Abbas et al. 2023).

This section has illustrated that Pakistan's constitutional ambitions, colonial legacy, and legal difficulties combined establish a tenuous basis for governing abortion (Shaikh et al. 2010). The legislation is excessively stringent, fundamentally ambiguous, and jurisprudentially inconsistent. For Pakistan to harmonise its abortion laws with *maqāṣid al-sharīʿah* and international obligations, it must first recognise this fundamental inconsistency. Only then may reform initiatives progress towards a legal system that authentically safeguards life, dignity, and justice in alignment with the paramount purposes of Islamic law.

Maqāṣid al-Sharīʿah and the Islamic Ethical Framework on Abortion

The notion of *maqāṣid al-sharīʿah*, or the supreme aims of Islamic law, offers a purposeful and ethical basis for tackling intricate modern dilemmas, such as abortion. The idea of *maqāṣid*, grounded in the Qur'an and Sunnah, asserts that

law serves as a means to achieve justice, mercy, and human welfare (*maṣlaḥah*), rather than being an end in itself, while also mitigating harm (*mafsadah*). Classical jurists such as *Abū Ḥāmid al-Ghazālī* and *Abū Isḥāq al-Shāṭibī* codified this doctrine into five universal necessities (*ḍarūriyyāt*): the preservation of religion *(ḥifẓ al-dīn)*, life *(ḥifẓ al-nafs)*, intellect *(ḥifẓ al-ʿaql)*, lineage *(ḥifẓ al-nasl)*, and property *(ḥifẓ al-māl)* (Al-Ghazali 2006; Al-Shatibi 1997). Any legislation or decree that safeguards these ideals is deemed legitimate, whereas those that compromise them are dismissed.

The classical framework has been further delineated into a hierarchy of wants: *ḍarūriyyāt* (necessities), *ḥājiyyāt* (complementary needs), and *taḥsīniyyāt* (embellishments), which illustrate the differing levels of legal and moral significance (Auda 2008). In this framework, the protection of life is paramount, frequently superseding other goals when rights are at odds. Many jurists concur that abortion may be sanctioned to preserve the mother's life, as the *maqāṣid* principle of *ḥifẓ al-nafs* encompasses not only bodily survival but also mental and social well-being (Mohamad Ismail et al. 2018).

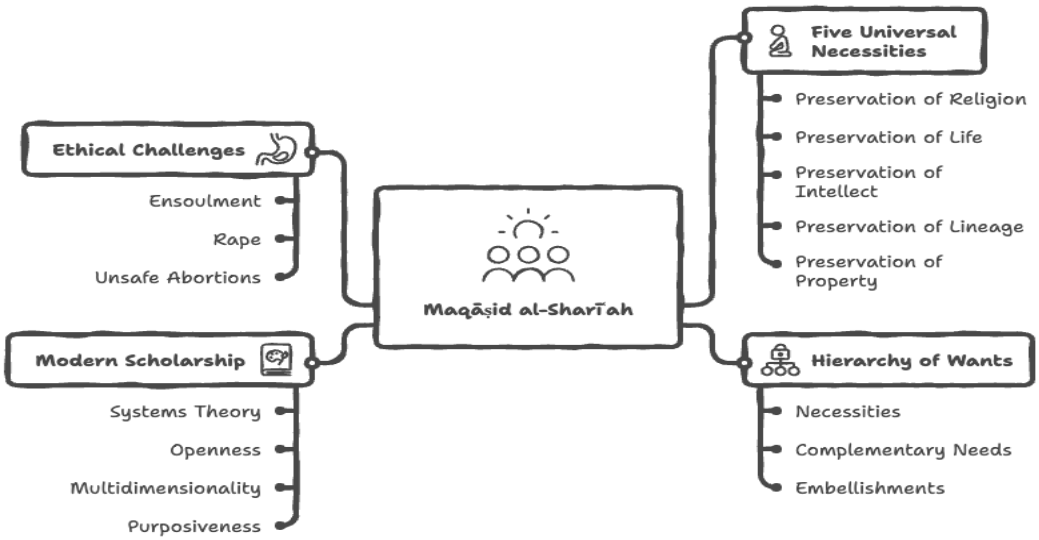
Modern scholarship, especially Jasser Auda's systems-based approach, underscores that *maqāṣid* should not be viewed as a static checklist but rather as a dynamic, multidimensional process adept at addressing contemporary difficulties (Auda 2022). Auda's "systems theory" emphasises principles such openness, multidimensionality, and purposiveness, together offering a more adaptable and cohesive framework for understanding Islamic law in areas such as bioethics and reproductive rights. This methodology facilitates the alignment of traditional decisions with modern circumstances, so preserving the relevance of Islamic law while maintaining its ethical purity.

