

## Research Article

# ABORTION-RELATED MATERNAL DEATHS: A COMPARATIVE STUDY OF CRIMINAL LAW IN JORDAN, THE UAE, AND EUROPE

***Abdullah Ehjelah Jr., Raed Faqir Jr.\*, Yusuf Obeidat, Mamdouh Hassan Manea Al-Adwan Jr. and Shaima Bani Amer Jr.***

## ABSTRACT

**Background:** *The study looks at the criminal implications for the death of a woman undergoing an abortion in the context of Islamic Sharia and the legal frameworks of Jordan, the United Arab Emirates, and Europe. The main concern of this study is how to preserve the mother's life while protecting the fetus, which raises sensitive questions about the legal definition of abortion that causes death. The study problem stems from the lack of explicit provisions in Emirati law and in the legislation of France and Poland that criminalize this composite conduct, in contrast to the explicit regulation found in Jordanian law. The study aims to clarify the Islamic Sharia's perspective on abortion crimes and the consequential death of the pregnant woman.*

**Method:** *The study uses a comprehensive comparative analytical methodology that systematically contrasts relevant Islamic Sharia rulings with the Jordanian, Emirati, French, and Polish legal frameworks governing abortion and the legal consequences of death resulting from it. The study's objectives*

## DOI:

<https://doi.org/10.33327/AJEE-18-9.2-a000191>

Date of submission: 19 Dec 2025

Date of acceptance: 02 Mar 2026

Online First Publication: 20 Apr 2026

## Disclaimer:

The authors declare that their opinions and views expressed in this manuscript are free of any impact of any organizations.

## Copyright:

© 2026 Abdullah Ehjelah Jr.,  
Raed Faqir Jr., Yusuf Obeidat,  
Mamdouh Hassan Manea Al-Adwan Jr.  
and Shaima Bani Amer Jr.

are to identify similarities and differences between religious and positive law, assess their impact on criminal liability, and assess how well each legal system balances the protection of fetal life with consideration for individual rights and medical necessity. It accomplishes this by critically examining judicial interpretations, statutory provisions, and doctrinal sources.

**Results and Conclusions:** *The study draws several important conclusions, chief among them being that both Jordanian and Emirati laws are in line with Islamic Sharia in that they forbid abortion unless necessary, and criminalize both abortion and the killing of a pregnant woman while imposing penalties for both. In contrast to Jordanian law, which specifically forbids abortion that results in death, Emirati and European laws permit abortion in cases of fetal malformation. The study also identifies shortcomings in Emirati law concerning the escalation of penalties. Therefore, in accordance with the Jordanian legislative approach, the study suggests adding a specific clause to Emirati law that criminalizes abortion that results in death and imposes harsher penalties. It also addresses circumstances where criminal liability increases following the issuance of a final judgment for abortion.*

## 1 INTRODUCTION

Abortion is considered a criminal act under both Jordanian and Emirati law, with the level of harm being the determinant of the severity of the crime, which may be considered a misdemeanor or a felony, and the ensuing punishment. The matter becomes even more complicated when an abortion leads to the accidental death of the woman who is pregnant, creating complex legal issues as to the nature of the crime and the sufficiency of the criminal law. Within this framework, the Emirati criminal law lacks specific provisions regarding the issue of abortion-related deaths of mothers. Conversely, the Jordanian criminal law specifically addresses the issue through clear and unequivocal provisions in the Penal Code.<sup>1</sup> In the UAE, the Medical Liability Law, in particular Article 33 of Federal Law No. 4 of 2016,<sup>2</sup> restricts criminal liability to instances where the physician performs the abortion. These differences have major implications for the degree of criminal protection extended to women.

This study focuses on two representative legal systems: the French and Polish. Besides these, two Arab legal systems, namely the UAE and Jordanian systems, have been chosen. The common feature of all four legal systems is that they are rooted in the Latin legal tradition. In addition, both the UAE and Jordanian systems highlight Islamic Sharia principles.

---

1 Jordanian Penal Code No 16 of 1960 (amended 2025) [in Arabic] <<https://jordan-lawyer.com/2017/04/05/jordan-criminal-law/>> accessed 26 February 2026.

2 UAE Federal Decree-Law No (4) of 2016 'On Medical Liability' (amended 4 September 2023) <<https://uaelegislation.gov.ae/en/legislations/1192?keyword=united%20arab%20emirates>> accessed 26 February 2026.

Abortion has been thoroughly studied from a moral, religious, and criminal standpoint in earlier legal and jurisprudential research, especially in relation to the preservation of fetal life and the legality of abortion when necessary.<sup>3</sup> However, abortion that results in the death of the pregnant woman has received relatively little attention as a distinct and complicated criminal phenomenon, particularly when comparing Islamic Sharia with modern Arab legal systems. There is a noticeable gap in the literature and in legal practice because of the lack of clear Emirati penal provisions that criminalize abortion that results in the death of the pregnant woman, especially regarding the escalation of criminal liability and the variety of legal characterizations applicable to such conduct.

European legislation treats a woman's death from abortion as a criminal matter, with a doctor held liable in law for gross negligence, whereas death in an illegal abortion itself directly punishes the act and reflects the concern of legislation for the protection of women's lives and clarification of criminal responsibility.

In France, a woman's death due to abortion is classified as a crime in which the physician is liable for gross ignorance in legal abortions (Article 221-6 of the French Penal Code),<sup>4</sup> while in Poland an illegal abortion that results in the death of the pregnant woman is an offence under Article 152 of the Penal Code in Poland,<sup>5</sup> which indicates the legislation's concern for the protection of women's lives with regard to criminal liability. The issue identified for the purposes of this study is to determine the optimal criminal qualification of maternal death from abortion within the legislation of Jordan, the UAE, France, Poland, and Sharia law, considering the differences in these states' legislation on criminalization issues. Despite the differences in criminalization scope, criminalization type, and medical necessity limits, it is necessary to determine the type of qualification for a criminal act: What is the optimal criminal qualification of maternal death from abortion within these comparative laws, and on which ground is it possible to determine this qualification in a manner that balances the right to life with modern criminal policy?

The study aims to examine the intricacy of defining abortion-related maternal death under Jordanian and Emirati law, with special emphasis on the legislative lacuna in the Emirati Penal Code beyond the limited scope of regulation under the Medical Liability

---

3 Dinesh Ashok, Tahir Qureshi and Manvendra Singh, 'Religious, Moral, and Legal Rhetoric of Abortion Argument: A Study of Select Common Law Adhering Nations' (2022) 6(S6) International Journal of Health Sciences 6176, doi:10.53730/ijhs.v6nS6.10969; Barbara Pfeiffer Billauer, 'Abortion, Moral Law, and the First Amendment: The Conflict between Fetal Rights & Freedom of Religion' (2017) 23(2) William & Mary Journal of Race, Gender, and Social Justice 271; Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice* (Routledge, 2022) doi:10.4324/9781003305217; Hundzukani P Khosa-Nkatini, 'Evaluation into Religious and Global Perspectives on Abortion' (2025) 49(1) Theologia Viatorum a341, doi:10.4102/tv.v49i1.341.

4 French Penal Code of 22 July 1992 'Code Pénal' (amended 1 January 2026) <[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070719/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/)> accessed 26 February 2026.

5 Poland Penal Code of 6 June 1997 'Kodeks Karny' (amended 4 December 2025) <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553>> accessed 26 February 2026.

Law. This issue will be compared to Islamic Sharia law and selected European laws on matters of mistake of fact, absence of pregnancy, and reopening of criminal cases after a final judgment. This paper will also analyze the stances of the UAE, Jordan, France, Poland, Islamic Sharia law on abortion-related unintentional death of the mother, the viability of the Emirati Medical Liability law, and the determination of the relevant law in the event of death after a final judgment on abortion, with the aim of enhancing criminal protection for the mother and the fetus.

Accordingly, the study will take a comparative approach, aiming to develop a coherent legal standard that balances the protection of the right to life, the need for legal certainty, and the particularities of each legal system.

## 2 LITERATURE REVIEW

In the punitive system of Arab legal norms, such as those of Jordan and the UAE, the practice of abortion and the accidental death of the pregnant woman are greatly affected by the rules of the Islamic Sharia in regard to the right to life, as abortion is considered contrary to the right to life, and the legal consequences vary according to the stage of fetal development, the need for the abortion, and the need to preserve the life of the mother.<sup>6</sup> There's no ambiguity in the separation between the act and the punishment of abortion and the accidental death of the pregnant woman as provided in the Islamic Sharia.<sup>7</sup> Under Islamic Sharia law, the act of abortion is considered to be an infringement of the fetus's right to life, which is punishable by both heavenly and earthly laws, including diyah or discretionary punishment, particularly after 120 days of pregnancy. On the other hand, an unintentional death is not punishable under the law but may attract compensation in accordance with the applicable jurisprudence.<sup>8</sup>

Kooli examines cases where a brain-dead pregnant woman is on life support due to fetal protection laws, emphasizing the ambiguity of the law between the autonomy of the mother

- 
- 6 See, Jordanian Penal Code (n 1) arts 322, 323, 324; French Penal Code (n 4) art 222-2. See also, UAE Federal Decree-law No (18) of 2023 'Amending Some Provisions of Federal law No 4 of the year 2016 Regarding Medical Liability', art 16 (1) (2) <<https://uaeph.mohap.gov.ae/admin/Attachment/Download?id=429cddb-07c3-497b-ac01-abd8a079360b&response=download>> accessed 26 February 2026; Poland Law of 7 January 1993 'On Family Planning, Protection of Human Fetuses, and Conditions Permitting Termination of Pregnancy' (amended 1 October 2021) art 4a (1)(1) <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19930170078>> accessed 26 February 2026.
  - 7 Ayman Abdelhamid Al-Badarin, 'The Ruling on Aborting the Fetus before the Blowing of the Soul in it: A Comparative Legal Jurisprudential Study' (2022) 19(2) Journal of the University of Sharjah for Sharia Sciences and Islamic Studies 501, doi:10.36394/jsis.v19.i2.14 [in Arabic].
  - 8 Abd Allāh ibn Aḥmad ibn Qudāmāh al-Maqdisī, *Al-Mughni fī Fiqh al-Imām Aḥmad ibn Ḥanbal al-Shaybānī* (Dār al-Fikr 1984) vol 9, 9/538 [in Arabic]; Ziad Abdullah Mohammad Tarwah and Mohammad Motlaq Mohammad Assaf, 'The Provisions of Abortion in Islamic Jurisprudence' (2023) 6(57) Arab Journal for Scientific Publishing 142 [in Arabic].

and the personhood of the fetus. He argues that these cases demonstrate legislative loopholes and emphasizes the importance of differentiating between accidental or medical maternal death and criminal reproductive acts.<sup>9</sup> Mary Ziegler discusses the ambiguity that emerges as a consequence of restrictive abortion regimes and fetal personhood principles when a pregnant woman is deemed brain dead but sustained on life support to carry the pregnancy to full gestation. She posits that the lack of exact statutory regulation does not sufficiently differentiate between unintentional maternal consequences, such as brain death or accidental death, and criminalized forms of reproductive conduct, thus revealing the structural flaws within the law when dealing with complicated and ethically charged issues.<sup>10</sup>

The legality of abortion, its definition, and permissibility vary across European countries. Most Western countries, such as France, Germany, and the UK, allow abortions within a certain gestation period, while permitting them after that period only for medical or social reasons.<sup>11</sup> Some countries, e.g., Poland and Ireland, only permit abortions to save the mother's life or in cases of severe fetal anomalies.<sup>12</sup> These differences reflect the weighing of a woman's reproductive health rights with ethical and social considerations and impact access to medical services and the experiences of women, including those who travel across borders, and conscientious objection by physicians, which further complicates the relationship between legislation and medical practice within the European context.<sup>13</sup>

The Gissler et al. study reveals gaps in the administration and legal aspects of recording maternal mortality in France, as statistics are based on strict ICD-10 coding and a forty-two-day postpartum period.<sup>14</sup> This shows a need to amend the laws to make it easier to accurately record maternal mortality cases, as cases of pregnancy complications and mental health problems are underreported. In some situations, maternal mortality is due to a lack of proper medical counseling and precautions; both the mother and the newborn suffer from harm that could be prevented. This is also relevant from the European perspective, as it has been noted that fetal abnormalities should be properly dealt with from both a legal and medical point of view in order not to let women die from avoidable reasons.<sup>15</sup>

---

9 C Kooli, 'Navigating the Legal Vacuum: An Ethical Analysis of Brain Death, Fetal Personhood, and Maternal Autonomy in the Post-Roe Era: Lessons from *Smith v Georgia*' (2025) 33 *Ethics, Medicine and Public Health* 2, doi:10.1016/j.jemep.2025.101187.

10 Mary Ziegler, 'Fetal Personhood, Legal Ambiguity and the Treatment of Brain Death in Pregnancy' (2026) 26(1) *The American Journal of Bioethics* 40, doi:10.1080/15265161.2025.2594412.

