



Choosing the Lesser Evil? English Sunni E-fatwas on Abortion

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Abstract

There has been an academic interest in fatwas regarding abortion since the 1980s (Anees 1989; Rispler-Chaim 1993, 2003; Faúndes, Barzelatto 2006). With the globalisation of *ummah* – the Islamic community – and the expansion of the internet, online fatwas have started to provide normative answers to inquiries from Muslims from all over the world. Van den Branden and Broeckeaert researched non-voluntary euthanasia and assisted suicide expressed in English e-fatwas (2009, 2011). Using their approach and framing e-fatwas in the context of Roy’s view on the virtual Islamic community (2000, we have selected and analysed eighty English Sunni e-fatwas on abortion. On the level of structure, these e-fatwas are very similar – often rooted in the Quran and Sunna but not classical jurisprudential discussions on the subject. On the level of content, they do not deviate from Islamic jurisprudence, which does not encourage abortion but permits it in particular circumstances during specific stages of fetal development – generally, before four months or 120 days of gestation. In the light of our study, English Sunni e-fatwas on abortion constitute an important part of Islamic bioethical teachings and thus deserve further research.

Keywords: Islam, Islamic law, e-fatwas, abortion, Muslim diaspora

Słowa kluczowe: islam, prawo muzułmańskie, e-fatwy, aborcja, diaspora muzułmańska

Abortion is a socio-ethical problem that continues to provoke debate in different places and cultures. Recent years have shown that the issues of women's reproductive rights and abortion can be a battleground for different political interests, with religion often becoming a focal point of social conflict. In an era of increasing globalisation and diversity, studies on the attitudes, beliefs, and rules regarding abortion are highly needed. However, although the Muslim population is growing worldwide, the details of attitudes towards abortion in contemporary Islam are not well known.

In Islam, the norms governing bioethical issues such as abortion (*ijtihad* – the Arabic term for the process of legal reasoning to solve a problem) are part of Islamic law – a normative system that combines law, ethics, philosophy, and religious teachings. When certain actions or behaviours raise doubts, Muslims turn to jurists and legal scholars for recommendations on how to behave in accordance with the rules. These answers are given in non-binding legal opinions called fatwas.¹ Thus, to understand what norms bind pious Muslims, one must turn to the analysis of legal opinions.

Since the late 1980s, there has been academic interest in understanding Islamic positions on abortion through the analysis of fatwas.² However, studies on this topic are mostly limited to summarising classical juristic discussions,³ general positions and rules in Islamic law⁴ and regulations in Muslim-majority countries,⁵ or they focus on referring to different answers published in fatwas by well-known muftis and official Islamic institutions.⁶ Traditionally, there is no consensus in Islam regarding the timing and conditions under which abortion is permitted. There are differences

¹ In keeping with the subject matter of this study, we use anglicised versions of Islamic terms, for example, “fatwas” as the plural for fatwa, instead of Arabic sing. fatwā and pl. fatāwā.

² I.e., M.A. Anees, *Islam and Biological Futures: Ethics, Gender and Technology*, London–New York 1989; V. Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century*, Leiden–New York–Köln 1993; V. Rispler-Chaim, *The Right Not to Be Born: Abortion of the Disadvantaged Fetus in Contemporary Fatwas*, “The Muslim World” 1999, vol. 89, no. 2, p. 130.

³ I.e., Th. Rogers, *The Islamic Ethics of Abortion in the Traditional Islamic Sources*, “The Muslim World” 1999, no. 89, pp. 122–129; M.H. Katz, *The Problem of Abortion in Classical Sunni Fiqh*, [in:] *Islamic Ethics of Life: Abortion, War, and Euthanasia*, J.E. Brockopp (ed.), Columbia, SC 2003, pp. 25–50; T. Eich, *Induced Miscarriage in Early Mālikī and Hanafī Fiqh*, “Islamic Law and Society” 2009, vol. 16, no. 3–4, pp. 302–336; V.Y. Stodolsky, A.I. Padela, *Abortion in Hanafī Law*, [in:] *Abortion: Global Positions and Practices, Religious and Legal Perspectives*, A. Bagheri (ed.), Cham, Switzerland 2021, pp. 127–136.

⁴ I.e., M.A. Albar, *An Islamic View on Contraception and Abortion*, “Journal of the Islamic Medical Association of North America” 1989, vol. 21, no. 2, pp. 79–81; O. Asman, *Abortion in Islamic Countries-legal and Religious aspects*, “Medicine and Law” 2004, vol. 23, no. 1, p. 73; D.L. Bowen, *Abortion, Islam, and the 1994 Cairo Population Conference*, “International Journal of Middle East Studies” 1997, vol. 29, no. 2, pp. 161–184; G.K. Shapiro, *Abortion Law in Muslim-majority Countries: An Overview of the Islamic Discourse with Policy Implications*, “Health Policy and Planning” 2014, vol. 29, no. 4, pp. 483–494.

⁵ I.e., L. Hessini, *Abortion and Islam: Policies and Practice in the Middle East and North Africa*, “Reproductive Health Matters” 2007, vol. 15, no. 29, pp. 75–84; eadem, *Islam and Abortion: The Diversity of Discourses and Practices*, “IDS Bulletin” 2008, vol. 3, no. 3, pp. 18–27; I. Maffi, L. Tonnessen, *The Limits of the Law: Abortion in the Middle East and North Africa*, “Health and Human Rights” 2019, vol. 21, no. 2, pp. 1–6.

⁶ I.e., V. Rispler-Chaim, *Islamic Medical Ethics...*, *op. cit.*; *idem*, *The Right Not to Be Born...*, *op. cit.*

not only between Sunni and Shi'a Muslims⁷ but also within different Islamic schools of law (*madhab*)⁸ and even between scholars belonging to the same school.⁹ Similar diversity can be observed in state legislation in Muslim-majority countries.¹⁰ However, there are no studies on how these attitudes and norms might develop and change in Islamic law, especially outside of the local contexts of traditionally Muslim regions.