The *maqāṣid* framework, as applied to abortion, necessitates a balance between the sacredness of nascent life and the well-being of the mother and society. A highly contested topic in Islamic jurisprudence is the notion of ensoulment *(nafkh al-rūḥ)*, which is conventionally thought to transpire at 120 days of gestation, as derived from Prophetic traditions documented in *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ* Muslim (Husayn 2022). The timing of ensoulment carries substantial ethical ramifications: whereas the majority of institutions unequivocally forbid abortion post-ensoulment, few permit it under specific conditions before to this event. The Hanafi school, prevalent in South Asia, allows abortion up to 120 days with valid explanation (*ʿudhr*), including the preservation of the mother's life or alleviating significant hardship (F. Thamrin

and Tala', 'Pelaku Pernikahan Sunni-Syiah', 15 March 2024). The Hanbali school often allows abortion solely within the initial 40 days, but the Maliki school is the most prohibitive, forbidding abortion at practically all stages unless the mother's life is endangered (Ekmekci 2017). *Shāfiʿī* jurists offer a range of perspectives, from permissibility up to 42 nights post-conception to prohibition upon implantation. This variation illustrates that Islamic jurisprudence is not monolithic and offers a flexible interpretive framework for reform.

Figure 1

***Maqāṣid al-Sharīʿah,* Abortion & Ethical Framework**



Source: Author's elaboration based on field data (2025).

Maqāṣid-based reasoning also addresses certain ethical difficulties, such abortion in instances of rape. The principle of *ḥifẓ al-nafs* mandates the safeguarding of both the bodily and psychological well of the victim. Islamic jurists, such as Ibn Qudāmah, have asserted that women who are coerced (*al-mustakrahah ʿalā al-zināʾ)* hold no moral or legal responsibility (Qudamah 1996). Modern fatwas have broadened this rationale, allowing abortion in instances of rape to safeguard the dignity *(ḥifẓ al-ʿirḍ)* and well-being of victims. For instance, Sheikh Muḥammad Sayed Ṭanṭāwī of Al-Azhar promulgated a fatwa in 1998 endorsing the permissibility of abortion for victims of rape, although Sudan's 1991 reforms specifically acknowledged abortion within 90 days of gestation in instances of sexual abuse (Hessini 2007). Such stances exemplify the application of *maqāṣid* principles that prioritise compassion, equity, and the safeguarding of the disadvantaged over strict formality.

The difficulty of unsafe abortions is equally critical, as they continue to be a primary cause of maternal morbidity and mortality in Pakistan. Sathar et al. and Ahsan al. demonstrate that restrictive legislation has not diminished abortion rates; rather, it has compelled women to seek clandestine and frequently perilous treatments (Sathar et al. 2025; Ahsan Nyazee 2025). From a *maqāṣid* standpoint, this result is intolerable, as it directly jeopardises the maintenance of life and lineage *(ḥifẓ al-nafs and ḥifẓ al-nasl*). Furthermore, when women experience irreversible infertility as a result of unsafe abortions, the goal of safeguarding future generations is also undermined (Padela 2025; Khalid et al. 2025). The Qur'an's focus on reducing hardship (Q. 2:185) highlights that the essence of Islamic law is to facilitate safe and dignified outcomes, rather than to sustain social harm through legal ambiguity.

Collectively, these factors underscore the disparity between Pakistan's legal structure and the ethical principles of *maqāṣid*. By favouring ambiguous colonial-era terminology like "good faith" over substantive criteria rooted in Islamic jurisprudence, Pakistan's abortion regulations do not reflect the purposeful aspect of sharia. An method centred on *maqāṣid* necessitates explicit legislative criteria that safeguard maternal health, acknowledge valid justifications for abortion prior to ensoulment, and tackle instances of rape and foetal abnormality in manners that are ethically consistent and socially attuned. Auda contends that Islamic law can attain consistency with its fundamental principles of justice, mercy, and welfare solely through the adoption of a comprehensive and intentional framework.