11 Danielle Marie Pullan, *The Gap Between Abortion Policy and Abortion Access in Europe: A Mixed-Methods Comparative Study* (IMPRS-SPCE 2024) 17-20, doi:10.17617/2.3614737.

12 Kornelia Zaręba and others, 'Abortion in Countries with Restrictive Abortion Laws: Possible Directions and Solutions from the Perspective of Poland' (2021) 9(11) *Healthcare* 1594, doi:10.3390/healthcare9111594.

13 Pullan (n 11) 17-22.

14 Mika Gissler et al., 'Pregnancy-Related Deaths in Four Regions of Europe and the United States in 1999–2000: Characterisation of Unreported Deaths' (2007) 133(2) *European Journal of Obstetrics & Gynecology and Reproductive Biology* 181-2, doi:10.1016/j.ejogrb.2006.08.013.

15 Bianca Selejan-Gutan, *The Constitution of Romania: A Contextual Analysis* (Bloomsbury 2016).

Islamic jurists have used several terms, including *isqāt* (miscarriage), *ilqāe* (expulsion), *ikhrāj* (removal), and *ṭard* (ejection), to refer to the act of abortion. These terms are closely related in meaning and collectively refer to the expulsion of the fetus prior to the completion of its development. Ḥanafī jurists defined *isqāt* as the expulsion of the fetus after the initial signs of its formation have appeared.<sup>16</sup> In contrast, Ḥanbalī jurists employed the term *ilqā'* and, in certain opinions, permitted a woman to take lawful medication to expel the fetus before its formation.<sup>17</sup> The Ḥanafīs also used the term *istinzal*, which allows medical intervention to induce uterine bleeding so long as the pregnancy remains at the stage of a drop (*nuṭṭah*) or a clot ('*alaqah*), and no bodily organ has yet formed.<sup>18</sup> In the Prophetic tradition, the term *imlās* is used to denote the miscarriage of a fetus before the completion of pregnancy.<sup>19</sup>

Muslim jurists unanimously agree on the prohibition of abortion after the ensoulment of the fetus, a stage medically estimated to occur after one hundred and twenty days of pregnancy. After this period, abortion is deemed strictly prohibited by consensus of the Islamic schools of law. Prior to ensoulment, however, juristic opinions diverge. Some Ḥanafī scholars permitted abortion during the pre-formation stage without requiring a specific justification, whereas the majority of Ḥanafī jurists conditioned its permissibility upon the existence of a legitimate necessity aimed at preventing a serious and established harm. In contrast, Mālikī and Shāfi'ī jurists adopted a position of absolute prohibition, both before and after ensoulment, grounded in the principle of safeguarding the origin of human existence and regarding the fetus as a potential human being deserving of legal respect from the moment of conception.<sup>20</sup>

Even before the 120-day period has elapsed, most scholars tend to favor prohibition, despite the legal dispute over the time frame prior to ensoulment. This stance is based on the idea that human life should be protected and that fetuses should be treated as potential human beings deserving of legal protection. This viewpoint has been embraced by the Jordanian General Iftaa' Department, which affirms in Fatwa No. 287 that abortion is forbidden at all stages of pregnancy, albeit to varying degrees. When a suitably qualified doctor concludes that carrying the pregnancy to term would endanger the mother's life, the fatwa permits abortion under special circumstances. Additionally, it permits abortion after 120 days if the fetus's life endangers the mother's, on the grounds that the mother's life is certain while the fetus's life is still uncertain.<sup>21</sup>

---

16 Ala al-Din al-Haskafi, *Al-Durr al-Mukhtar Sharh Tanwir al-Absar* (Dar al-Fikr 2002) vol 3, 176 [in Arabic].

17 Shams al-Din Ibn Muflih, *Al-Furu* (Dar al-Kutub al-Ilmiyyah 1997) vol 1, 398 [in Arabic].

18 Muhammad Amin Ibn Abidin, *Hashiyat Radd al-Muhtar ala al-Durr al-Mukhtar* (Dar al-Fikr 2000) vol 1, 202-3 [in Arabic].

19 Sulayman ibn al-Ashath, Abu Dawud, *Sunan Abi Dawud* (Dar al-Risalah al-Alamiyyah 2009), Hadith no 3123 (Kitab al-Imlas) [in Arabic].

20 Fawwaz Salami, 'Provisions of Abortion before the Soul Is Breathed into the Fetus between Islamic Law and Algerian positive law' (2024) 19(1) *Journal of Thought* 483-6 [in Arabic].

21 Fatwa No 287 (Jordanian General Iftaa' Department, 16 August 2009).

### 3 METHODOLOGY

The study follows a structured qualitative comparative method along with a well-defined analytical framework. The research covers five different legal systems. These are Islamic Sharia, Jordan, the United Arab Emirates, France, and Poland. The comparison of these systems is made in an organized manner. In the context of these five legal systems, four aspects are analyzed. These are: (1) the classification of abortion and abortion-related maternal death in the legal sphere; (2) the relevant criminal liability and sanctions; (3) the underlying legal justification and policy considerations; and (4) the extent to which moral and or religious and constitutional values are reflected in the regulation of abortion in the statute books.

The primary sources comprise legal provisions, constitutions where applicable, and authoritative sources of Sharia, while the secondary sources comprise juristic literature, scholarly contributions, and comparative legal studies. The comparison begins with a presentation of each legal system in the same format to ensure consistency. The comparison across legal systems is conducted to establish similarities and differences, assess the adequacy of legal responses, and evaluate the compatibility of the frameworks with the aims of Islamic Sharia (maqāṣid), specifically the preservation of life and dignity.

In the present study, the basis for the comparative analysis is established with the focus being on the French and Polish systems in Europe, and the UAE and Jordanian systems in the Arab world, due to the adherence to the Latin tradition and the effect of Islamic Sharia in the UAE and Jordan, to explore the connection between civil law and Islamic law.

### 4 RESULTS AND DISCUSSION

An examination of both the Jordanian Penal Code and the Emirati Penal and Crimes Law reveals that both legal systems concur on criminalizing abortion along with its prescribed penalties. Such legislative approaches fall squarely within the provisions of Islamic Sharia that impose a general prohibition against abortion. Thus, positive law in both systems reflects and conforms with this basic principle of Sharia law.

Nevertheless, the Jordanian Public Health Law No. 47 of 2008 and the Emirati Medical Liability Law depart from this general rule by introducing legal exceptions, grounded in juristic opinions, that permit abortion in cases of necessity. Under these exceptions, abortion does not constitute a criminal offense, and no criminal liability arises where the procedure is carried out in accordance with specific conditions aimed at protecting the life or health of the pregnant woman.<sup>22</sup>

---

22 Abu Muhammad al-Hasan ibn Ali al-Kattani, *Abortion and Its Rulings in Islamic Law* (Al-Maktabah Al-Shamilah 2021) 10 ff [in Arabic].

## 4.1. Abortion Regulation in Jordan, the UAE, Europe, and Sharia Islamic Law

Under Jordanian law, abortion is prohibited unless there are exceptions to protect the woman's life or health. These exceptions must come with "written consent, certification by two specialist physicians, and official hospital documentation kept for ten years". Article 12(b) holds neither the woman nor the practitioner criminally responsible if these conditions are met.<sup>23</sup> This exemption applies to situations where abortion leads to the death of the pregnant woman, if the procedure was performed according to the legal requirements. Therefore, there is no criminal responsibility for the doctor or anyone who helped with the procedure. This aligns with the view taken by the Jordanian Council of Iftaa', which allows abortion if continuing a pregnancy goes against saving a mother's life. The question then arises as to whether the death of the pregnant woman due to the pregnancy itself, in the absence of any medical intervention, justifies the invocation of this exception, thereby directly relating the regulation of abortion with the obligation to save the pregnant woman's life.

Article 16 of the Emirati Medical Liability Law presents a comparable exception to that found in Jordanian law. This exception applies to a medical risk that poses a threat to the mother's life. However, Emirati law elaborates on this with more details by requiring that abortion be the only medical means available for saving the pregnant woman's life, that it takes place in a licensed medical facility, and under the supervision of two specialist physicians. It also requires an accompanying detailed medical report, signed by the pregnant woman or by a person legally authorized to make medical decisions on her behalf. In extreme necessity cases, prior consent is waived by the legislator, and immediate intervention is authorized to save the mother's life. In this regard, it can be seen how the dimension related to death caused by pregnancy is postulated as a criterion for measuring the state of necessity, with the risk of death being the legal foundation for justifying the procedure and excluding penal responsibility.

An essential difference between the two legal systems lies in a second exception that is specific to Emirati law. The Emirati Medical Liability Law allows abortion if there is a serious fetal deformity that impacts the fetus's ability to survive or makes post-birth survival impossible, but only under strict conditions.<sup>24</sup> These conditions are: (1) confirmation of the deformity via a medical report from a specialized committee made up of at least three consultant physicians; (2) completion of all advanced medical tests required to assess the condition of the fetus; and (3) acquiring consent from the pregnant woman or her legal guardian when necessary. However, this exception is still unique in that it is founded not on the scenario of death caused by pregnancy, but on the interest of the fetus itself. This leads

---

23 Jordanian Law No 47 of 2008 'Public Health Law' <[https://www.moh.gov.jo/ebv4.0/root\\_storage/en/eb\\_list\\_page/public\\_health\\_law\\_no\\_\(47\)\\_for\\_year\\_2008\\_and\\_its\\_changes.pdf](https://www.moh.gov.jo/ebv4.0/root_storage/en/eb_list_page/public_health_law_no_(47)_for_year_2008_and_its_changes.pdf)> accessed 26 February 2026.

24 UAE Federal Decree-Law No (4) of 2016 (n 2).

to the question of how one can distinguish between abortion that prevents the risk of the mother's death and abortion that is connected to the non-viability of the fetus.

It is clear then that both Jordanian and Emirati law agree with Islamic Sharia<sup>25</sup> in forbidding abortion except when there is a necessity recognized both religiously and medically to save the life or health of the mother, whether before or after one hundred and twenty days of pregnancy. However, Emirati law has widened the grounds for permission by adding fetal deformity as a separate reason for abortion, which is not provided in the Jordanian Public Health Law. It can be argued that the death caused by pregnancy under both systems constitutes the ultimate boundary of the state of necessity, which has priority over all other factors, emphasizing the supremacy of the protection of life over other interests.

Although Jordanian law does not specifically allow for abortion in the case of severe deformities in the fetus, the Jordanian Council of Iftaa' has issued fatwas that allow for abortion in the case of unstable or unviable postnatal life.<sup>26</sup> These religious rulings offer guidance in the absence of statutory regulation, which may also form the basis of possible future legislation on the issue.<sup>27</sup> In our view, the most compelling criterion in jurisprudence and fatwas is the risk of death to the mother arising from pregnancy, as it presents the strongest ground to prioritize the mother's interests over the fetus's interests. In Jordan, abortion due to fetal deformity is permitted up to 120 days, but in our opinion, death due to pregnancy is a key factor to intervene even beyond the 120 days, while in the Emirati law, abortion due to fetal deformity is permitted, but without any timeframe.

The abortion laws in France and Poland depict a notable difference in addressing the issue of abortion, especially in protecting the life of the pregnant woman.<sup>28</sup> In France, abortion is considered an inalienable right that is protected under the constitution and can be carried out in the context of health services, especially in cases that pose a threat to the life or health of the pregnant woman. Therefore, the death of the pregnant woman can be considered a legitimate reason for abortion, making the act legal without exposing the physician or individuals performing the act to any criminal risk.<sup>29</sup> Most States follow an

---

25 The Islamic Sharia is a "system of divine laws that cover all aspects of faith, worship, and social behavior, as well as ethics and punishments," which are intended to "ensure the welfare of humanity in both the world and the hereafter." The Sharia is based on the Qur'an, the Sunnah, the consensus of the community (ijma'), and analogical reasoning (qiyas), and is designed to "attain the Maqasid" of protecting religion, life, intellect, lineage, and property.

26 The technical meaning of fatwa is the clarification of a Shar'i ruling; and the mufti is one who informs about the Shar'i ruling. See, Abdulhameed Bin Saleh Bin Abdulkarim Al-Krrani Al-Ghamdi, 'Electronic Fatwa: Foundations and Application' (2020) 16 *Journal of Arts* 269, doi:10.35696/v1i16.669.

27 Fatwa No 791 (Jordanian General Iftaa' Department, 21 June 2010).

28 Christian Fiala and others, 'Abortion: Legislation and statistics in Europe' (2022) 27(4) *The European Journal of Contraception & Reproductive Health Care* 346-7, doi:10.1080/13625187.2022.2057469.

29 *ibid* 347.

intermediate form that allows abortion after a certain period and on terms like obligatory counseling or a physician's conscientious objection, as in Germany, Italy, and Spain.<sup>30</sup> This clearly underlines that abortion continues to remain a divided issue in European society and law, notwithstanding.<sup>31</sup>

On the other hand, the Polish legal system is known to be strict, as abortion is banned in most circumstances and is only legal when the pregnancy threatens the life of the woman.<sup>32</sup> In this scenario, the risk of the death of the mother due to pregnancy becomes the only legal reason for abortion,<sup>33</sup> as it allows abortion while maintaining strict rules against it in all other circumstances.<sup>34</sup> It is thus clearly understood that the key factor in both systems is death from pregnancy. In French law, it enables an extension of the right to abortion in the interests of the mother's life, while in Poland, it is the only condition under which an abortion is legal under the more restrictive law.