Nowadays, technological developments influence how Muslims' knowledge of Islam and Islamic law is produced, transmitted and used. Due to the globalisation of the *ummah* – the Islamic community – and the spread of the internet, it is not only the long-established Islamic legal institutions that provide ethical and normative guidance to Muslims. Within the new deterritorialised virtual *ummah*,¹¹ more and more Muslims seek guidance and follow the precepts they can find in e-fatwas (electronic legal opinions) on various Islamic websites. Such portals are often published in English and are also aimed at Muslims born or living outside Muslim-majority countries.

E-fatwas are an important exemplification of contemporary Islam, making them relevant material for research on the virtual Islamic community. In the following pages, we present the results of a content and structural analysis of English Sunni e-fatwas on the topic of abortion. This study is particularly focused upon contemporary Islamic viewpoints and the exploration of how Islamic law evolves in the virtual space. The article attempts to answer three main questions: How are abortion issues resolved in English e-fatwas? Are the rules and solutions presented in these legal opinions consistent with classical Islamic jurisprudence on abortion? What can we learn about e-fatwas from the content and structure of legal opinions on abortion?

Methodology

The basis of this study was an analysis of eighty English Sunni e-fatwas on abortion published on Islamic websites in the years 2000–2016. The majority of the opinions were obtained from the platform www.islamweb.net (60 e-fatwas). The remaining were from Islam Questions and Answers (www.islamqa.info – 5), Darul Ifta (www.darulifta.com – 3), Fatwa-Online (www.fatwa-online.com – 2), Islam Questions and Answers (www.islamqa.org – 1), Islam Awareness (former Islam Online, www.islamawareness.net – 1), Islam Today (en.islamtoday.net – 1, the English website no longer exists); Scholar of the House (www.scholarofthehouse.org – 1), IslamiCity (www.islamicity.com – 1), Alsiraj (www.alsiraj.net – 1), About Islam (www.aboutislam.net – 1), Ask Imam (www.askimam.org – 1), Albalagh (www.albalagh.net – 1), Dr Zaik Nakir (zakirnaikqa.wordpress.com – 1).

⁷ O. Asman, *op. cit.*

⁸ M.H. Katz, *op. cit.*; G.K. Shapiro, *op. cit.*; T. Eich, *op. cit.*

⁹ D.L. Bowen, *op. cit.*

¹⁰ L. Hessini, *Islam and Abortion...*, *op. cit.*; *idem*, *Abortion and Islam...*, *op. cit.*; G.K. Shapiro, *op. cit.*; I. Maffi, L. Tønnessen, *op. cit.*

¹¹ O. Roy, *La communauté virtuelle. L'internet et la déterritorialisation de l'islam*, "Réseaux. Communication–Technologie–Société" 2000, vol. 18, no. 99, pp. 219–237.

There are a few reasons why we analysed only e-fatwas issued by Sunni scholars. First, Sunni Islam is the dominant branch of Islam in the world, including within minorities living outside of Muslim countries¹², thus online platforms offering legal opinions in English are also mainly Sunni. Furthermore, jurisprudence in the other two branches, Shia and Khawarij, is based on different theoretical and methodological foundations. In effect, positions on bioethical issues and abortion between the branches vary and should not be generalised or essentialised.

Our analysis was inspired by research on euthanasia and assisted suicide in English e-fatwas by Stef Van der Branden and Bert Broeckaert.¹³ We used a similar approach and methods to explore the Islamic legal narratives on abortion found in English online fatwas. However, rather than comparing the material to the collection of e-fatwas on a different topic, as our predecessors did, we place our findings in the broader context of traditional narratives in Islamic jurisprudence. In doing so, we aim to examine the contemporary evolution and direction of change in the norms embodied in online fatwas on abortion. This study included desk research on classical positions on abortion in non-electronic fatwas, an examination of the norms on abortion presented in e-fatwas, and content and structural analyses of the research material. The content analysis in this research focuses on the legal argumentation of the jurist issuing the fatwa, particularly the citation of sources of Islamic law, references to classical or contemporary respected Muslim scholars or other electronic fatwas, and the repetition of arguments or quotations between e-fatwas. Structural analysis is used to investigate the format of e-fatwas, including the form of communication with addressees (whether they are addressed to the general public or specifically to the questioner), the division of the text into specific parts, the signatures, and the authorship of the electronic document. These methods allowed us to define the characteristics of a new corpus of virtual legal opinions and to draw conclusions about the contemporary virtual Islamic community. The article consists of three parts. First, an overview of traditional Islamic legal views on abortion is provided, which forms the background for a comparative study of contemporary debates. Second, the main issues and norms expressed in online fatwas on abortion are discussed in depth. The fatwas are first categorised according to the issue reported by the fatwa seeker and then the principles and exceptions expressed in the fatwas are summarised. Third, the results of content and structural analyses of e-fatwas are described, showing the functions they serve for English-speaking Muslim communities and exploring how these opinions are linked to the tradition of Islamic jurisprudence and other contemporary e-fatwas.

¹² T. Miller, *Mapping the Global Muslim Population: A Report on the Size and Distribution of the World's Muslim Population*, Pew Research Center 2009, <https://www.pewforum.org/2009/10/07/mapping-the-global-muslim-population/> [access: 28.11.2021].

