



Commentary

Abortion Law in Pakistan: Deficiencies and the Need for Reforms

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ABSTRACT

This commentary provides a comprehensive overview of the abortion law in Pakistan and raises several valid concerns about its deficiencies. It effectively highlights the need for reforms to protect the rights and well-being of women and emphasizes the importance of legal reforms to address the issues faced by women seeking abortion services in Pakistan.

Keywords: Abortion law, Pakistan, Women health, Legal reforms

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INTRODUCTION

The abortion law in Pakistan has been well explained by Rawal Kazmi in her commentary “Abortion Law in Pakistan: Reforms needed?”¹ and so, we would like to highlight and present key arguments against the current abortion law in Pakistan.

The word “Abortion” means the end of pregnancy, and in medical terminology, it is referred to as the “premature exit of the products of conception (the fetus, fetal membranes, and placenta) from the uterus”.² It is considered to be one of the taboo issues to be discussed, abortion has been a complex and blazing argument, especially in Pakistani society due to religious beliefs. The principles of laws and jurisdiction are governed by Islamic and Sharia laws in Pakistan, due to these reasons and misconceptions by the population, abortion is considered illegal.³ In 1990, the government reformed the laws, which were built in 1860 under the penal code in the British era. After the establishment of reforms, the laws concerning abortion were more focused on the early developmental stages of pregnancy and clearly stated the conditions in which it is legal in the country. In the Islamic sharia law, the Hanafi school of thought is mostly followed by Pakistan and in light of the Quran and Sunnah, the amendments were carried out and became part of the 1997 law, which includes the following, 338. (A) Isqat-i-Hamal, in which Punishment for Isqat-i-haml, with the consent of the woman, or if isqat-i-haml is caused without the consent of the woman, 338. (B) Isqat-i-Janin, and last 338. (C) Punishment for Isqat-i-Janin.

This write-up is against the current abortion laws in Pakistan, to be fair in addressing the issue of abortion as per need. The law states that abortion is legal in certain situations until the first trimester of pregnancy, which makes 120 days if the mother’s life is in threat, or any necessary treatment is required. But the counter argument is that the woman should have complete right over her body and decisions irrespective of whether her health is at risk or not, but this law doesn’t allow her to do so. Besides this, there are many ambiguities found with health care providers and seekers due to the law being vague. In our society, abortion is viewed as a sensitive topic, which may lead

many women to avoid seeking assistance even if they experience complications. The Supreme Court has put forth a recommendation stating that a woman should have an unequivocal legal right to obtain an abortion of her choice during the initial 120 days of pregnancy. However, it is important to note that this recommendation has not yet been fully implemented.⁴ The absence of safe abortion services exposes numerous women and girls facing unintended pregnancies to potential health risks and even loss of life when they resort to unsafe abortion methods. In Pakistan, unsafe abortion continues to a minimum of 6% of maternal deaths, and there is a possibility that this estimate underrepresents the true extent of the issue, considering the regional coverage of 13%.⁵

A significant proportion of women in Pakistan face significant difficulties in obtaining safe abortion services due to existing barriers. One major obstacle is the varying interpretations of the country’s abortion law, despite several amendments being made. These divergent interpretations occasionally limit women’s access to safe abortion services (Gutmacher Institute and Population Council, 2013).⁶

Key arguments against the current laws:

1. Lack of education and awareness: Though there are laws on abortion but as observed, there is an increased number of cases of unsafe and induced abortions, which is due to the lack of education and knowledge of the population and health care providers on the current existence of law. This results in misinterpretation and thus increases the stigma of abortion being illegal. It is one of the major flaws of lawmakers, and it is their responsibility to provide awareness to the healthcare providers so they can provide safe services for abortion and safeguard the right of individuals with a legal understanding of the law in line with the Sharia law of Islam. In research conducted by Rehan (2003), examining the attitudes of HCPs towards induced abortion and the prevailing abortion laws, it was discovered that 67.3% of the providers held negative views towards induced abortion and the prevailing abortion laws, it was discovered that 67.3% of the providers held negative views towards induced abortions. All the providers were knowledgeable about the existing abortion laws, and 37.5% believed that the

laws should be modified, although the majority (80.9%) believed that any changes should make the laws more stringent. These findings led Rehan (2003) to suggest that provider attitudes could potentially hinder the progress of improving abortion services.⁷