In our view, in the event of death from pregnancy, all four legal systems—Jordanian, French, Emirati, and Polish—agree in giving priority to the protection of the woman's life as the supreme principle, though they differ in the degree of permissibility and conditions: the Jordanian<sup>35</sup> and French<sup>36</sup> systems allow the performance of medical interventions to prevent death; the Emirati system exempts the physician from liability in cases of necessity to preserve the mother's life<sup>37</sup>; while the Polish system limits it to cases presenting a direct threat to the woman's life.<sup>38</sup> Islamic jurisprudence agrees with this view in considering the threat to the mother's life a legitimate ground to permit abortion, thus giving priority to the protection of the woman's life over the interests of the fetus. This is a meeting point between Sharia law and positive law in considering the woman's life as the fundamental criterion to permit medical interventions.

---

30 Michael Minkenberg, 'The Policy Impact of Church-State Relations: Family Policy and Abortion in Britain, France, and Germany' (2003) 26(1) *West European Politics* 198, doi:10.1080/01402380412331300267.

31 Barbara Havelková, *Gender Equality in Law: Uncovering the Legacies of Czech State Socialism* (Hart 2017).

32 Agnès Guillaume and Clémentine Rossier, 'Abortion Around the World: An Overview of Legislation, Measures, Trends, and Consequences' (2018) 73(2) *Population* 234-5, doi:10.3917/pope.1802.0217.

33 Francesca Minerva, 'Conscientious Objection in Italy' (2015) 41(2) *Journal of Medical Ethics* 170, doi:10.1136/medethics-2013-101656.

34 Anna Piecuch, Malwina Gryka and Małgorzata Kozłowska-Wojciechowska, 'Attitudes Towards Conscientious Objection Among Community Pharmacists in Poland' (2014) 36(2) *International Journal of Clinical Pharmacy* 314, doi:10.1007/s11096-013-9878-5.

35 See, Jordanian Penal Code (n 1) arts 322, 323, 324.

36 See, French Penal Code (n 4) art 222-2.

37 See, UAE Federal Decree-law No 18 of 2023 (n 6) art 16 (1) (2).

38 See, Poland Law of 7 January 1993 'On Family Planning' (n 6) art 4a (1) (1).

## 4.2. Islamic Perspective on the Penalties for Abortion Causing the Death of a Pregnant Woman

There are no known provisions in Islamic Sharia that mandate a specific, standalone, and direct punishment for abortion in the case where it results in the death of a pregnant woman as a combined crime in this exact instance.<sup>39</sup> Rather, Islamic Sharia stipulates punishments for each of the two separate crimes individually; these being: abortion and unintentional killing.<sup>40</sup> These two offenses form the factual elements of such composite criminal conduct.

### 4.2.1. Penalties for Intentional Abortion in Islamic Sharia

The Islamic Sharia law considers the fetus sacred from the moment that the nutfah embeds in the womb and assumes the shape of a fetus.<sup>41</sup> It is considered a living being with an inalienable right to life that prohibits abortion by anyone, including the parents themselves.<sup>42</sup> Infringing this right invites punishment in this life and accountability in the afterlife because of the fetus's high status.<sup>43</sup> These sanctions are explained as follows:

#### A. Blood Money for the Fetus (al-ghurrah):

Islamic jurists agree that the blood money for the fetus is to be assessed as a ghurrah, which is defined as the price of a male or female slave, or their monetary equivalent in those places where slavery no longer exists.<sup>44</sup> This ruling is based on the judicial precedent of Prophet Muḥammad. It has been reported that 'Umar ibn al-Khaṭṭāb asked some Companions about a case concerning the miscarriage of a woman; al-Mughīrah ibn Shu'bah testified that he had seen the Messenger of Allah judge such a matter by imposing a ghurrah - that is, by giving either a male or female slave. 'Umar asked for more evidence and got it from Muḥammad ibn Maslamah.<sup>45</sup>

In the same way, Abū Hurayrah told a story about two women who fought; one hit the other with a stone, killing her and causing her to lose her baby. The Prophet said that for the baby, the payment was a ghurrah, which is a slave, either male or female. This establishes that the

39 Alireza Bagheri and Leila Afshar, 'Abortion in Different Islamic Jurisprudence: Case and Commentaries' (2011) 3(4) *Asian Bioethics Review* 353.

40 Farrukh B Hakeem, MR Haberfeld and Arvind Verma, 'The Concept of Punishment under Sharia' in *Policing Muslim Communities: Comparative International Context* (Springer 2012) 7, doi:10.1007/978-1-4614-3552-5\_2.

41 Suliman MK Ibrahim, 'The Moral and Legal Status of the Human Foetus: A Critical Analysis from an Islamic Perspective' (PhD (Law) thesis, Lancaster University 2008) 109.

42 *ibid* 110.

43 *ibid*

44 Mudrasa Sabreen, 'An Unborn Child's Right to Life: A Study of the Law of Abortion in Pakistan in the Light of Shariah' (2020) 35(53) *Al-Adwa/Al-Azyā* 189-90.

45 Alawī ibn 'Abd al-Qādir al-Saqqāf, *Al-Durar al-Saniyyah: The Contemporary Encyclopedia* (2025) [in Arabic] <<https://dorar.net>> accessed 26 February 2026.

baby has its own right to payment, and when both the mother and baby are killed, two separate payments should be made because it is like taking away two lives.<sup>46</sup>

Where no slave is available, jurists assessed the *ghurrah* as one-fifth of the full blood money (*diyah*)—equivalent to five camels, or fifty dinars, or six hundred dirhams according to the majority of the Islamic jurisprudence. The Ḥanafī school assessed it as five hundred dirhams, based on their valuation of full blood money at ten thousand dirhams, whereas the majority assessed full blood money at twelve thousand dirhams.<sup>47</sup> Since the blood money for a woman is half that for a man, the *ghurrah* for the fetus amounts to one-twentieth of the full blood money.<sup>48</sup>

Jurists further held that if a mother intentionally causes the miscarriage of her fetus, such as by consuming medication that results in abortion, she is liable to pay the *ghurrah*, as she is deemed to have unlawfully caused harm to the fetus.<sup>49</sup> Ibn Qudāmah states in *al-Mughnī* that if a pregnant woman consumes medication and thereby causes the miscarriage of her fetus, she must pay the *ghurrah* and is not entitled to inherit from it, as a killer does not inherit from the victim. The same rule applies to the father or any heir who causes the miscarriage; each is liable to pay the *ghurrah* and barred from inheriting from it.<sup>50</sup>

### B. Expiation (*Kaffārah*) in Addition to the *Ghurrah*

In addition to the *ghurrah*, some jurists further require the expiation prescribed for unintentional killing, namely the emancipation of a believing slave, and if this is not possible, fasting for two consecutive months. This requirement is derived by analogy from the Qur’anic ruling on unintentional killing, as stated in the verse: “Whoever kills a believer by mistake must free a believing slave and pay blood money to the family of the deceased.”<sup>51</sup> This indicates that abortion constitutes a serious offense that entails both financial compensation (*ghurrah*) and a penitential sanction (*kaffārah*).<sup>52</sup>

#### 4.2.2. Penalties for the Unintentional Death of a Pregnant Woman in Islamic Sharia

Islamic Sharia establishes that the punishment for unintentional killing generally rests upon two complementary components. The first is financial compensation (*diyah*) payable to the heirs of the deceased, while the second is moral and spiritual reformation of the offender

46 Muhammad Abu Zahrah, *Crime and Punishment in Islamic Jurisprudence: Punishment* (Dar al-Fikr al-Arabi 1999) 430 [in Arabic].

47 Ron Shaham, ‘Debates on the Diya (Blood Money): Contemporary Juristic Discourse and Women’s Rights’ (2019) 19(2) *Hawwa* 129, doi:10.1163/15692086-12341351.

48 Thomas Eich, ‘Induced Miscarriage in Early Mālikī and Hanafī Fiqh’ (2009) 16(3-4) *Islamic Law and Society* 328, doi:10.1163/092893809X12469547140991.

49 *ibid*

50 Abu Zahrah (n 46) 430.

51 Qur’an 4:92.

52 Abu Zahrah (n 46) 430.

through expiation (*kaffārah*). This dual approach seeks to achieve justice for the victim and their family on the one hand, and to reform the offender's conscience and conduct on the other. The Qur'an explicitly sets forth these sanctions in the following verse:

*"It is not for a believer to kill a believer except by mistake. Whoever kills a believer by mistake must free a believing slave and pay blood money to the family of the deceased, unless they remit it as charity..."*<sup>53</sup>

From this verse, three principal rulings may be derived:

1. **Obligation of Blood Money (*Diyah*).** Blood money constitutes financial compensation payable to the heirs of the deceased as a vested property right, similar in nature to inheritance. It is payable where the deceased is a Muslim or belongs to a community bound to Muslims by a covenant of peace.<sup>54</sup>
2. **Non-Payment of *Diyah* in Cases of Hostile Communities.** Where the deceased belongs to a community hostile to Muslims, despite being a believer, blood money is not paid to the heirs, as such payment would ultimately benefit those who are hostile to the Muslim community.<sup>55</sup> However, where a covenant exists between the community of the deceased and the Muslims, blood money is payable in fulfillment of that covenant.
3. **Obligation of Expiation (*Kaffārah*).** Expiation consists of emancipating a believing slave, or, failing that, fasting for two consecutive months. In cases of unintentional killing, *kaffārah* serves as a corrective and reformatory sanction, intended to cultivate moral awareness, caution, and a sense of responsibility in the offender, thereby deterring negligence and carelessness.<sup>56</sup>

### 4.3. The Concept of Abortion Resulting in Death under Jordanian and Emirati Law

Jordanian and UAE laws mainly govern abortion through their respective penal codes; thus, it is a misdemeanor or a felony, depending on the nature of the act. Penal responsibility is established by the Jordanian Penal Code, Arts. 321–325; the UAE Crimes and Penalties Law, Arts. 390–392; supplemented for the UAE by its Medical Liability Law, Art. 33, with limited

53 Qur'an 4:92

54 Yusuf Mohammed Gassim Obeidat, 'The Combining Between Blood Money and Compensation in The Jordanian Civil Law and The United Arab Emirates Civil Transactions Law' (2019) 25(4) Al-Manara Journal for Research and Studies (Al al-Bayt University) 9 [in Arabic]. See also, Yusuf Mohammed Gassim Obeidat, 'The Efficient Breach Theory under Jordanian Civil Law' (2016) 30(4) Arab Law Quarterly 336, doi:10.1163/15730255-12341328 [in Arabic].

55 Nurit Tsafir, *Collective Liability in Islam: The Aqila and Blood Money Payments* (CUP 2020) 119 doi:10.1017/9781108654241.

56 Abu Zahrah (n 46) 367.

exceptions.<sup>57</sup> This statutory structure corresponds with Islamic Sharia, which, following its classical interpretation, was opposed to abortion, and with the structure of criminal law doctrine defining abortion as any premature termination of pregnancy, be it by way of expulsion of the fetus, even if born alive, or causing the death of the fetus in utero.<sup>58</sup>

Abortion resulting in death is expressly addressed under Jordanian law in Articles 322 and 323 of the Penal Code, as well as under the Emirati Medical Liability Law. For the offense of abortion resulting in death to be established, several constituent elements must be satisfied, namely the presumed element and the material and moral elements of the crime. Once these elements are fulfilled, the legally prescribed penalty must be imposed in accordance with the relevant statutory provisions. These issues will be examined in detail in the following subsections.

In contrast, the French system, through a public health model, excludes the death of a fetus due to a legal abortion from the crime of homicide. The Public Health Code provides that "abortion constitutes a legitimate medical practice" (Art. L2212-1), that "abortion can, in accordance with the conditions provided for in Article L. 2212-2, be carried out up to the 14th week of gestation" (Art. L2212-2), and that "it can, regardless of the stage of gestation, be carried out when the health or life of the woman is in a grave and immedicable peril or when the fetus presents a mortal congenital defect" (Art. L2213-1).<sup>59</sup> In this case, criminal responsibility can be engaged in case an abortion turns out to be carried out "in deviation from the conditions provided for in Articles L.

The Polish legislation on abortion persists with the penal framework on the issue. Under the Act of 7 January 1993, abortion is permitted if the pregnancy threatens the life and health of the woman (Art. 4a),<sup>60</sup> because of the 2020 decision of the Constitutional Tribunal that abolished the entitlement to abortion on the grounds of fetal abnormality. In all other circumstances, the Criminal Code provides that abortion with the woman's consent is an offense (Art. 152) and without the woman's consent (Art. 153), and with an aggravating element if the woman loses her life (Art. 154) to emphasize the precedence of the protection of the fetus over the freedom of the woman to reproduce.<sup>61</sup>

---

57 See, Jordanian Penal Code (n 1); UAE Federal Decree-Law No (31) of 2021 'Promulgating the Crimes and Penalties Law' (amended 1 October 2025) <<https://uaelegislation.gov.ae/en/legislations/1529>> accessed 26 February 2026; UAE Federal Decree-law No (4) of 2016 (n 2).