¹³ S. Van den Branden, B. Broeckaert, *Globalisation and a Living Islamic Identity: English Sunni E-Fatwas on End-of-Life Decision Making*, [w:] *In-between Spaces: Christian and Muslim Minorities in Transition in Europe and the Middle East*, Ch. Timmerman, J. Leman, H. Roos, B. Segaert (eds.), Brussels 2009, pp. 203–218; *idem*, *Living in the Hands of God: English Sunni e-fatwas on (Non-)voluntary Euthanasia and Assisted Suicide*, “*Medicine Health Care and Philosophy*” 2011, vol. 14, no. 1, pp. 29–41.

Islamic law and the virtual umma

The internet creates an important space for contemporary Islam, which thrives on the virtual sphere. Muslims worldwide are using social media, websites and apps to communicate and exchange views. More than two decades ago, Oliver Roy proposed and discussed the idea of an emerging *oummah virtuelle*,¹⁴ arguing that the new global Islamic community is not territorial or regional but increasingly virtual.

The growing presence of Muslims in countries where Islam is not a predominant religion and where access to Islamic legal institutions, jurists, and scholars is much more difficult than in Islamic-majority countries creates a particular need for the online presence of Islam and Islamic law.¹⁵ In the diaspora, internet helps to recreate a religious community online, while in real-life conditions, there is no space or acceptance for it.¹⁶ It is also relevant that English is becoming a dominant language in Islamic international cyberspace, particularly for Muslims in Europe and America.¹⁷ Accessing discussions and information in English broadens the audience and accommodates those believers who could otherwise be excluded due to language barriers. Moreover, it defines virtual Islam as being more multicultural, open to Muslims of different ancestries, and creating a common international communication platform for global Islam.

One of the manifestations of this technological development and adaptation of Islam to the changing reality is the emergence of a new online fatwa phenomenon. Fatwa is a legal opinion on the point of Islamic law,¹⁸ issued by a qualified jurist (*mufti*) or scholar specialised in Islamic law (*'alim*).¹⁹ Usually, it is issued as a response to a question put forward by a private person, Islamic judge or institution (i.e. state, non-governmental). Fatwas indicate how one should act in a specific situation in accordance with the rules of Islam and Islamic law. However, they are non-binding rules of behaviour, meaning that even in Muslim-majority countries, there are usually no legal sanctions if they are not obeyed.²⁰ Because Islam is a discursive tradition,²¹ without one hierarchy or one centre for Islamic thought, Islamic law is characterised by a plurality of different fatwas existing simultaneously. Historically, opinions published by well-recognised Islamic scholars and national or international

¹⁴ O. Roy, *op. cit.*, pp. 219–237.

¹⁵ S. Van den Branden, B. Broeckaert, *Globalisation and a Living Islamic Identity...*, *op. cit.*

¹⁶ O. Roy, *op. cit.*

¹⁷ J. Cesari, *Islam in the West: Modernity and Globalization Revisited*, [in:] *Globalization and the Muslim World*, B. Schaebler, L. Stenberg (eds.), Syracuse, NY 2004, p. 86.

¹⁸ E. Tyan, J.R. Walsh, *Fatwā*, [in:] *Encyclopaedia of Islam. Second Edition*, P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs (eds.), https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/fatwa-COM_0219 [access: 11.11.2021].

¹⁹ In Shiism, opinions are issued by experts in jurisprudence (*faqih*, pl. *fuqaha'*) and ayatollahs.

²⁰ In a few places in the Muslim world, such as Saudi Arabia and Malaysia, states give power to fatwas issued by official Muslim juridical institutions. E.A. Black, H. Esmaili, N. Hosen, *Modern Perspectives on Islamic Law*, Cheltenham, UK – Northampton, USA, pp. 83–85.

²¹ T. Asad, *The Idea of an Anthropology of Islam*, “Occasional Paper Series”, Washington, DC 1986, pp. 1–30.

institutions were considered more authoritative, but now Muslims are more often choosing to follow a fatwa from the internet.

Access to English e-fatwas is especially important for groups such as Muslims who do not use other languages fluently, for example, the descendants of migrants to non-Muslim countries and converts to Islam. Although many traditional Islamic legal institutions in the Middle East, Asia and Africa increasingly use internet websites to announce their opinions and resolutions, many still publish only in Arabic or local languages. There are exceptions to this, for example, the Egyptian Dar al-Ifta' al-Mašriyya also publishes English online legal opinions; however, the collection of these e-fatwas is not as extensive as that of Arabic versions. Thus, international websites building large collections of various opinions on all topics and publishing them in English attract many Muslims.

The internet space reflects the plurality of Islam, with different scholars, groups, and institutions using online tools to promote their interpretations and ideologies. This diversity of “cyber-Islamic environments”²² offers something for everyone, represents different worldviews, and influences new adherents. Nevertheless, the fact that the internet simultaneously provides easy access to a wide variety of e-fatwas creates new problems. Individuals seeking advice on complying with Muslim law are confronted with a much wider range of possible answers, which are sometimes contradictory.²³ This poses new dangers, such as legal chaos and so-called forum shopping (*fatwa* shopping) – a situation in which individuals pragmatically choose from among several existing norms the one that is more favourable to them.²⁴

Tendencies towards simplification and homogenisation are observed in the virtual Islamic sphere. Roy argued that the virtual *ummah* is characterised by the growing uniformity and conservatism of the information provided.²⁵ He pointed out that the statements disseminated on Islamic websites are often very short, presenting a basic (and thus universal) “normative corpus” that is not nuanced by ties to a particular culture or community. The repetition of such messages produces a uniform online discourse, characterised by the limited use of religious and legal source texts. Roy argued that the almost exclusive reference to the Quran and Sunna, and not to interpretations and discussions that have developed over centuries, conveys conservative concepts and standards, with no place for “reformism, liberalism or theological renewal.”²⁶

Van den Branden and Broeckaerts, in their research on e-fatwas concerning end-of-life decisions, demonstrate a similar limitation of sources included, with quotes from almost only fundamental religious texts.²⁷ Nevertheless, both virtual space and

²² See: G.R. Bunt, *Hashtag Islam: How Cyber-Islamic Environments Are Transforming Religious Authority*, Chapel Hill 2018.