Comparative Insights from Other Muslim-Majority Countries

The comparative analysis of abortion legislation in Muslim-majority nations reveals that Islamic jurisprudence is neither uniform nor intrinsically prohibitive. Rather, it is characterised by a range of interpretations that embody historical legacies, socio-political contexts, and the progressive uses of *maqāṣid al-sharīʿah* (Osman 2022a). Analysing these variances is crucial for Pakistan, since the enduring presence of colonial-era regulations continues to yield detrimental effects. Comparative research indicates that various Muslim cultures have effectively pursued legal reform while maintaining Islamic beliefs, offering valuable insights for Pakistan's path forward.

North Africa presents some of the most enlightening examples. Tunisia is distinguished by its prompt and thorough reform efforts. In 1973, it legalised

abortion on demand during the first trimester, significantly earlier than many Western nations (Hessini 2007; Sockol 2015). This approach was rationalised not as a deviation from Islam but as a realistic acknowledgement of public health and social welfare requirements. It embodies the *maqāṣid* principle of *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-ʿirḍ* (protection of dignity), as the limitation of abortion resulted in hazardous practices and compromised women's health. Morocco, previously more conservative, amended its Penal Code in 2016 to permit abortion in instances of rape, incest, and significant foetal impairment (Maffi and Tønnessen 2023). These reforms resulted from extensive collaboration among policymakers, religious scholars, and civil society, highlighting the potential for institutionalising *ijtihād* inside state law. Tunisia and Morocco demonstrate that structuring transformation through *maqāṣid* enables the alignment of sharia principles with urgent health and social requirements.

The Middle East exhibits a more disjointed landscape. Iran, utilising Shia jurisprudence *(fiqh jaʿfarī)*, permits abortion before to ensoulment in instances of foetal anomalies and threats to maternal health, in accordance with fatwas promulgated by leading Ayatollahs in the early 2000s (Ridgeon 2013). This illustrates how religious power can confer direct legitimacy for reform, particularly in a society where clerical verdicts had statutory significance. In contrast, Egypt and Yemen maintain stringent regulations that prohibit abortion, unless where necessary to preserve the mother's life (Brookman-Amissah and Moyo 2004). Sudan exemplifies a complicated scenario: its 1991 laws permitted abortion within 90 days in instances of rape; yet, procedural stipulations rendered access exceedingly challenging, as rape was legally classified as a subclass of *zināʾ*, necessitating extensive evidence and judicial validation (Tønnessen and Al-Nagar 2019; Imran et al. 2022). These examples underscore the promise and challenges of reform—although jurisprudential tools are available for accommodation, restrictive frameworks sometimes diminish their practical efficacy.

Southeast Asia exhibits gradual reform. Indonesia, the largest Muslim-majority country, prohibits abortion generally but allows it in instances of rape and medical crises according to Law No. 36 of 2009 on Health. The Constitutional Court subsequently affirmed this stance, underscoring the necessity of reconciling religious traditions with maternal health (Tønnessen and Al-Nagar 2019). Malaysia and Oman have both acknowledged concerns to maternal health and foetal damage as justifications for permissibility; yet, significant cultural

stigma persists, obstructing practical access (Abdullah 2017). These instances illustrate that, even in traditional civilisations, gradual legal adjustments can occur when based on the *maqāṣid* principle of damage prevention (*dafʿ al-ḍarar*).

An examination of the function of fatwas and juristic reasoning elucidates the adaptive nature of Islamic law. The Islamic *Fiqh* Council of the Muslim World League has authorised abortion prior to 120 days in instances of significant foetal abnormalities, contingent upon medical validation by reputable physicians (Awass 2014; Abdulghani and Alrumayh 2025). In 1998, Al-Azhar in Egypt, under Sheikh Muḥammad Sayed Ṭanṭāwī, promulgated a fatwa endorsing the permissibility of abortion for victims of rape, emphasising the primacy of safeguarding dignity and mitigating suffering (Hessini 2007). In Iran, Ayatollah Khamenei permitted abortion in instances of genetic problems during the first trimester (Ridgeon 2013), although Ayatollah Yusuf Saanei acknowledged more extensive criteria for permissibility, encompassing societal suffering. These fatwas demonstrate how *ijtihād*, when attuned to modern reality, can broaden the acceptable justifications for abortion while adhering to Islamic norms.