58 Muhammad Said Namur, *Commentary on the Penal Code*, pt 1: *Crimes against Persons* (14th ed, Dar al-Thaqafah 2025) 142 [in Arabic]. See also, Samih Al-Muhammadi, 'The Criminal Policy of the Egyptian Legislator in Confronting the Crime of Abortion' (2021) 64(3) *al-Majallah al-Jinaiyyah al-Qawmiyyah* 5-9, doi:10.21608/ncj.2021.225838.

59 French Public Health Code 'Code de la santé publique' (amended 22 February 2026) <[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006072665/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072665/)> accessed 26 February 2026.

60 Poland Law of 7 January 1993 'On Family Planning' (n 6).

61 Poland Penal Code (n 5).

### 4.3.1. The Presumed Element (Existence of Pregnancy)

Abortion can only occur in relation to a pregnant woman, as pregnancy is defined as the union of the ovum and the sperm from the moment of fertilization until the completion of childbirth.<sup>62</sup> Accordingly, the establishment of the crime presupposes the actual existence of pregnancy. No criminal liability for abortion arises where the act is committed based on a mistaken belief that pregnancy exists, as such conduct falls within the category of an impossible crime, except in legal systems that recognize punishment for absolute impossibility.<sup>63</sup>

The criminalization of abortion is not limited to protecting pregnancy as such. Rather, the legislator's prohibition of this act aims to safeguard a set of interrelated interests. Foremost among these is the fetus's right to future life and its natural development within the womb, without necessarily recognizing it as a fully living human being at that stage.<sup>64</sup> In addition, the law seeks to protect the woman's reproductive capacity and her right to continue her pregnancy, as well as the community's collective interest in reproduction as a prerequisite for social stability and development.<sup>65</sup>

In this regard, the Federal Supreme Court of the United Arab Emirates held that the crime of abortion requires the existence of pregnancy as an essential element, since abortion is intended to terminate a living pregnancy prior to the natural time of delivery.<sup>66</sup> The act is fundamentally directed against a living fetus, and the subject matter of the crime is the pregnancy protected by law. Consequently, the offense does not arise before pregnancy occurs or after it has ended, nor does it arise if the fetus is already dead. The scope of abortion ends with the commencement of the childbirth process, even if delivery has not yet been completed, because the onset of labor marks the beginning of an independent natural life. At that point, the fetus is regarded as a living human being protected under the legal provisions governing homicide and bodily harm rather than those regulating abortion. Accordingly, where no pregnancy exists, the offense of abortion is not established, even if it was mistakenly believed that pregnancy existed.

62 Walid Suleiman Ali Alaya, Khamis Abd Rabbo Ismail Al Khattab and Moayad Hosni Ahmed Al Khawaldeh, 'Extent of Criminal Liability Arising from Harm to the Fetus under Jordanian Penal Law' (2024) 16(1) *Jordanian Journal of Law and Political Science* 123, doi:10.35682/jjpls.v16i1.638 [in Arabic].

63 Kamel Al-Saeed, *Commentary on the Penal Code: Crimes Against Morality, Public Decency and the Family* (Dar al-Thaqafah 2008) 190 [in Arabic].

64 Mahmud Najib Husni, *Commentary on the Penal Code: Special Part* (Dar al-Nahdah al-Arabiyyah 1986) 503 [in Arabic].

65 Russell Heaton and Claire de Than, *Criminal Law* (3rd edn, OUP 2011) 103.

66 Appeal No 46 [2011] UAE Federal Supreme Court (Criminal).

### 4.3.2. The Actus Reus Element

The offense of abortion consists of three components: criminal conduct, the criminal result, and the causal relationship between them.<sup>67</sup>

#### a. Criminal Conduct:

The act of abortion may be committed by any means whatsoever, as neither the Jordanian nor the Emirati legislators have restricted the offense to specific methods. This approach is reflected in Articles 321 and 322 of the Jordanian Penal Code, which respectively provide: “Any woman who aborts herself by whatever means she uses...” and “Whoever, by any means whatsoever, causes a woman to miscarry with her consent...”<sup>68</sup> Similarly, Articles 390 and 391 of the Emirati Penal and Crimes Law state: “Whoever assaults the bodily integrity of another by any means whatsoever... and if the assault upon a pregnant woman results in abortion, this constitutes an aggravating circumstance,” and “Any pregnant woman who deliberately aborts herself by any means whatsoever...”<sup>69</sup> Article 33 of the Emirati Medical Liability Law likewise refers to the use of “means leading to that result.”<sup>70</sup>

The act of abortion may take either a positive form, which is the most common form, or a negative form, manifested in the pregnant woman’s omission to prevent another person from committing the act of abortion upon her body.<sup>71</sup> The Jordanian Penal Code adopts the latter form in Article 321, which provides: “Any woman who aborts herself by the means she uses or consents to another person using such means upon her...”<sup>72</sup> The Emirati Penal and Crimes Law likewise recognizes this form in Article 390, which states: “...whoever deliberately causes her to miscarry with her consent by any means whatsoever.”<sup>73</sup> Accordingly, all means of abortion are treated equally, with no distinction made between them for purposes of mitigating or aggravating punishment, and such means are numerous and are not exhaustively defined.

#### b. Criminal Result.

In the offense of abortion resulting in death, the criminal result is realized either by the death of the fetus or by its expulsion from the womb prior to the natural time of delivery, in

---

67 Diala Altaani and others, ‘Virtual justice: Navigating the Challenges of Remote Testimony at the International Criminal Court’ (2024) 19(2) *International Journal of Criminal Justice Sciences* 15, doi:10.5281/zenodo.19202.

68 Jordanian Penal Code (n 1) arts 321, 322.

69 UAE Federal Decree-Law No (31) of 2021 (n 57) arts 390, 391.

70 UAE Federal Decree-Law No (4) of 2016 (n 2) art 33. See, Khalid bin Mohammed bin Abdulaziz Al-Qudaibi, ‘Criminal Liability for the Crime of Abortion: A Comparative Study’ (2023) 19(1) *Omdurman Islamic University Journal* 379-81 [in Arabic].

71 Samih Al-Sayyid Jad, *Commentary on the Penal Code: Special Section (Crimes of Assault Against Persons and Property)* (Dar al-Ittihad al-Arabi lil-Tibaah 1988) 102 [in Arabic].

72 Jordanian Penal Code (n 1) arts 321.

73 UAE Federal Decree-Law No (31) of 2021 (n 57) arts 390.

addition to the death of the pregnant woman because of the abortion. The criminal result may take one of two forms: the death of the fetus within the womb, or its expulsion prior to the natural term of pregnancy. The latter form is established even if the fetus is expelled alive and is viable, provided that, in both cases, the mother dies because of abortion.<sup>74</sup>

### c. Causal Relationship.

Causation in the offense of abortion resulting in death requires the existence of a causal link between the act of abortion and the death of the pregnant woman. That is, but for the act of abortion, the woman would not have died. Where the causal relationship is absent, the offense loses one of its essential elements and is not made out.<sup>75</sup>

#### 4.3.3. The Mens Rea Element

Generally, crimes are presumed to be intentional.<sup>76</sup> Accordingly, the offense of abortion is punishable only where it is committed intentionally. The mental element, therefore, takes the form of **criminal intent (mens rea)**. Consequently, a person who causes the miscarriage of a pregnant woman through negligence or error does not incur criminal liability for the offense of abortion.<sup>77</sup> Criminal intent is established where the offender's will and knowledge are directed toward the constituent elements of the offense as defined by law. In particular, the offender must be aware of the existence of the pregnancy; if the offender is unaware of the pregnancy and nonetheless commits the act, criminal liability under the provisions governing abortion does not arise.<sup>78</sup>

This principle was affirmed by the Jordanian Court of Cassation, which held that where no evidence establishes that the accused knew that the deceased woman was pregnant, Article 323 of the Penal Code—which penalizes anyone who intentionally causes the abortion of a woman without her consent—cannot be applied. In the absence of criminal intent, a finding that the accused is not criminally responsible for the offense is legally sound.<sup>79</sup>

Accordingly, the mental element of the crime of abortion resulting in death is based on two cumulative factors: first, the offender's intent must be directed toward aborting the

---

74 Salakh Muhammad Lamin, 'Criminal Liability of the Physician for the Crime of Abortion through Medical Prescription' 4(2) (2020) *International Journal of Legal and Political Research* 116-7 [in Arabic].

75 Rizq Khamis Al-Ajour, 'Penalties for the Crime of Abortion and its Incidental Consequences under Palestinian Law' (2022) 6(3) *International Journal of Legal and Political Research* 358 [in Arabic].

76 Abdullah Ehjelah, 'Criminal Modus Operandi in Bahraini Tax Law No 40 of 2017' (2023) 15(4) *Pakistan Journal of Criminology* 389.

77 Farid Bulaidi, 'Criminal Responsibility for the Crime of Abortion in Algerian Law' (2021) 6(2) *Mediterranean Review of Law and Economics* 126 [in Arabic].

78 Raed SA Faqir and Ehab Alrousan, 'Reimagining Criminology: The Transformative Power of the Postmodern Paradigm' (2023) 15(3) *Pakistan Journal of Criminology* 154.

79 Decision No 1523 [2005] Jordanian Court of Cassation (Criminal Chamber).

fetus; and second, the offender's intent must not be directed toward killing the pregnant woman. Once criminal intent is established in this manner, the motives underlying the act—whether revenge or assisting the woman in terminating an unwanted pregnancy—are legally irrelevant.<sup>80</sup> This may include situations where the pregnancy resulted from a criminal act such as rape. Moreover, the offender may benefit from mitigating circumstances where abortion is committed for reasons of honor, in accordance with Article 324 of the Jordanian Penal Code.

In this regard, the Jordanian Court of Cassation stated that abortion is an intentional offense for which punishment is imposed only where criminal intent is established, namely the will to commit the act as defined by law pursuant to Article 63 of the Penal Code. In abortion offenses, criminal intent requires that the offender's will be directed toward committing the offense with all its constituent elements, with full knowledge thereof. Where the Public Prosecution fails to prove that the act committed by the accused was intended to cause abortion, no punishment may be imposed. Likewise, no punishment may be imposed for killing a fetus in the womb, since the crime of homicide requires an assault against a living human being after birth—a condition not satisfied in such cases. Consequently, a declaration of non-liability is warranted where these elements are absent.<sup>81</sup>

Similarly, the Ma'an Court of First Instance<sup>82</sup> held that abortion is an intentional offense, and that criminal intent requires that the offender's will be directed toward committing the act of miscarriage constituting the material element of the offense, as well as toward achieving the result, namely the abortion the pregnancy. This necessarily presupposes that the offender is aware that the act is being directed against a pregnant woman.<sup>83</sup>

#### 4.3.4. Penalties for the Offense of Abortion Resulting in Death

The Jordanian legislator has classified abortion resulting in death as a grave offense and has imposed severe penalties. Article 322(2) of the Penal Code states that if an abortion or the means used to perform it result in the death of the woman, the perpetrator shall be punished with hard labor for a term of not less than five years. Article 323(2) further stipulates that if an abortion or means employed lead to the woman's death, the penalty shall not be less than ten years hard labor. This is consistent with the legislator's firm stance due to the gravity of this offense.

It should be noted that an attempt is inconceivable in the felony of abortion resulting in death, as this offense belongs to the category of crimes with probabilistic outcomes. Attempt requires that the offender's intent be directed toward achieving the criminal result—in this

---

80 Jad (n 71) 104.

81 Decision No 667 [2002] Jordanian Court of Cassation (Criminal Chamber).

82 Ma'an is a city in southern Jordan, 218 km southwest of Amman, and is the capital of Ma'an Governorate.

83 Decision No 20 [2023] Ma'an Court of First Instance (Criminal).

case, the death of the pregnant woman. However, the offender's intent is directed solely toward abortion rather than death. Accordingly, it is not legally possible to characterize such conduct as an attempt to commit abortion resulting in death.<sup>84</sup>

Under Emirati law, the Penal and Crimes Law does not contain provisions equivalent to Articles 322 and 323 of the Jordanian Penal Code. However, Article 33 of the Emirati Medical Liability Law addresses one form of abortion resulting in death, which provides that, subject to Article 16 of the same law, any physician who intentionally performs an abortion on a pregnant woman—by administering medication, using means leading to that result, or guiding her thereto, whether with or without her consent—shall be punished by imprisonment for a period not exceeding four years. Where abortion results in the death of the victim, the penalty shall be imprisonment for a period of not less than five years and not more than ten years. This provision applies to cases in which death occurs at the hands of a physician performing an abortion without lawful justification, as referred to in Article 16 of the same law.