²³ V. Rispler-Chaim, B. Arda, *Introduction to the Proceedings*, [in:] *Islam and Bioethics*, V. Rispler-Chaim, B. Arda (eds.), Ankara 2012, pp. 16–17.

²⁴ E.A. Black, H. Esmaili, N. Hosen, *op. cit.*, pp. 98–99.

²⁵ O. Roy, *op. cit.*

²⁶ *Ibidem*, pp. 229–230.

²⁷ S. Van den Branden, B. Broeckaert, *Globalisation and a Living Islamic Identity...*, *op. cit.*

contemporary Islamic law are evolving, and more research into the phenomenon of e-fatwas is needed. As the subject of abortion is always topical, inquiry into the content and structure of electronic legal opinions in English related to this issue may provide important information.

Traditional Islamic views on abortion

Abortion is one of a few subjects that have been the object of legal, medical and ethical inquiry by Muslims since the first decades of Islam.²⁸ It is not only because the religious, moral and legal implications of the wilful and unwilful termination of pregnancy are always actual for women and men around the world but also because new medical advancements, i.e., *in vitro* fertilization (IVF), better prenatal diagnosis tools, and improved understanding of medical and psychological conditions are sources of new questions. The protection of life or childbearing are considered to be both the foundations of religion and Muslim law and a blessing.²⁹ According to the Sunna, the Prophet Muhammad encouraged Muslim men to marry fertile women so that the numbers of the *ummah* would increase.³⁰ However, there are no universal norms on terminating a pregnancy in Islam, and the matter is one of many ethical and social issues debated within Islamic law.

Sunni Islamic law was developed in a couple of schools of jurisprudence (*mad-habs*), from which four have survived to our time: Hanafi, Hanbali, Shafi'i, and Maliki. All these schools use four main sources of Islamic law (*usul al-fiqh*) as a basis for the interpretations: the Quran, the Sunna, *ijma* (consensus of Muslim scholars on a legal matter), and *qiyas* (reasoning by analogy, which is one form of independent personal reasoning of the jurist – *ijtihad*).³¹ However, the schools differ in how the latter two sources are prioritised, what is considered additional legal sources, and on certain understandings developed over the centuries within the jurisprudence (*fiqh*) of the schools. Regarding abortion, although the Quran explicitly prohibits the killing of children (Quran 6: 151, 17: 31) and it also made the historical pre-Islamic custom of *wa'd* (burying newborn girls alive) unlawful, it does not directly specify

²⁸ M.H. Katz, *op. cit.*; V.Y. Stodolsky, A.I. Padela, *op. cit.*

²⁹ There are exceptions, for example, some Pakistani scholars claimed that there was a preference for smaller families according to the Quran, and the parents may choose to have fewer children and ensure better living conditions for them, rather than enduring hardships if the family is too big. V. Rispler-Chaim, *Islamic Medical Ethics...*, *op. cit.*, p. 13. Also, Egyptian scholars agreed that willingness to provide better education quality of life for children is a legitimate reason not to expand the family. E. Górska, *Współczesna dynamika prawa muzułmańskiego wobec problemów bioetycznych. Studium wybranych przypadków*, Kraków 2020, pp. 136–137. However, these arguments are used as a reason to allow family planning and contraceptives not abortion to reduce the number of children.

³⁰ [Prophet Muhammad said], *Marry One Who Is Loving and Fertile, for I Will Boast of Your Great Numbers to the Prophets on the Day of Resurrection*, Sahih Ibn Hibban 4028, <https://archive.org/details/SahihIbnHibbanJild2LRes/Sahih%20Ibn%20Hibban%20Jild%205%20LRes/page/n103/mode/2up> [accessed: 28.11.2021].

³¹ A.I. Padela, *Medical Ethics in Religious Traditions: A Study of Judaism, Catholicism, and Islam*, "Journal of the Islamic Medical Association of North America" 2006, vol. 38, no. 3, pp. 106–117.

any rules about terminating pregnancy.³² Thus, the issue was elaborated upon within Islamic jurisprudence for centuries, using an interpretation of other Quranic verses, hadith, and legal reasoning.

Generally, abortion is considered inadvisable in all Sunni *madhabs* if not forbidden. However, there are exceptions to this prohibition and in some cases, termination is perceived as justifiable. Recognising such situations requires Islamic jurists to contemplate two issues: the period when termination might still be allowed and the validity of other conditions that may or may not justify the pregnancy's termination. Historically, there were differences between Islamic legal schools with regard to both of these problems.

According to the schools of law, the biggest difference that affects the time when termination is possible is views on ensoulment. It concerns views on ensoulment that the Quran accurately describes in the biological stages in the development of a pregnancy,³³ and the concept of the bestowal of the soul is also described in a Quranic verse: *He then moulded it harmoniously and breathed some of His Spirit into it* (Quran 32: 9). However, it is not clear from this verse when exactly the ensoulment takes place, and although this matter has been contemplated by Muslim jurists since the early decades of Islam,³⁴ there has thus far been no agreement on the matter.³⁵ Commonly, it is believed that the Hanafi and Shafi'i schools recognise that ensoulment occurs on the 120th day of the pregnancy.³⁶ Some of the more conservative scholars, especially (but not only) from Maliki and Hanbali schools, believe that it takes place on the 40th day.³⁷ Defining the moment of ensoulment affects the time when abortion might be permissible. Until the fetus acquires a soul, it has the potential to become a human being, but is not yet considered a person or a Muslim (although this is also debated³⁸); therefore, termination of its existence does not have the same moral or legal value as killing a person already born.³⁹ Therefore, after this moment, jurists generally agree that abortion is forbidden. However, as there has thus far been no real consensus as to the exact time of ensoulment, some jurists allow termination only until day 40, some until day 80, and others up to day 120 days after conception.⁴⁰ Hanafi school is considered to be the most liberal, usually allowing abortion until 120 days and making an exception after that in case of a threat to the mother's life.⁴¹

³² G.K. Shapiro, *op. cit.*

³³ *We first created man from an essence of clay: then placed him, a living germ, in a secure enclosure. The germ We made a leech; and the leech a lump of flesh; and this We fashioned into bones, then clothed the bones with flesh; then We develop it into another creation.* Quran 23: 12–14.