2. Time limitations and valid reasons: Abortion is not allowed after 120 days, according to the law. If any issue arises after the counted days or the mother has any valid reason (e.g., health problems, poverty, family disputes, mental stress, etc.) for not giving birth, the law does not state that. The counselling process should prioritize the patient's emotional wellbeing, ensuring they do not experience negativity, discomfort, or judgement. Instead, patient should be provided with comprehensive guidance encompassing the selection of a suitable abortion method, post-abortion care, and the choice of a contraceptive method after the abortion.⁸
3. Defining "Necessary treatment": "Necessary treatment"⁹ is an indefinite expression, what is the measuring scale that defines what comes under, and what does not, or is it fatal or not? Only the medical issues are part of it, or emotional, mental, and physical well-being is also considered? It is the responsibility of the law and health care providers as they are the means to understand the conditions. There might be conditions that were not so fatal initially but later ended up taking the mother's life. Although the initial impression of these laws suggests a significant level of restriction, their inadequate specifications render them rather ambiguous. It remains unclear whether the phrase 'saving the mother's life strictly pertains to biomedical factors or if it also includes the woman's mental and social well-being. Particularly, in cases of pregnancy resulting from rape, they might face social exclusion from their family and community. Moreover, the term 'necessary treatment' lacks a clear explanation, allowing for subjective interpretations to prevail.¹⁰ According to the literature, in 2015, an estimated 303000 women died from complications related to pregnancy or childbirth.¹¹

4. Censorious approach: The law is censorious on the issues like incest, fetal abnormalities, and rape, it permits to allow abortion to save women's lives, but it is not permitting abortion on the appeal of the women. In other Countries they don't need to worry that abortion can lead up to the mother serving jail time, hence the risk of going forward with a not-so-complicated problem can end up taking her life. Thus, Family planning researchers at the Guttmacher institute clearly states abortion provisions in Pakistan penal code are vague and legal only in very limited circumstances.¹²

CONCLUSION

The abortion laws in Pakistan are not well intact and positioned to meet the needs of women, it does not provide full autonomy to them, provided they are not well advocated and not well informed to healthcare providers (HCPs) as well. There is an ongoing debate regarding the classification of abortion as equivalent to murder due to its involvement with potential life. However, it is crucial to note that legally and scientifically; a fetus is not recognized as a person or human being. Therefore, equating abortion to murder is not supported since the fetus does not possess the attributes of personhood or life. Furthermore, the scientific community has not conclusively established whether fetuses have the capability to experience pain during an abortion procedure. It is worth mentioning that various religious perspectives consider the stage of fetal development and may permit abortion before a certain point in time. Legitimization of abortion law is very important for the beneficence of women because no one can imagine a society where a woman is raped and is not allowed to terminate an unwanted pregnancy. Issues can be addressed by involving the stakeholders including, the legal community, HCPs, reproductive health rights advocates, and women in legal ethical and real-case scenario discussions.

RECOMMENDATIONS

1. It is important to launch behavioral change management campaigns at the community level. These campaigns should aim to involve influential community leaders, including religious scholars, male members, and other important family members. Their active participation can help raise awareness about the potential consequences of unintended pregnancies and unsafe abortions.
2. Efforts should be made to foster networking among community-based healthcare professionals who provide sexual and reproductive health services.
3. Raising awareness through mass media campaigns, including the use of mobile health messages, can be effective in promoting family planning and post-abortion care services.
4. It is crucial to guarantee a consistent availability of supplies and resources in healthcare facilities to provide uninterrupted family planning and post-abortion care services (PAC). Furthermore, it is essential to prioritize the provision of high quality services that are legally permissible in the country, while also ensuring their accessibility to women.

Authors Contribution

S.K: literature review, interpreted the data, developed the design and methodology, writing of the manuscript, comprehended the study, performed revisions, supervision. N.K: conceived the idea of the study, performed revisions, and writing of the manuscript. H.K: conceived the idea of the study, literature review, developed the design and methodology, data collection and coordination, and interpreted the data. A.T.F: comprehended the study and participated in drafting the manuscript, literature review, developed the design and methodology, supervise the draft making, data collection and coordination.

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