Accordingly, the Emirati Medical Liability Law limits criminal liability to cases where the offender is a physician, whereas Jordanian legislation criminalizes the act irrespective of the offender's status and treats the offender's professional capacity as an aggravating circumstance under Article 325 of the Jordanian Penal Code.

For a person to be regarded as a physician, they must hold a recognized medical qualification. Under Article 2 of the Jordanian Public Health Law, a physician is defined as a person licensed to practice medicine in accordance with applicable laws and regulations. Similarly, Article 1 of the UAE Law Regulating the Practice of Medical Profession No. 5 of 2019 provides that the status of a physician includes both medical doctors and dentists. Jurisprudence defines a physician as a person academically specialized in medicine and duly authorized by the Ministry of Health to practice the medical profession.<sup>85</sup>

## 5 PROBLEMATIC ASPECTS OF ABORTION RESULTING IN DEATH UNDER JORDANIAN AND EMIRATI LAW

Abortion resulting in death, as a composite model of criminal conduct, raises several intricate legal issues that go beyond the mere application of statutory provisions and extend directly to the limits of legal characterization and the determination of the appropriate legal description of the act, considering the resulting harm. These issues become particularly evident when addressing atypical situations that fall outside the conventional framework of

84 Saadli Zarifa, 'The Specificity of Algerian Law in Aggravating the Crime of Abortion: A Comparative Study' (2022) 7(1) *Al-Ustadh Researcher Journal of Legal and Political Studies* 436 [in Arabic].

85 Mahmoud Al-Shahat Qasim, 'The Physician's Liability for Failure to Provide Medical Assistance: A Jurisprudential and Practical Study' (2020) 35(1) *Journal of the Faculty of Sharia and Law, Tanta University* 492, doi:10.21608/MKSQ.2020.78405 [in Arabic].

abortion, whether due to the absence of pregnancy *ab initio* and the consequent impossibility of abortion, or due to the multiplicity of criminal outcomes arising from a single act, which may range from bodily harm to abortion, unintentional homicide, or abortion resulting in death.

Jordanian and Emirati law address this complexity to varying degrees, given the differences in their legislative structures, particularly with respect to the presence or absence of specific statutory provisions. In this section, we deal with the principal legal issues raised by this criminal model in the following two subsections.

### 5.1. Maternal Death in Cases of Nonexistent Pregnancy

As previously established, the crime of abortion presupposes that the woman subjected to the act is pregnant. This means that the object of the offense in abortion crimes is pregnancy itself, which begins with fertilization and continues until childbirth.<sup>86</sup> During this period, the commission of the offense of abortion is legally conceivable. This position was affirmed by the UAE Federal Supreme Court, which held that the existence of pregnancy is an essential element of the offense of abortion, as abortion is intended to terminate a viable pregnancy prior to the natural time of delivery. Accordingly, abortion is fundamentally directed against a living fetus, and the protected legal interest is pregnancy itself. The offense does not arise before pregnancy occurs or after it ends, nor does it arise where the fetus is already dead. Moreover, the limits of abortion end with the commencement of labor, even if delivery has not been completed, as the onset of labor marks the beginning of an independent natural life, at which point the fetus is regarded as a living human being protected by the provisions governing homicide and bodily harm rather than those governing abortion.<sup>87</sup>

On this basis, where pregnancy does not exist, the offense of abortion cannot be established, even if the offender mistakenly and contrary to reality believed that it did. This raises the following question: What is the legal position under Jordanian and Emirati law regarding attempted abortion and criminal liability where the offender erroneously believes that the woman is pregnant?

Jordanian law does not specifically mention this matter. However, one opinion in Jordanian legal scholarship argues that without pregnancy, the offense of abortion cannot exist because the element of pregnancy is missing. Therefore, the accused person cannot be held liable for attempted abortion based on a false belief of being pregnant, as this would be an instance of absolute or legal impossibility, which is not punishable under Jordanian law.<sup>88</sup>

---

86 Ali Alaya, Al Khattab and Al Khawaldeh (n 62) 123-4.

87 Appeal No 46 [2011] UAE Federal Supreme Court (Criminal).

88 Al-Saeed (n 63) 191.

The same conclusion applies under Emirati law. There is no express regulation of this issue in Emirati law. However, the UAE Federal Supreme Court has explicitly ruled that the absence of pregnancy makes abortion an impossible offense in the absolute sense. This rule excludes both the completed offense and an attempt. One of its judgments held that abortion does not take place before pregnancy occurs or after it has ended, even if the offender imagines or believes otherwise. The absence of pregnancy renders the act legally and factually impossible; where the completed offense is impossible, an attempt is equally inconceivable.<sup>89</sup>

A further fundamental question, therefore, arises: What is the criminal liability of the offender if the means used in an impossible abortion result in the death of a woman mistakenly believed to be pregnant?

In such cases, where the intended abortion constitutes an impossible offense and is, therefore, not punishable under either Jordanian or Emirati law, criminal liability is limited to the offense of homicide. The legal characterization of that offense depends on the existence of criminal intent. Where direct or eventual intent is established, the offender is liable for intentional homicide; where intent is absent, liability arises for unintentional homicide.

## 5.2. Conflicting Legal Classifications of Fatal Abortion

The ideal concurrence of offenses presupposes a single act committed by the offender that falls under multiple legal provisions. The issue here is not the commission of multiple acts, but rather a single act violating several criminal norms. This form of concurrence is based on two elements: unity of the act and the multiplicity of legal characterizations. Jordanian law regulates this matter in Article 57 of the Penal Code, while Emirati law addresses it in Article 88 of the Penal and Crimes Law. The effect of these provisions is that the judge examines the various legal characterizations of the act and limits the judgment to the most severe description, namely the one carrying the most severe penalty.<sup>90</sup>

Accordingly, if a person strikes a pregnant woman with the intention of causing the termination of her pregnancy and the woman dies as a result, the act may be characterized as bodily harm resulting in death, or as abortion. This raises the question of whether the rules governing ideal concurrence apply to abortion accompanied by death.

Both Jordanian and Emirati legislation adopt a general rule for ideal concurrence in the absence of any specific provision governing the relevant situation. In Jordanian law, however, the legislation has departed from this general rule in Articles 322(2) and 323(2) of

89 Appeal No 46 [2011] UAE Federal Supreme Court (Criminal)

90 Fahd Hadi Habtour, 'Multiplicity of Crimes and Its Effect on Rules of Criminal Jurisdiction in the Saudi Legal System: A Comparative Study' (2023) 57 *Journal of Legal and Economic Research* 821-3, doi:10.21608/jjslem.2023.196934.1218.

the Penal Code that specifically govern cases of abortion, whether with or without the woman's consent, resulting in death. As special provisions, these articles take precedence over general rules on concurrence and exclude their application by recourse to general provisions. On the other hand, Emirati law does not have a special provision regarding death resulting from abortion in Articles 390 and 391, whether committed with or without the consent of the woman. Here, death is viewed as an aggravating circumstance changing a misdemeanor into a felony but not creating a separate offense; hence Article 88 of the Penal and Crimes Law calls for aggregation of legal characterizations and application of the severest penalty which is that prescribed for felonies concerning assault on bodily integrity culminating in death under Article 387 together with that for abortion under Articles 390 and 391. A systematic reading of these provisions leads one to conclude that an Emirati judge must impose a penalty prescribed under Article 387, as it is the most severe.

An exception to this approach exists in Emirati law under Article 33 of the Medical Liability Law, which establishes a special legal characterization where abortion is committed by a physician. In this case, the general rules of "ideal concurrence" are set aside, and the special provision applies. Outside this specific situation, the general rules of concurrence under the Penal and Crimes Law apply.

It should be noted that the general rule of "ideal concurrence" is closely linked to the principle that no person may be prosecuted more than once for the same act.<sup>91</sup> This principle grants final judgments *res judicata* effect, preventing their reconsideration except through legally prescribed avenues of appeal. Once exhausted, the judgment becomes final and immune from challenge, even if it is flawed, in order to preserve legal stability and prevent indefinite litigation.<sup>92</sup> However, a practical difficulty arises where an offender is prosecuted for a criminal act resulting in a certain outcome, a final conviction is rendered, and the consequences later escalate into a more serious result. For example, a person may be convicted by a final judgment for the misdemeanor of abortion with the woman's consent, after which the woman dies because of the abortion. The question then arises as to whether the principle of *res judicata* bars renewed prosecution.

Jordanian law deals with this matter explicitly by allowing a further prosecution as an exception to the general rule. Article 58(2) of the Penal Code states that if the consequences of a criminal act increase after the initial prosecution, making the act fall under a more serious legal description, then the offender can be prosecuted again for that more serious offense, and will only be subject to the more severe penalty with any previously executed penalty deducted from it. This was confirmed as recently as 2023 by the Jordanian Court of

---

91 Abdullah Ehjelah and Shaima Bani Amer, 'Impact of Confessions Taken Remotely via Modern Technology on the Conscientious Conviction of the Criminal Judge' (2023) 15(3) *Pakistan Journal of Criminology* 211 [in Arabic].

92 Nizam Al-Majali, *Commentary on the Penal Code: General Part* (9th edn, Dar al-Thaqafah 2025) 478 [in Arabic].

Cassation.<sup>93</sup> On the other hand, Emirati law has no equivalent provision to Article 58(2) of the Jordanian Penal Code. Therefore, where abortion takes place and a final conviction is handed down, and subsequently, she dies for some reason, then the offender cannot be tried for the death since judgment has become final with no possibility of renewed prosecution, even though such an act would otherwise call for a more severe penalty.

From this analysis, two major observations can be made. The first is that applying the rules of ideal concurrence in Emirati law equates punishment for abortion that leads to death with that of assault leading to death; thereby merging two different offences into one. Assault leading to death is an intentional crime against bodily integrity, while abortion leading to death involves intentionality in terminating pregnancy and resulting in the death of a pregnant woman. Second, the two legal systems differ in the severity of their penalties. According to Emirati law, the maximum punishment that can be applied, by applying ideal concurrence, is ten years in prison, which is the maximum penalty specified under Article 387 for assault that results in death. In contrast, Article 323(2) of the Jordanian law stipulates that an abortion that results in death carries a minimum sentence of ten years of hard labor.

Therefore, in line with the Jordanian legislative approach, it is suggested that the Emirati legislator adopt a specific legal characterization for abortion that results in death, like that established under the Medical Liability Law, by explicitly criminalizing this conduct in a dedicated provision and prescribing a minimum sentence of ten years in prison. Such a reform would reduce the burden on courts in determining legal characterizations, enhance criminal protection for both the mother and the fetus, and avoid confusion between assault that results in death and abortion that results in death.

## 6 ANALYZING ABORTION AND MATERNAL DEATHS IN EUROPE: FRANCE AND POLAND COMPARATIVE PERSPECTIVE

In the European legal setting, maternal deaths due to abortion are seldom addressed in a straightforward manner regarding the impact of criminalization or adverse laws. Rather, in Europe, these deaths are increasingly becoming a case of systemic failure related to accessibility, procedure, and the rule of law. Although most countries in Europe provide for abortion on certain grounds, the case law on the European Court of Human Rights (ECtHR) raises a fundamental worry: difficult laws combined with difficult processes can foreseeably endanger the health and sometimes the life of women.

Unlike in other regions, where the issue of maternal mortality due to abortion is straightforwardly associated with clandestine abortion, the issue in Europe is complex. This is due to delays, refusal, legal uncertainty, unavailability of legal recourse, and forced traveling, which may ensure that even if the abortion is lawful, it is unsafe. The human

93 Decision No 4692 [2023] Jordanian Court of Cassation (Criminal Chamber).

rights organizations in Europe, therefore, moved from focusing on the morality of abortion to the moral obligations of the state regarding the safety of the lives of women once abortion is legalized.

The decision of *Tysiác v. Poland* (2007) of the ECtHR is an important step in recognizing the link between legalized abortions, harm to women, and, by extension, maternal mortality.<sup>94</sup> The applicant in this case suffered from severe myopic vision; she was not allowed an abortion even though it was indicated that her health might be compromised if she continued with her pregnancy. After giving birth, she lost her eyesight.

Even though there was no maternal death in the case, it is significant for understanding abortion-related maternal mortality, as it emphasizes that the problem in Poland was not, or at least did not consist in, its abortion Act itself, but in it lacking procedural guarantees that enable women to contest medical denial within a reasonable time limit, thus putting women at risk even if they are authorized to have an abortion under the law.

In terms of maternal mortality, *Tysiác* has set down an important precedent: if legal abortions are available but not possible to access in practice, then any ensuing health repercussions, possibly but not necessarily resulting in death, can be imputed to the state. The Court has been specific about recognizing that it is “not only a medical issue, but a question of law” in such cases.<sup>95</sup>

The connection between abortion and life-threatening outcomes is further analyzed in the case of *P. and S. v. Poland* (2012), which refers to a fourteen-year-old rape victim who has a right to an abortion under the law.<sup>96</sup> The applicant was subjected to certain obstacles despite having a legitimate reason, including misleading advice, harassment, disclosure, and delays.