³⁴ M. Ghaly, *Human Embryology in the Islamic Tradition: The Jurists of the Post-formative Era in Focus*, "Islamic Law and Society" 2014, vol. 21, no. 3, pp. 157–208.

³⁵ M. Ghaly, *Islam, Paternity, and the Beginning of Life*, "Zygon" 2012, vol. 47, no. 1, pp. 175–214.

³⁶ M.H. Katz, *op. cit.*; D.L. Bowen, *op. cit.*

³⁷ M.A. Albar, *op. cit.*; T. Eich, *op. cit.*; D.L. Bowen, *op. cit.*

³⁸ M. Ghaly, *Islam, Paternity...*, *op. cit.*

³⁹ V. Rispler-Chaim, *Islamic Medical Ethics...*, *op. cit.*; T. Rogers, *op. cit.*

⁴⁰ M. Ghaly, *Islam, Paternity...*, *op. cit.*; D.L. Bowen, *op. cit.*; T. Eich, *op. cit.*

⁴¹ A. Faúndes, J. Barzelatto, *The Human Drama of Abortion: A Global Search for Consensus*, Nashville 2006, pp. 85–86; V.Y. Stodolsky, A.I. Padela, *op. cit.*

Another issue discussed by classical Muslim scholars since at least the eighth century C.E. is how causing a miscarriage should be treated criminally.⁴² Early *fiqh* accounts already mentioned that the penalty in such cases is not the same, and instead of *hadd* punishment, only *diya* – indemnity for the act of bloodshed – should be paid after the termination of pregnancy, especially if it was older than 120 days.⁴³ The amount for causing the death of a fetus was lower than *diya* for killing a person born alive. This lower sum, called *ghurrah*, amounts to 1/10th of the amount of *diya* paid for causing the death of a grown woman (1/20 of *diya* for a man),⁴⁴ and it should be paid to the heirs of the victim but only those who did not take part in the abortion.⁴⁵ Discussions about the financial penalties for both spontaneous and induced miscarriage in Islam are less frequent these days, at least in academic literature. However, as we show later in this article, Muslims seek answers about these amounts from jurists issuing e-fatwas.

Regarding what constitutes the aforementioned “justifiable reasons” for abortion, there is no consensus of Islamic scholars, and cases of different life situations were repeatedly ruminated upon by jurists and evaluated in their fatwas. However, certain generalised positions towards reasons for terminating the pregnancy in traditional jurisprudence may be presented. When the life of the mother is endangered, abortion is permitted in all legal schools at least until ensoulment occurs, because saving the already established life of the mother at the cost of protecting the potential future of the fetus is considered a higher priority.⁴⁶

As mentioned, the Hanafi madhab is more liberal when it comes to the timing of the permissibility of termination to save the mother’s life. Sometimes, the threat to the pregnant woman’s health is also considered by Hanafites and some Shafi’ites as a higher priority, but overall, such circumstances raise doubts. Defining exactly what constitutes serious danger to the mothers’ health or other medical necessities is usually left to physicians, who should be medical experts and (preferably) pious Muslims.⁴⁷ There is no agreement between jurists when it comes to termination because of congenital diseases of the fetus. Some influential Arab Muslim scholars issued fatwas permitting termination before ensoulment if the tests proved that the defect was fatal, but many believed this was not a sufficient reason⁴⁸ because diagnostic tests do not determine the degree of disease with certainty.⁴⁹ Various scholars have debated economic hardship as reason for abortion and the dominant attitude was against this being a valid excuse.⁵⁰

⁴² M.H. Katz, *op. cit.*, p. 28.

⁴³ Th. Rogers, *op. cit.*, p. 128–129.

⁴⁴ M.H. Katz, *op. cit.*, p. 28.

⁴⁵ V. Rispler-Chaim, *Islamic Medical Ethics...*, *op. cit.*, pp. 9–10.

⁴⁶ M.A. Albar, *op. cit.*; B. Darwish, *Arab Perspectives*, [in:] *Handbook of Global Bioethics*, H. ten Have, B. Gordijn (eds.), vol. 4, Dordrecht 2014, p. 270.

⁴⁷ M.A. Albar, *op. cit.*

⁴⁸ V. Rispler-Chaim, *Islamic Medical Ethics...*, *op. cit.*; *idem*, *The Right Not to Be Born...*, *op. cit.*

⁴⁹ B. Darwish, *op. cit.*, p. 270.

⁵⁰ V. Rispler-Chaim, *Islamic Medical Ethics...*, *op. cit.*

With regard to the termination of pregnancy following sexual assault, a few influential jurists at the end of the twentieth century acknowledged the welfare of the mother and made exceptions in their fatwas. There were a few prominent opinions with such conclusions issued in the nineteen-nineties, for example, by the Grand Sheikh of al-Azhar, Muhammed Sayed Tantawi,⁵¹ the Islamic Supreme Council in Algeria in 1998,⁵² and by the Grand Mufti of the Palestinian Authority, Ekrema Sabri, in 1999.⁵³ Nevertheless, in many other legal opinions of Muslim jurists, the sanctity of the life of a fetus should be protected despite the conditions of its conception.⁵⁴ With regard to other possible reasons for the termination of pregnancy, the jurists usually decide on a case by case basis what is permissible and there are no established legal norms.