From these varied experiences, numerous insights arise for Pakistan. The North African example underscores the significance of integrating theological studies with legislative reform. Tunisia and Morocco illustrate that the principles of sharia can offer robust ethical rationales for abortion access, especially when legislation is designed to mitigate social harm. Secondly, Iran and Indonesia demonstrate that religious authority may validate reform when decisions are based on *maqāṣid* and supported by public health data. Third, Sudan and Egypt exemplify the perils of legal inflexibility and imprecise legal classifications, which, instead of safeguarding life, establish insurmountable obstacles for victims of abuse and compel abortions to occur clandestinely.

For Pakistan, these comparative findings highlight the pressing necessity to transcend colonial-era ambiguity and establish a coherent legal system clearly based on *maqāṣid al-sharīʿah*. A deliberate revision would acknowledge valid justifications for abortion prior to ensoulment—including maternal health issues, rape, incest, and serious foetal abnormalities—while upholding the prohibition post-ensoulment, except in cases when the mother's life is at risk. This framework would not signify a deviation from Islamic law but rather its genuine renewal, harmonising Pakistan's legislation with its Hanafi tradition and the overarching Islamic ethical principles of mercy, justice, and human welfare. Furthermore, by using a *maqāṣid*-based approach, Pakistan would exhibit adherence to

international human rights standards, so reconciling its Islamic identity with its global obligations.

Ultimately, the comparative analysis indicates that Islamic law possesses the doctrinal and interpretive frameworks to endorse humane and socially appropriate abortion legislation. Sharia, when directed by its overarching goals, offers a flexible framework that ensures women's health, secures family welfare, and upholds the dignity of the most vulnerable, rather than being confined to rigidity. Pakistan's future depends not on discarding tradition but on revitalising the *maqāṣid* ethos of Islam as a dynamic, purposeful framework that can tackle the ethical intricacies of contemporary existence.

Conclusion

This analysis demonstrates that Pakistan's abortion regulations exhibit significant discrepancies, influenced both by colonial punitive legacies and by insufficient Islamization. The Constitution seeks to reconcile sharia with fundamental rights; nonetheless, legislative sections are ambiguous, especially with the notions of "good faith" and "necessary treatment." This uncertainty not only lacks legal clarity but also contravenes the *maqāṣid al-sharīʿah* principle of safeguarding life *(ḥifẓ al-nafs)*, dignity (*ḥifẓ al-ʿirḍ*), and lineage *(ḥifẓ al-nasl)*. The result is a significant prevalence of unsafe abortions, endangering mother health and contravening both constitutional protections and Islamic ethical principles.

This study illustrates that Islamic law is dynamic and not intrinsically limiting by integrating classical jurisprudence with contemporary *maqāṣid*-based reasoning. The classical diversity, especially within the Hanafi tradition, provides interpretive flexibility, but contemporary methods prioritise purposiveness and adaptability in addressing bioethical dilemmas. This approach offers philosophical justification for legal reform regarding abortion, including instances of rape, foetal disability, and hazards to mother health, particularly prior to ensoulment.

Comparative analyses from other Muslim-majority nations further substantiate that Islamic legal systems can facilitate pragmatic transformation. Tunisia and Morocco exemplify how *maqāṣid*-inspired policies can harmonise religious legitimacy with public health needs; Iran and Indonesia showcase the influence of religious authority in validating reform; whereas Sudan and Egypt highlight the perils of excessive rigidity. These experiences cumulatively

demonstrate that change based on *maqāṣid al-sharīʿah* can protect women's rights while preserving Islamic identity.

This research innovatively connects *maqāṣid al-sharīʿah* with international human rights discourse to advocate for a comprehensive model for abortion law reform in Pakistan. This framework would re-establish coherence between Pakistan's constitutional obligations and Islamic ethical precepts while aligning national law with international health and rights norms. Subsequent research ought to broaden this approach via empirical socio-legal studies, incorporating the viewpoints of healthcare providers, religious scholars, and impacted women, to enhance doctrinal understanding with experiential realities. Integrating normative reasoning with empirical facts might enhance later scholarship's argument for a *maqāṣid*-driven change that encompasses justice, mercy, and human welfare in abortion regulation.

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