Although the case is not associated with mortality, it is widely applicable to maternal mortality vis-à-vis abortion because the Court’s finding is immediately pertinent to abortion-related maternal mortality cases. It underlines that time is the critical determinant of abortion services because a delay leads to increased risks of complications and even threatens life. It is also important to note that if the states create barriers that impinge upon having an abortion on time, it may fall foul of Article 3 of the European Convention on Human Rights<sup>97</sup> because it is dehumanizing and degrades people.<sup>98</sup>

In this regard, it must be noted that the Court has been well aware of the fact that being forced to remain pregnant under stressful and hostile circumstances may in itself amount

---

94 *Tysiác v. Poland* App no 5410/03 (ECtHR, 20 March 2007) <<https://hudoc.echr.coe.int/eng?i=001-79812>> accessed 26 February 2026.

95 *ibid*

96 *P and S v Poland* App no 57375/08 (ECtHR, 30 October 2012) <<https://hudoc.echr.coe.int/eng?i=001-114098>> accessed 26 February 2026.

97 Council of Europe, *European Convention on Human Rights* (Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols) (ECHR 2013).

98 *P and S v Poland* (n 96).

to a form of harm, specifically for minors or vulnerable women. In this regard, as it pertains to Europe in general, it may well be determined that maternal deaths resulting from late abortions are in themselves non-accidental but structurally caused by inaction or obstruction by the state.

In *M.L. v. Poland* (2023), there is a more modern and emergent risk to mothers' health, as it arose from abrupt legal and medical uncertainties.<sup>99</sup> The applicant qualified for a legal abortion because of her fetal abnormality. Nevertheless, due to the constitutional court's judgment that came into force on the eve of her abortion, her legal entitlement was invalidated. The European Court of Human Rights ruled that this abrupt and clinically unclear legal turnabout violated the applicant's right to respect for private life under Article 8 of the ECHR. Most important, however, is the Court's acknowledgment of how legal unpredictability within abortion regulation necessitates that women seek high-risk alternatives, including cross-border travel, delayed procedures, or continuation of medically dangerous pregnancies.<sup>100</sup>

Regarding maternal mortality, *M.L. v. Poland* points out an important truth concerning European conditions: forced travel is not an insurmountable alternative. However, it may entail costs, stress, and lack of continuity of care, all of which are conditions that increase the risk of complications and, potentially, maternal mortality. Finally, this case is important because it evidences how maternal mortality caused by abortions may occur even under advanced systems of healthcare due to conditions of legal instability.

The European Parliament Resolution of 11 April 2024 is a major political recognition of the relationship between restricted abortion, maternal illness, and maternal mortality. While aligning an argument for incorporating rights to abortions as an essential right in the EU Charter of Fundamental Rights and seeking total decriminalization, this resolution clearly points out restricted policy as a cause for preventable maternal mortality rates.<sup>101</sup>

The Resolution states: "Criminalisation implies compulsory travel, too often delayed care, and unsafe procedures. Although maternal mortality ratios remain low for Europe overall, it is fully understood that any death, no matter how remote or due to unsafe or inequitable access to abortion, should not happen in a rights-based legal system."<sup>102</sup> This reflects a preventive approach to maternal mortality: to end any maternal death that can be avoided through legal abortion rather than addressing it after it has happened.

---

99 *ML v Poland* App no 40119/21 (ECtHR, 14 December 2023) <<https://hudoc.echr.coe.int/eng?i=001-229424>> accessed 26 February 2026.

100 *ibid*

101 European Parliament Resolution of 11 April 2024 'On Including the Right to Abortion in the EU Charter of Fundamental Rights (2024/2655(RSP))' [2025] OJ C 1279 <<http://data.europa.eu/eli/C/2025/1279/oj>> accessed 26 February 2026.

102 *ibid*

The Council of Europe Recommendation CM/Rec(2007)17 on gender equality supports the idea that the promotion of women's health is fundamental to guaranteeing the health requirements for reproductive health for women and is, therefore, a necessary approach for women's equality and security.<sup>103</sup> Although a recommendation designed for the reduction of reproductive health disparities does not contain a point on abortion deaths in mothers, its strong appeal for non-discriminative access to healthcare fundamentally establishes a relevant framework for addressing such risks.

In categorizing reproductive health barriers as expressions of gender inequality, it can be inferred from the Recommendation that maternal mortality due to unsafe or inadequate abortion care is more than a failure to provide adequate health care, but fails to deliver equity for women. Women are shouldering more of the burdens of possible injuries due to restrictive laws on abortion.

The Council of Europe Commissioner for Human Rights' Follow-Up Report on Sexual and Reproductive Health and Rights (2017–2021) emphasized that liberalizing laws alone are insufficient. Legal equality in several European countries has been obstructed by a number of factors, including a lack of information, geographical disparities, conscientious objections, or stigma.<sup>104</sup>

Implicitly, the Report links these barriers to unsafe abortions and delays, mainly among marginalized groups such as migrants, minors, rural women, and poor women. From the maternal mortality perspective, this indicates that deaths due to abortion in Europe are under-recorded and are distributed unevenly, falling disproportionately among women with already high social and medical risk.<sup>105</sup>

The European situation shows that maternal mortality due to abortion is not only a consequence of illegal practices but rather a consequence of legal ambiguity, obstruction of procedures, and delays within legal frameworks. Indeed, the case law of the ECtHR has repeatedly clarified that when a country legalizes abortion, it follows a positive obligation to provide effective procedures. Delays in this respect can cause serious health risks to women, including maternal mortality, triggering potential state responsibility under human rights law. Modern European law is slowly acknowledging that maternal mortality can be prevented not only by legality but also by legal certainty, accountability, and equity of reproductive healthcare practices.

---

103 Recommendation CM/Rec (2007)17 of the Committee of Ministers to Member States on Gender Equality Standards and Mechanisms (adopted on 21 November 2007) <<https://search.coe.int/cm?i=09000016805d4aa3>> accessed 26 February 2026.

104 Council of Europe, *Sexual and Reproductive Health and Rights in Europe: Progress and Challenges: Follow-up Report to the 2017 Issue Paper by the Council of Europe Commissioner for Human Rights* (Council of Europe 2024).

105 *ibid*

## 7 PHILOSOPHICAL BASIS AND CRIMINAL POLICY OF THE PROPOSED PENALTIES

In criminal philosophy, punishment must strike a balance between protecting human life and the functions of criminal law in preventing crime and promoting justice. It is suggested that Emirati law should consider abortion that leads to death as a separate offence from other abortion laws.<sup>106</sup> This can be achieved through a specific provision in the Federal Penal Code that distinguishes between legal and illegal abortion, providing punishment that gives priority to the preservation of the mother's life.<sup>107</sup> Thus, improving the role of criminal justice, such as deterrence and rehabilitation, rather than just focusing on the problem through an administrative or medical approach.<sup>108</sup>

Under Jordanian law, abortion is criminalized with some exceptions for the life or health of the mother under Articles 321-325 of the Penal Code. Penalties include jail sentences for both the perpetrator and accomplices, increasing in duration if the woman succumbs to a botched illegal abortion.<sup>109</sup> This differentiation between pre- and post-ensoulment stages is intended to ensure consistency with Islamic law while providing a clear rule for necessity cases to avoid ambiguity in the imposition of penalties.<sup>110</sup>

The criminalization of fatal abortion is inextricably related to the legal process that protects the rights of the individuals involved. The legal process in both the Arab and European systems requires immediate review procedures, timelines, and the responsibility of the healthcare providers.<sup>111</sup> These elements are crucial in avoiding the risk to the mother's life because of administrative delays in the legal process.<sup>112</sup> In addition, the legal process is vital in ensuring compliance with international human rights standards, including the European Convention on Human Rights, which requires prompt legal action in the event of a threat to the life or health of the woman.<sup>113</sup>

---

106 Fatiha Mohamed Gourari, 'Criminal Liability of the Physician in Light of Legislation and Jurisprudence in the United Arab Emirates: A Comparative Study' (2004) 28(3) *Journal of Law* 254, doi:10.34120/jol.v28i3.1359 [in Arabic].

107 *ibid* 255.

108 Irene Maffi and Liv Tønnessen, 'The Limits of the Law: Abortion in the Middle East and North Africa' (2019) 21(2) *Health and Human Rights* 2.

109 Hisham Jadallah Mansour Shakhateh, and others, 'Medico-Legal Aspects of Abortion: Updates of the Literature' (2022) 76(5) *Medical Archives (Sarajevo, Bosnia and Herzegovina)* 375, doi:10.5455/medarh.2022.76.373-376.

110 *ibid* 374.

111 Leila Hessini, 'Abortion and Islam: Policies and Practice in the Middle East and North Africa' (2007) 15(29) *Reproductive Health Matters* 80, doi:10.1016/S0968-8080(06)29279-6.

112 *ibid*

113 Rebecca J Cook, 'International Human Rights and Women's Reproductive Health' in Susan Sherwin and Barbara Parish (eds), *Women, Medicine, Ethics and the Law* (Routledge 2017) 73, doi:10.4324/9781003073789.

In France, abortion is enshrined in the constitution as a right that focuses on the woman's health.<sup>114</sup> There is the provision for the termination of the fetus during certain stages without any legal consequences for the woman or the doctor.<sup>115</sup> Poland has restrictive abortion laws that only permit abortion in certain circumstances, with the possibility of the doctor facing criminal charges if the mother dies because of delayed medical attention.<sup>116</sup>

At the European level, the responsibility is to create an enabling environment that weighs access to safe abortion services against the right to life and health. The European Parliament urges that abortion should be considered a basic right to ensure a level of standardization among the member states and minimize discrepancies in the law. This should be accompanied by the collection of reliable information on unsafe abortions, equality in access to care, and protection against "forced medical travel" from punitive states to countries that permit abortion.<sup>117</sup>

From the above comparative analysis of the laws of Jordan, the UAE, France, and Poland, it is evident that the following comprehensive framework of amendments can be proposed for the criminal law on fatal abortion, making it balanced, clear, and effective both legally and philosophically.

In the UAE and Jordan, abortion resulting in the death of the mother ought to be distinguished from ordinary abortion or general medical criminalization, becoming an independent offense with stringent penalties. This ensures that the offenders are punished for the death of the mother, which aligns with the principles of criminal justice and deterrence.

A system of cumulative penalties should be established, increasing criminal responsibility in cases of the mother's death, distinguishing between minor negligence, gross negligence, and intention. This approach is in accordance with the dual principles of Islamic Sharia law, combining retribution and compensation, to meet both deterrent and reparative goals.

Under Jordanian law, clear provisions must be made to distinguish between the period before ensoulment and the period after it, with the punishment varying accordingly. This way, the Sharia law guidelines can be followed, and the general criminalization of abortion can be maintained.

There should also be legal provisions that clearly outline cases of medical and social necessity that justify legal abortion, with specific criteria for evaluating such cases. The amendments should also provide clear guidelines on how cases are reviewed and specific

---

114 Hazal Atay and Guillaume Levrier, 'Constitutionalizing Abortion in France: A "Civilizational Imperative" to Safeguard Access and Counter International Backlash?' 11(1) (2025) *Interdisciplinary Political Studies* 39, doi:10.1285/i20398573v11n1p30.

115 *ibid* 40.

116 Marta Bucholc, 'Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon' (2022) 14(1) *Hague Journal on the Rule of Law* 86, doi:10.1007/s40803-022-00167-9.

117 *ibid*

timelines, as well as the accountability of service providers to ensure that the mother's rights are protected and health hazards are minimized.

The amendments must take into account the provisions of the European Convention on Human Rights and other international treaties to ensure the protection of the rights to life and health. At the European level, in France and Poland, it is recommended that a complete framework and policy of prevention be established to ensure fair and safe access to abortion services, without violating the protection of life and health, and without "forced medical travel" from restrictive countries to permissive ones.

## 8 CONCLUSIONS

This study looks at how Islamic Sharia, Jordanian law, and Emirati law regulate the offense of abortion that results in a pregnant woman's death. It has evaluated the effectiveness of the current legislative solutions and made clear the areas where these systems overlap and diverge. The research has produced a set of integrated conclusions and suggestions that can be summed up as follows:

Primarily, the research shows that the impeding point for abortion as per Islamic Sharia is when the ensoulment of the fetus occurs (120 days), after which abortion is forbidden as a rule and allowed only in cases of necessity. Different fatwas distinguish the viewpoints about abortion before this developmental stage of the fetus. By and large, this stance agrees with that of the laws of Jordan and the UAE, according to which abortion is considered a criminal act as a general principle and is permitted only in cases of medical necessity or for the protection of the mother's life, whether it is before or after 120 days of pregnancy.

It also demonstrates that, according to Islamic Sharia, the fetus is protected from the very moment it is implanted in the mother's womb and that abortion is considered a sin. It sets two main penalties for abortion: *al ghurra*, denoting the blood money that is to be paid for the fetus, and *al kaffara*, where some scholars suggest the mixture of *al ghurra* and the atonement normally assigned to unintentional killing.

It explains that, according to Islamic Sharia, the accidental killing offense is regulated by a dual system of sanctions that includes the payment of compensation to the heirs of the deceased, in the form of *diyya*, as well as a moral and corrective sanction in the form of *kaffara*, thus constituting a harmony between the elements of redress and reform of the offender.