Issues and norms in e-fatwas on abortion

Almost all (95%) of the e-fatwas we analysed were responses to questions describing specific situations. Those asking the questions usually inquired whether their circumstances could be accepted as a reason justifying the termination of a pregnancy. Because some questions were repeated more frequently than others, we catalogued the legal opinions based on the frequency of the issue raised. Of the eighty e-fatwas on abortion, thirteen concerned the physical and/or mental health of the mother, ten were about regrets, atonement and indemnity (including three direct questions on diya), nine were concerned with an impaired fetus, nine were about pregnancy following illicit sexual relations (zina), five were general, four concerned pregnancy following a rape, four related to a difficult financial situation of the family, three were about divorce while the wife is pregnant, three concerned early abortion (within forty days after conception), three were about already having too many children, three concerned children of non-Muslim partners, two covered forced abortion, and two were about multiple pregnancy (from in vitro). The remaining eight e-fatwas were about: a dead fetus, the morning-after pill, doctor's responsibility, underage motherhood, a mother over forty, a mother seeking religious knowledge, paying for a friend's abortion, and breastfeeding after abortion.

The main view expressed in the e-fatwas is that abortion is forbidden after 120 days, when ensoulment occurs, and before that, there must be valid reasons for it to be permissible. However, there is an exception in the case of a threat to the life of the mother. The e-fatwas stating this are based on the Islamic legal rule of choosing the lesser evil. In the eyes of the authors of fatwas, the mother is the "originator" of the fetus (which might not be saved if she does not survive), she already has a separate, active life, she is an important member of a family, and she has her duties

⁵¹ L. Hessini, *Islam and Abortion...*, *op. cit.*

⁵² C. Chelala, *Washington Algerian Abortion Controversy Highlights Rape of War Victims*, "The Lancet" 1998, vol. 351, p. 1413.

⁵³ G.K. Shapiro, *op. cit.*

⁵⁴ V. Rispler-Chaim, *The Right Not to Be Born...*, *op. cit.*

in the family and community and therefore saving her life means avoiding the greater of two evils.

With regard to abortion for other reasons, and before four months have passed, certain general conditions are described as valid justifications for termination in some of the more elaborate of the e-fatwas. The conditions given special mention are: danger to the mother's physical health, danger to the mother's mental health, pregnancy caused by rape, cases in which the mother is severely handicapped physically or psychologically and cannot take care of the child, and finding severe disabilities or genetic disease of the fetus.

In the case of a threat to the mother's physical health, abortion is only allowed if the danger is serious and if it occurs in the first 120 days of pregnancy, which is consistent with the teachings of all Sunni schools in recent decades. If the pregnancy poses a risk to the mother's mental health, jurists consider the nature and severity of the psychological disorder from which the mother suffers or may suffer as a result of the pregnancy. In the e-fatwas, severe postnatal depression or anxiety related to a previous traumatic birth were not recognised as sufficient grounds for the termination of pregnancy. However, again, an exception was made: if in a doctor's opinion, the psychological problem would be permanent and incurable, abortion could be permissible.

The issue of the termination of pregnancy with a damaged fetus is analysed on a case-by-case basis. According to e-fatwas, the diagnosis of Down's syndrome during pregnancy is not a valid reason for abortion. However, if the fetus has a severe health condition (e.g. a severe genetic disorder that will cause constant pain, cystic fibrosis, anencephaly, trisomy, carrier of HIV, congenital rubella), that has been proven beyond doubt by a Muslim doctor, this may be a justifiable reason for termination before 120 days of conception.

One other circumstance that appears in e-fatwas as a justifiable reason for the termination of pregnancy during the first four months is if the conception is the outcome of sexual assault. Jurists issuing e-fatwas reference fatwas on war rapes and so-called doctrine of necessity. For some, if the abortion is performed within the first forty days of pregnancy, the termination is more justifiable. Thus, there seems to have been a development in e-fatwas – while the traditional corpus was divided regarding abortion after rape, the modern opinions seem to allow it unanimously.

Many Muslim people asking for fatwas on abortion are not concerned with the legality of the act itself, but rather with what is required of them afterwards.⁵⁵ Ten e-fatwas were about penance and reparation. Three of them were focused on explaining the rules for paying compensation (*diyya*) for abortion: who should pay, what amount, and to whom. This subject is also raised in answers to other questions. Most e-fatwas state, in accordance with traditional jurisprudence, that compensation needs

⁵⁵ From a social perspective, it is alarming that a recurring theme is the question of atonement and the payment of compensation after abortion. Questioners asking for these e-fatwas usually describe the reasons that led them to terminate a pregnancy and ask about specific rules for repentance afterward, sometimes expressing regret and guilt. This could indicate that abortion seems to be the only option for many Muslims. They do not seek advice beforehand on whether to do it, but only on how to behave afterwards, knowing that the act itself is condemned.

to be paid if the fetus was older than 120-days, and for earlier termination, the person responsible (usually the mother) should only repent for their sins. However, there are some discrepancies, specifically, some (unnamed) jurists from islamweb.net believe that *diya* should always be paid after abortion and do not mention the age of the fetus, and in one fatwa from that portal (also by an unnamed jurist), we read that the mother must pay *diya* if she terminated the pregnancy after forty days.

Nine e-fatwas from the analysed material concerned extramarital affairs and carrying a pregnancy deemed illegitimate in Islamic law. In such cases, the jurists decided that abortion was not allowed but also had to answer questions about the child's family affiliation. In Islamic law, ancestry is determined on a patrilineal basis, and the identity (surname), inheritance rights, and general legal status of the child are tied to the father's family.⁵⁶ In e-fatwas on abortion, muftis recognise that the child born from an illegitimate relationship will have to be legally attributed only to the mother and her family.

One of the other concerns of Muslims about family relations and abortion is the legality of divorce during pregnancy. According to opinions published online, it is allowed in Islamic law for a husband to divorce his pregnant wife. As for the expectant woman, if she wants to get a divorce, for example if her husband is abusive to her, she may do so, but this does not constitute grounds for terminating a pregnancy. Some of the e-fatwas on this topic also do not refer to the legality of abortion *per se*, but to the assignment of sin to a person. In cases in which the husband does not want the child and forces his wife to divorce if she keeps the pregnancy, early abortion is allowed to save the marriage; however, the husband has sinned. Another interesting e-fatwa related to marriage allows an under-age wife to abort a pregnancy in order to protect her husband from going to prison in a non-Muslim country in which sexual relations with minors constitutes a criminal offence.

Some Muslims are concerned that if their spouse does not confess to the same religion, their children may be "corrupted" in the future. Abortion in such cases is not permitted, but divorce is sometimes advised. Thus, if the wife is non-Muslim, abortion is not allowed because the child will be Muslim according to religious law and should be born. If the husband is non-Muslim, his wife should divorce him and raise the child on her own within the Islamic faith.

When it comes to certain other reasons for abortion (for example, a difficult financial situation of the family, having already too many children to cope with, particularly young or old (over forty) age of the mother, if the mother is pursuing religious knowledge and does not want children) these are not valid reasons for termination according to the e-fatwas, even within first the first forty days of conception. The exception is early abortion in multiple pregnancy resulting from in vitro fertilisation, in which it may be permissible if the medical experts recommend it. In some of the e-fatwas, answering questions about financial issues, the authors indirectly, but not so subtly, suggest that contraception is allowed in Islam, and in one e-fatwa, the "morning-after pill" is allowed if it is used as a contraceptive. From other singular

⁵⁶ C. Morgan, *Islam and New Kinship: Reproductive Technology and the Shariah in Lebanon*, New York 2009, p. 96.

e-fatwas, we learn that it is permissible to clear the tissue of a dead fetus at any gestational age.⁵⁷ Also, Muslim doctors performing abortions are legally responsible and should either repent or pay diya, depending on the age of the pregnancy. It is not allowed for a Muslim to pay for a friend's abortion as it is a sinful act. When it comes to breastfeeding other children after abortion, the jurists find it acceptable.

The e-fatwas on abortion are very revealing when considered in relation to the value of marriage in Islam as well as in the context of reasons for divorce and Islamic norms regarding single parenthood. For example, in certain cases, the protection of marriage is more important to the authors of these opinions than the life of a fetus. This is surprising, because in Islamic communities, one of the main reasons for marriage is procreation, and opposition to childbearing can traditionally be grounds for divorce. Another surprising finding is that in situations of mixed-faith relationships, the norms in e-fatwas point towards single motherhood as a better choice than a child having a non-Muslim father. Even though single mothers are generally viewed negatively in Islam, and although – as we can see from the above-mentioned cases – marriage with another Muslim is considered more important than maintaining an early pregnancy, according to the e-fatwas, a mother should get a divorce and raise the child alone as a Muslim rather than jeopardise the child's faith by raising it with a non-Muslim father.

The Content and Structure of E-fatwas

The structure analysis of e-fatwas on abortion shows that the e-fatwas are directed first and foremost at the person asking a question – they start with an invocation to Allah but then often address the questioner (whose question is also published ahead of the fatwa). Electronic legal opinions are usually comprised of two parts (which do not have to come in a specific order): setting the ultimate principles based on the Quran and/or Sunna; more nuanced discussion on topics raised in the presented individual situation. A few of the e-fatwas are signed by the European Council for Fatwa and Research, or by renowned scholars like Dr Abou El Fadl (on scholarofthehouse.org) but many are anonymous.

The form of the opinions also suggests the purposes they serve. Firstly, they have the function of anonymous electronic counselling for members of the community. They help solve Muslims' individual legal/ethical problems when they find themselves wondering what they should do in their particular circumstances and need advice. The opinions that address the questioner also directly build a sense of connection and care. Secondly, e-fatwas disseminate knowledge about Islam and its norms in wider circles of Muslims and possibly interested non-Muslims. Many make use of possibilities offered by the internet, especially through linking to other platforms and

⁵⁷ This situation does not constitute abortion but because the questioner and the mufti use the term abortion, we included this case in our analysis.

e-fatwas. On some websites, for example, on islamweb.net, fatwas can also be rated, which enables some interaction with users.

Regarding content, there is a common foundation for legal reasoning in the analysed e-fatwas. From the four classical sources of Islamic law – *usul al-fiqh* – it is almost only the Quran and Sunna that are used in e-fatwas as a foundation for a conclusion, however in some e-fatwas Quran and Sunna are not quoted at all. In the research material, there was a classical source cited in more than half of the e-fatwas; the Quran was the main reference in twenty-six, in twenty it was Sunna. In five e-fatwas, one of the arguments for allowing abortion was the choice of the lesser evil. “Choosing the lesser evil” is a version of so-called legal maxims or juristic principles (ar. *al-qawā'id al-fiqhiyya*) in Islamic law.⁵⁸ There are many such maxims, they occur in different variants,⁵⁹ and they are not part of the traditional sources of Islamic law, nor are they collected in official and written compilations, instead, they are part of the *usus* of Islamic jurisprudence.⁶⁰ These legal rules are often used in contemporary legal opinions on bioethical issues issued in Arab-Muslim institutions. They allow jurists to justify their opinions when the facts and legal sources can be interpreted differently, and the *mufti* weights the rationales himself, not simply basing his opinion on previous fatwas.⁶¹ Invoking legal maxim shows that e-fatwas are tied to general Islamic jurisprudence.