It exposes a legislative gap in the law of the UAE, as the Penal and Crimes Law does not have a specific provision that criminalizes abortion causing death, and, therefore, it is necessary to rely on the rules of ideal concurrence of crimes. On the other hand, the Jordanian Penal Code gives a separate and independent legal characterization for this offense.

It compares the medical liability laws in the UAE and Jordan, showing that the former restricts the classification of abortion leading to death as a special offense only to a doctor, thus reducing the area of criminal responsibility.

The comparative analysis points to a significant difference in the severity of punishment: the Emirati law, the punishment provided in the case of ideal concurrence, is less than ten years imprisonment, thus the penalty for bodily harm resulting in death, while the Jordanian law imposes a sentence of temporary hard labor for a period of not less than ten years.

The study finds that the Jordanian law specifically mentions the cases of an increase in the criminal result, thus allowing the offender to be retried under a more serious legal description if the pregnant woman dies because of a prior final judgment for abortion. On the other hand, Emirati law lacks a similar provision; it does not allow further prosecution and limits the offender's liability to the offense of abortion only.

Maternal mortality related to abortion in Europe results mainly from procedural barriers and legal uncertainty, not illegality. Delays, lack of remedies, and abrupt legal changes heighten health risks. ECtHR jurisprudence shows that such failures may engage state responsibility under human rights law.

Health risks and deaths from abortion in Europe have been largely skewed in numbers in reference to minors, immigrants, and so-called socio-economic disadvantage. Such cases have shown abortion-related mortality as an issue with gender and social inequality.

## REFERENCES

1. Abu Dawud S, *Sunan Abi Dawud* (Dar al-Risalah al-Alamiyyah 2009) Hadith no 3123 (Kitab al-Imlas) [in Arabic]
2. Abu Zahrah M, *Crime and Punishment in Islamic Jurisprudence: Punishment* (Dar al-Fikr al-Arabi 1999) [in Arabic]
3. Al-Ajour RK, 'Penalties for the Crime of Abortion and its Incidental Consequences under Palestinian Law' (2022) 6(3) *International Journal of Legal and Political Research* 358 [in Arabic]
4. Al-Badarin AA, 'The Ruling on Aborting the Fetus before the Blowing of the Soul in it: A Comparative Legal Jurisprudential Study' (2022) 19(2) *Journal of the University of Sharjah for Sharia Sciences and Islamic Studies* 501, doi:10.36394/jsis.v19.i2.14 [in Arabic]
5. Al-Ghamdi ABS, 'Electronic Fatwa: Foundations and Application' (2020) 16 *Journal of Arts* 259, doi:10.35696/v1i16.669
6. Al-Haskafi AAD, *Al-Durr al-Mukhtar Sharh Tanwir al-Absar* (Dar al-Fikr 2002) vol 3 [in Arabic]

7. Ali Alaya WS, Al Khattab KARI and Al Khawaldeh MHA, 'Extent of Criminal Liability Arising from Harm to the Fetus under Jordanian Penal Law' (2024) 16(1) Jordanian Journal of Law and Political Science 116, doi:10.35682/jjpls.v16i1.638 [in Arabic]
8. Al-Kattani AM, *Abortion and Its Rulings in Islamic Law* (Al-Maktabah Al-Shamilah 2021) [in Arabic]
9. Al-Majali N, *Commentary on the Penal Code: General Part* (9th edn, Dar al-Thaqafah 2025) [in Arabic]
10. Al-Muhammadi S, 'The Criminal Policy of the Egyptian Legislator in Confronting the Crime of Abortion' (2021) 64(3) al-Majallah al-Jinaiyah al-Qawmiyyah 1, doi:10.21608/ncj.2021.225838
11. Al-Qudaibi KMA, 'Criminal Liability for the Crime of Abortion: A Comparative Study' (2023) 19(1) Omdurman Islamic University Journal 372 [in Arabic]
12. Al-Saeed K, *Commentary on the Penal Code: Crimes Against Morality, Public Decency and the Family* (Dar al-Thaqafah 2008) [in Arabic]
13. Al-Saqqāf AAQ, *Al-Durar al-Saniyyah: The Contemporary Encyclopedia* (2025) [in Arabic] <https://dorar.net> accessed 26 February 2026.
14. Altaani D and others, 'Virtual justice: Navigating the Challenges of Remote Testimony at the International Criminal Court' (2024) 19(2) International Journal of Criminal Justice Sciences 15, doi:10.5281/zenodo.19202
15. Ashok D, Qureshi T and Singh M, 'Religious, Moral, and Legal Rhetoric of Abortion Argument: A Study of Select Common Law Adhering Nations' (2022) 6(S6) International Journal of Health Sciences 6176, doi:10.53730/ijhs.v6nS6.10969
16. Atay H and Levrier G, 'Constitutionalizing Abortion in France: A "Civilizational Imperative" to Safeguard Access and Counter International Backlash?' 11(1) (2025) Interdisciplinary Political Studies 31, doi:10.1285/i20398573v11n1p30
17. Bagheri A and Afshar L, 'Abortion in Different Islamic Jurisprudence: Case and Commentaries' (2011) 3(4) Asian Bioethics Review 351
18. Billauer BP, 'Abortion, Moral Law, and the First Amendment: The Conflict between Fetal Rights & Freedom of Religion' (2017) 23(2) William & Mary Journal of Race, Gender, and Social Justice 271
19. Bucholc M, 'Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon' (2022) 14(1) Hague Journal on the Rule of Law 73, doi:10.1007/s40803-022-00167-9
20. Bulaidi F, 'Criminal Responsibility for the Crime of Abortion in Algerian Law' (2021) 6(2) Mediterranean Review of Law and Economics 110 [in Arabic]

21. Cook RJ, 'International Human Rights and Women's Reproductive Health' in Sherwin S and Parish B (eds), *Women, Medicine, Ethics and the Law* (Routledge 2017) 73, doi:10.4324/9781003073789
22. Ehjelah A and Amer SB, 'Impact of Confessions Taken Remotely via Modern Technology on the Conscientious Conviction of the Criminal Judge' (2023) 15(3) *Pakistan Journal of Criminology* 211 [in Arabic]
23. Ehjelah A, 'Criminal Modus Operandi in Bahraini Tax Law No 40 of 2017' (2023) 15(4) *Pakistan Journal of Criminology* 389
24. Eich T, 'Induced Miscarriage in Early Mālikī and Hanafī Fiqh' (2009) 16(3-4) *Islamic Law and Society* 302, doi:10.1163/092893809X12469547140991
25. Faqir RSA and Alrousan E, 'Reimagining Criminology: The Transformative Power of the Postmodern Paradigm' (2023) 15(3) *Pakistan Journal of Criminology* 151
26. Fiala C and others, 'Abortion: Legislation and statistics in Europe' (2022) 27(4) *The European Journal of Contraception & Reproductive Health Care* 345, doi:10.1080/13625187.2022.2057469
27. Gissler M and others, 'Pregnancy-Related Deaths in Four Regions of Europe and the United States in 1999–2000: Characterisation of Unreported Deaths' (2007) 133(2) *European Journal of Obstetrics & Gynecology and Reproductive Biology* 179, doi:10.1016/j.ejogrb.2006.08.013
28. Gourari FM, 'Criminal Liability of the Physician in Light of Legislation and Jurisprudence in the United Arab Emirates: A Comparative Study' (2004) 28(3) *Journal of Law* 196, doi:10.34120/jol.v28i3.1359 [in Arabic]
29. Guillaume A and Rossier C, 'Abortion Around the World: An Overview of Legislation, Measures, Trends, and Consequences' (2018) 73(2) *Population* 217, doi:10.3917/pope.1802.0217
30. Habtour FH, 'Multiplicity of Crimes and Its Effect on Rules of Criminal Jurisdiction in the Saudi Legal System: A Comparative Study' (2023) 57 *Journal of Legal and Economic Research* 821, doi:10.21608/jslem.2023.196934.1218 [in Arabic]
31. Hakeem FB, Haberfeld MR and Verma A, 'The Concept of Punishment under Sharia' in *Policing Muslim Communities: Comparative International Context* (Springer 2012) 7, doi:10.1007/978-1-4614-3552-5\_2
32. Havelková B, *Gender Equality in Law: Uncovering the Legacies of Czech State Socialism* (Hart 2017)
33. Heaton R and de Than C, *Criminal Law* (3rd edn, OUP 2011)
34. Hessini L, 'Abortion and Islam: Policies and Practice in the Middle East and North Africa' (2007) 15(29) *Reproductive Health Matters* 75, doi:10.1016/S0968-8080(06)29279-6

35. Husni MN, *Commentary on the Penal Code: Special Part* (Dar al-Nahdah al-Arabiyyah 1986) [in Arabic]
36. Ibn Abidin MA, *Hashiyat Radd al-Muhtar ala al-Durr al-Mukhtar* (Dar al-Fikr 2000) vol 1 [in Arabic]
37. Ibn Muflih SAD, *Al-Furu* (Dar al-Kutub al-Ilmiyyah 1997) vol 1 [in Arabic]
38. Ibn Qudāmah, *Al-Mughni fi Fiqh al-Imām Aḥmad ibn Ḥanbal al-Shaybānī* (Dār al-Fikr 1984) vol 9 [in Arabic]
39. Ibrahim SMK, 'The Moral and Legal Status of the Human Foetus: A Critical Analysis from an Islamic Perspective' (PhD (Law) thesis, Lancaster University 2008)
40. Jad SAS, *Commentary on the Penal Code: Special Section (Crimes of Assault Against Persons and Property)* (Dar al-Ittihad al-Arabi lil-Tibaah 1988) [in Arabic]
41. Kaczor C, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice* (Routledge 2022) doi:10.4324/9781003305217
42. Khosa-Nkatini HP, 'Evaluation into Religious and Global Perspectives on Abortion' (2025) 49(1) *Theologia Viatorum* a341, doi:10.4102/tv.v49i1.341
43. Kooli C, 'Navigating the Legal Vacuum: An Ethical Analysis of Brain Death, Fetal Personhood, and Maternal Autonomy in the Post-Roe Era: Lessons from Smith v Georgia' (2025) 33 *Ethics, Medicine and Public Health* 101187, doi:10.1016/j.jemep.2025.101187
44. Lamin SM, 'Criminal Liability of the Physician for the Crime of Abortion through Medical Prescription' 4(2) (2020) *International Journal of Legal and Political Research* 111 [in Arabic]
45. Maffi I and Tønnessen L, 'The Limits of the Law: Abortion in the Middle East and North Africa' (2019) 21(2) *Health and Human Rights* 1
46. Minerva F, 'Conscientious Objection in Italy' (2015) 41(2) *Journal of Medical Ethics* 170, doi:10.1136/medethics-2013-101656
47. Minkenberg M, 'The Policy Impact of Church-State Relations: Family Policy and Abortion in Britain, France, and Germany' (2003) 26(1) *West European Politics* 195, doi:10.1080/01402380412331300267
48. Namur MS, *Commentary on the Penal Code, pt 1: Crimes against Persons* (14th ed, Dar al-Thaqafah 2025) [in Arabic]
49. Obeidat YMG, 'The Combining Between Blood Money and Compensation in The Jordanian Civil Law and The United Arab Emirates Civil Transactions Law' (2019) 25(4) *Al-Manara Journal for Research and Studies* (Al al-Bayt University) 9 [in Arabic]
50. Obeidat YMG, 'The Efficient Breach Theory under Jordanian Civil Law' (2016) 30(4) *Arab Law Quarterly* 336, doi:10.1163/15730255-12341328 [in Arabic]

51. Piecuch A, Gryka M and Kozłowska-Wojciechowska M, 'Attitudes Towards Conscientious Objection Among Community Pharmacists in Poland' (2014) 36(2) *International Journal of Clinical Pharmacy* 310, doi:10.1007/s11096-013-9878-5
52. Pullan DM, *The Gap Between Abortion Policy and Abortion Access in Europe: A Mixed-Methods Comparative Study* (IMPRS-SPCE 2024) doi:10.17617/2.3614737
53. Qasim MAS, 'The Physician's Liability for Failure to Provide Medical Assistance: A Jurisprudential and Practical Study' (2020) 35(1) *Journal of the Faculty of Sharia and Law, Tanta University* 410, doi:10.21608/MKSQ.2020.78405 [in Arabic]
54. Sabreen M, 'An Unborn Child's Right to Life: A Study of the Law of Abortion in Pakistan in the Light of Shariah' (2020) 35(53) *Al-Adwa/Al-Azyā* 183
55. Salami F, 'Provisions of Abortion before the Soul Is Breathed into the Fetus between Islamic Law and Algerian positive law' (2024) 19(1) *Journal of Thought* 476 [in Arabic]
56. Selejan-Gutan B, *The Constitution of Romania: A Contextual Analysis* (Bloomsbury 2016)
57. Shaham R, 'Debates on the Diya (Blood Money): Contemporary Juristic Discourse and Women's Rights' (2019) 19(2) *Hawwa* 129, doi:10.1163/15692086-12341351
58. Shakhathreh HJM, and others, 'Medico-legal aspects of abortion: updates of the literature' (2022) 76(5) *Medical Archives (Sarajevo, Bosnia and Herzegovina)* 373, doi:10.5455/medarh.2022.76.373-376
59. Tarwah ZAM and Assaf MMM, 'The Provisions of Abortion in Islamic Jurisprudence' (2023) 6(57) *Arab Journal for Scientific Publishing* 131 [in Arabic]
60. Tsafirir N, *Collective Liability in Islam: The Aqila and Blood Money Payments* (CUP 2020) doi:10.1017/9781108654241
61. Zaręba K et al., 'Abortion in Countries with Restrictive Abortion Laws: Possible Directions and Solutions from the Perspective of Poland' (2021) 9(11) *Healthcare* 1594, doi:10.3390/healthcare9111594
62. Zarifa S, 'The Specificity of Algerian Law in Aggravating the Crime of Abortion: A Comparative Study' (2022) 7(1) *Al-Ustadh Researcher Journal of Legal and Political Studies* 430 [in Arabic]
63. Ziegler M, 'Fetal Personhood, Legal Ambiguity and the Treatment of Brain Death in Pregnancy' (2026) 26(1) *The American Journal of Bioethics* 39, doi:10.1080/15265161.2025.2594412