Only in eight legal opinions are the thoughts of other Muslim legal scholars quoted. Often, the references were to influential modern Islamic scholars, like Yusuf Al-Qaradawi, Gad Al-Haq, Saalih al-Fawzaan, Mustafa Zarqa, the Council of Senior Scholars of Saudi Arabia, and sometimes to classical jurists like Al-Ghazali, Imam Ibn Abidin and Ibn Qudaamah. In a few opinions, previous fatwas by Islamic legal institutions were noted, i.e. the European Council for Fatwa and Research (three e-fatwas, the original fatwa was copy-pasted in one), and Egyptian Dar al-Ifta' (two e-fatwas).

Importantly, half of the e-fatwas we analysed do not mention any specific sources of Islamic law or former jurisprudence but are self-referential inside the online corpus. In many opinions, it is visible that they are based on each other. The same verses and traditions are cited, and some replicate interpretations. There are many links to other opinions on different topics, especially in e-fatwas published on islamweb.net in the text of the fatwas.⁶² This distinguishes it in form the traditional fatwa corpus, in which previous resolutions are quoted as justification of the position taken.

⁵⁸ Legal maxims can be defined as “[...] legal rules, the majority of which are universal, expressed in concise phraseology, depicting the nature and objectives of Islamic Law and encompassing general rules in cases that fall under their subject matter.” See: L. Zakariyah, *Legal Maxims in Islamic Criminal Law: Theory and Applications*, Leiden 2015, p. 40.

⁵⁹ Popular variants for choosing the lesser evil in classical Islamic jurisprudence are: “Greater harm should be prevented by committing a lesser injury,” “The lesser of two evils or injuries should be chosen” or “If two evils clash, the greater should be prevented by committing the lesser.” *Ibidem*, p. 165.

⁶⁰ *Ibidem*, pp. 165–172.

⁶¹ E. Górska, *op. cit.*, pp. 121–125.

⁶² Sometimes, it is the number of links and not much other content that brings to mind material aiming to maximise “clickability” and not inform the users about Islam.

Conclusions

Abortion remains a current and important problem for many Muslims, including those for whom English is a language they use to access information on Islam. Islamic jurists issuing e-fatwas continually respond to both general and very specific questions about the permissibility of abortion. In terms of content, the electronic legal opinions we analysed do not deviate from the legal/ethical norms of classical Islamic jurisprudence, which does not endorse abortion but allows it under certain conditions. However, analysis of eighty English Sunni legal opinions published online show that, in comparison to “classical” Islamic jurisprudence on this topic, there are standardisation trends and a growing consensus among modern jurists on certain aspects that have classically led to controversy. There is a new unanimity of opinions on 120 days as the limiting time for termination of pregnancy and an acceptance of a medically proven threat to the mother’s life as a justification for abortion later on. This indicates a broader acceptance of most liberal norms that were developed in the Hanafi school of law.

Such a change towards standardisation may be one of the characteristics of virtual Islam. However, it could also be a general change in Islamic law allowing abortion in more situations and for a longer period during pregnancy. It proves that Islamic law is an evolving discursive system and confirms one of Roy’s conclusions, namely that the virtual *ummah* is more unified in its views. At the same time, it shows that using the internet will not necessarily diversify opinions further, cause legal chaos and increase online *fatwa shopping*, but it will possibly enable more fluxes of knowledge and the consolidation of views. The analysis also shows how Islamic law is adapting to virtual reality, using links, user ratings and electronic communication to ask for a fatwa. Often, the opinions also build a connection with those asking the questions by answering their issues directly, in a form somewhat resembling counselling.

However, certain aspects of this new corpus of e-fatwas are concerning. Firstly, although in some opinions there are wider explanations of their rationale based on legal sources, as many as half of them do not reference sources other than the Qur’an and Sunna (they particularly do not mention other jurisprudence) and some only rationalise conclusions by pointing to other e-fatwas. Secondly, anonymous authorship is a common issue for some of the e-fatwas, and it raises concerns about the possible dissemination of mistakes. For example, from within e-fatwas regarding the payment of *diya* after an abortion, some anonymous opinions do not conform to the hegemonic norms expressed in the traditional jurisprudence. This can be explained by two things: a likely explanation is that the authors were not legal specialists who should know the earlier legal thinking, and their texts are not real legal opinions. The second possibility is that, for some reason, the authors opted for less common legal reasoning. However, we cannot determine this beyond reasonable doubt because these e-fatwas are too brief and do not cite enough sources. A lack of references, anonymity and generally lower quality might be problematic because English e-fatwas are easily accessible and can influence the morality of many Muslims.

With regard to the fundamentalism of e-fatwas argued by Van den Branden and Broeckaert, in light of our research, conservatism and the simplification of messages published in the online legal corpus is indeed noticeable. However, not all of the e-fatwas we analysed are brief and conservative. Some offer a more robust and detailed analysis of legal sources, with a discussion of jurisprudence positions, and an explanation of the jurist's personal. Furthermore, one could argue that those texts which lack structure, proper referencing to sources, and the signature of a jurist, are simply not fatwas, even though they are presented as such on Islamic websites. This does not solve the problem of the quality of norms and information conveyed to Muslims seeking answers online. It instead points us into the direction of another problem of online Islam: the legitimacy of sources and authorities. This issue, as well as changing opinions about abortion in Islamic law, may necessitate further research.

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