## AUTHORS INFORMATION

### **Abdullah Ehjelah Jr.**

Ph.D., Law, Yarmouk University in the Jordan  
a.ehjelah@yahoo.com  
<https://orcid.org/0000-0002-3453-5738>

**Co-author**, responsible for conceptualization, methodology, formal analysis, writing – original draft.

### **Raed Faqir Jr.\***

Ph.D., Law, Al-Balqa Applied University, Jordan.  
r.faqir@bau.edu.jo  
Ph.D., Law, American University in the Emirates, UAE  
raed.faqir@aue.ae contact  
<https://orcid.org/0000-0002-6102-0983>

**Corresponding author**, responsible for writing – original draft, conceptualization, writing – review & editing, project administration, methodology.

### **Yusuf Obeidat**

Ph.D., Law, Yarmouk University in the Jordan  
yusuf@yu.edu.jo  
<https://orcid.org/0000-0002-9910-6491>

**Co-author**, responsible for formal analysis, conceptualization, data curation, investigation, writing – review & editing.

### **Mamdouh Hassan Manea Al-Adwan Jr.**

Ph.D., Law, World Islamic Sciences and Education University in the Jordan  
m.edwan@hotmail.com  
<https://orcid.org/0009-0005-2249-7040>

**Co-author**, responsible for writing – review & editing, validation, resources, formal analysis, methodology.

### **Shaima Bani Amer Jr.**

Master, Law, Jordanian Bar Association  
haimasbniamer@gmail.com  
<https://orcid.org/0009-0005-6239-1953>

**Co-author**, responsible for formal analysis, conceptualization, data curation, Investigation, writing – review & editing.

**Competing interests:** No competing interests were disclosed. Any potential conflict of interest must be disclosed by authors.

**Disclaimer:** The authors declare that their opinions and views expressed in this manuscript are free of any impact of any organizations.

## RIGHTS AND PERMISSIONS

**Copyright:** © 2026 Abdullah Ehjelah Jr., Raed Faqir Jr., Yusuf Obeidat, Mamdouh Hassan Manea Al-Adwan Jr. and Shaima Bani Amer Jr. This is an open access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

## EDITORS

**Assistant Editor** – Valentina Krivolapova. **English Editor** – Robert Reddin.  
**Ukrainian language Editor** – Mag. Liliia Hartman.

## ABOUT THIS ARTICLE

### Cite this article

Ehjelah AJr, Faqir RJr, Obeidat Y, Al-Adwan MHMJr and Amer SBjr, 'Abortion-Related Maternal Deaths: A Comparative Study of Criminal Law in Jordan, the UAE, and Europe' (2026) 9(2) Access to Justice in Eastern Europe 1-40 <<https://doi.org/10.33327/AJEE-18-9.2-a000191>> Published Online 20 Apr 2026

**DOI:** <https://doi.org/10.33327/AJEE-18-9.2-a000191>

## DETAILS FOR PUBLICATION

Date of submission: 19 Dec 2025

Date of acceptance: 02 Mar 2026

Online First Publication: 20 Apr 2026

Last Publication: May 2026

Was the manuscript fast tracked? - No

Number of reviewer reports submitted in first round: 2 reports

Number of revision rounds: 2 rounds with major and minor revisions

## Technical tools were used in the editorial process

Plagiarism checks - Turnitin from iThenticate

<https://www.turnitin.com/products/ithenticate/>

Scholastica for Peer Review

<https://scholasticahq.com/law-reviews>

## AI DISCLOSURE STATEMENT

This article was prepared with the assistance of AI tools. Specifically, Grammarly was employed for proofreading during the drafting process (version reviewed: December 2025). The authors confirm that all content, arguments, and conclusions were generated independently and remain their sole responsibility. No AI tool was used for generating original research findings or analysis.

**Summary:** 1. Introduction. – 2. Literature Review. – 3. Methodology. – 4. Results and Discussion. – 4.1. *Abortion Regulation in Jordan, the UAE, Europe, and Sharia Islamic Law.* – 4.2. *Islamic Perspective on Abortion Causing the Death of a Pregnant Woman.* – 4.2.1. – *Penalties of Intentional Abortion in Islamic Sharia.* – 4.2.2. *Penalties for the Unintentional Death of a Pregnant Woman in Islamic Sharia.* – 4.3. *The Concept of Abortion Resulting in Death under Jordanian and Emirati Law.* – 4.3.1. *The Presumed Element (Existence of Pregnancy).* – 4.3.2. *The Actus Reus Element.* – 4.3.3. *The Mens Rea Element.* – 4.3.4. *Penalties for the Offense of Abortion Resulting in Death.* – 5. Problematic Aspects of Abortion Resulting in Death under Jordanian and Emirati Law. – 5.1. *Maternal Death in Cases of Nonexistent Pregnancy.* – 5.2. *Conflicting Legal Classifications of Fatal Abortion.* – 6. Analyzing Abortion and Maternal Deaths in Europe: France and Poland Comparative Perspective. – 7. Philosophical Basis and Criminal Policy of the Proposed Penalties. – 8. Conclusions.

**Keywords:** *Islamic Sharia, Abortion, Death, Pregnancy, Expiation, Jordanian law, Emirati law, European laws.*

## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

**МАТЕРИНСЬКА СМЕРТНІСТЬ, ПОВ'ЯЗАНА З АБОРТАМИ:  
ПОРІВНЯЛЬНЕ ДОСЛІДЖЕННЯ КРИМІНАЛЬНОГО ПРАВА В ЙОРДАНІЇ, ОАЕ ТА ЄВРОПІ**

***Абдулла Ехджеллах-молодший, Раїд Факір-молодший\*, Юсуф Обейдат,  
Мамдух Хассан Манеа Аль-Адван-молодший та Шайма Бані Амер-молодша***

АНОТАЦІЯ

**Вступ:** У дослідженні розглядається смерть жінки внаслідок аборту в контексті ісламського шариату та правових баз Йорданії, Об'єднаних Арабських Еміратів та Європи. Головним завданням цього дослідження є збереження життя матері та

захист плоду, що порушує делікатні питання щодо юридичного визначення аборту, який спричиняє смерть. Проблема дослідження виникає через відсутність чіткого положення в законодавстві Еміратів та європейському законодавстві Франції та Польщі, яке б криміналізувало цю складну поведінку, на відміну від чіткого регулювання, що міститься в законодавстві Йорданії. Мета дослідження — з'ясувати погляд ісламського шаріату на злочини, пов'язані з абортom та зі смертю жінки внаслідок абортu.

**Методи.** У дослідженні використовується комплексна порівняльно-аналітична методологія, яка систематично порівнює відповідні рішення ісламського шаріату з правовими базами Йорданії, Еміратів, Франції та Польщі, що регулюють питання абортів та правові наслідки смерті, що виникли через них. Мета дослідження полягає у визначенні подібностей та відмінностей між релігійним та позитивним правом, оцінці їхнього впливу на кримінальну відповідальність та оцінці того, наскільки добре кожна правова система збалансовує захист життя плода з урахуванням особистих прав та медичної необхідності. Це досягається за допомогою критичного аналізу судових тлумачень, законодавчих положень та доктринальних джерел.

**Результати та висновки.** Дослідження робить кілька важливих висновків, головним з яких є те, що як йорданське, так і еміратське законодавство відповідають ісламському шаріату, оскільки вони забороняють аборти, якщо це не є необхідністю, та криміналізують як аборти, так і вбивство вагітної жінки, одночасно встановлюючи покарання за обидва види діяльності. На відміну від йорданського законодавства, яке спеціально забороняє аборти, що призводять до смерті, еміратське та європейське законодавство дозволяють аборти у випадках вад розвитку плода. Дослідження також визначає недоліки еміратського законодавства щодо посилення покарань. Тому, відповідно до йорданського законодавчого підходу, дослідження пропонує додати до еміратського законодавства спеціальне положення, яке криміналізує аборти, що призводять до смерті, та встановлює суворіші покарання. Воно також розглядає обставини, коли кримінальна відповідальність посилюється після винесення остаточного рішення про аборт.

**Ключові слова.** Ісламський шаріат, аборт, смерть, вагітність, спокута, йорданське законодавство, законодавство Еміратів, європейське законодавство.

## ABSTRACT IN ARABIC\*

مقال بحثي

# الإجهاض المفضي الى وفاة الأم الحامل: دراسة مقارنة للقوانين الجنائية في الأردن، والإمارات، واوروبا

عبدالله حجيله الابن، رائد الفقير الابن\*، يوسف عبيدات الابن، ممدوح العدوان الابن، شيماء بني عامر الابنة.

## المخلص

**الخلفية:** تتناول الدراسة الآثار الجنائية الناجمة عن وفاة المرأة الحامل بسبب خضوعها لعمليات الإجهاض، وذلك في ضوء أحكام الشريعة الإسلامية والأطر القانونية في كل من الاردن والإمارات العربية المتحدة وأوروبا. أما إشكالية الدراسة الرئيسية تتمثل في كيفية حماية حياة الأم مع صون الجنين. وهذا يثر تساؤلات دقيقة حول التعريف القانوني للإجهاض المفضي الى الوفاة. فمشكلة الدراسة تنطلق من غياب النصوص الصريحة في القانون الاماراتي وبعض التشريعات الاوروبية، ولا سيما في فرنسا وبولندا، التي تجرم هذا السلوك المزدوج، خلافاً للتنظيم الصريح في القانون الأردني. كما تهدف الدراسة الى بيان موقف الشريعة الإسلامية من جرائم الاجهاض وما قد يترتب عليها من وفاة المرأة الحامل.

**المنهجية:** تتبنى الدراسة المنهج التحليلي المقارن الذي يقوم على الموازنة بين أحكام الشريعة الإسلامية والتشريعات الوضعية في كل من الاردن، والإمارات وفرنسا وبولندا فيما يخص موضوع الوفاة الناجمة عن الإجهاض والنتائج القانونية الناشئة عنه. وترمي الدراسة الى حصر أوجه الإتفاق والاختلاف بين أحكام الشريعة والقانون الوضعي، بالإضافة الى تقييم أثر ذلك على المسؤولية الجزائية، ومدى تحقيق كل نظام من هذه النظم القانونية التوازن بين حماية الجنين ومراعاة حقوق الأم والضرورة الطبية، وتوضيح ذلك من خلال تحليل النصوص القانونية والسوابق القضائية والأراء الفقهية.

**النتائج والخاتمة:** خلصت الدراسة الى مجموعة من النتائج المهمة، أبرزها أن كل من القانون الأردني والإماراتي يتوافقان مع أحكام الشريعة الإسلامية في حظر الإجهاض إلا للضرورة، وتجريم فعل الإجهاض والتسبب بوفاة الأم الحامل مع تقرير العقوبات الملزمة لهذه الافعال. ولكن على خلاف

\*. The publication metadata in Arabic is presented as submitted by the authors.

القانون الاردني الذي ينص صراحة على تجريم الإجهاض المفضي الى الوفاة، تجيز بعض التشريعات الأوروبية والإماراتية الإجهاض في حالات ثبوت تشوه الجنين. وكشفت الدراسة عن أوجه القصور في القانون الاماراتي فيما يخص تشديد العقوبات. وبناء على ذلك توصي الدراسة بضرورة تبني نهج المشرع الاردني من خلال اضافة نص خاص في القانون الاماراتي يجرم الإجهاض المفضي الى الوفاة مع تشديد العقوبات، بالإضافة الى معالجة الحالات التي تتفاقم فيها النتيجة الجنائية بعد صدور الحكم النهائي في جريمة الاجهاض.

**الكلمات المفتاحية:** الشريعة الإسلامية، الإجهاض، الموت، الحمل، الكفارة، القانون الأردني، القانون الإماراتي، القوانين الأوروبية.