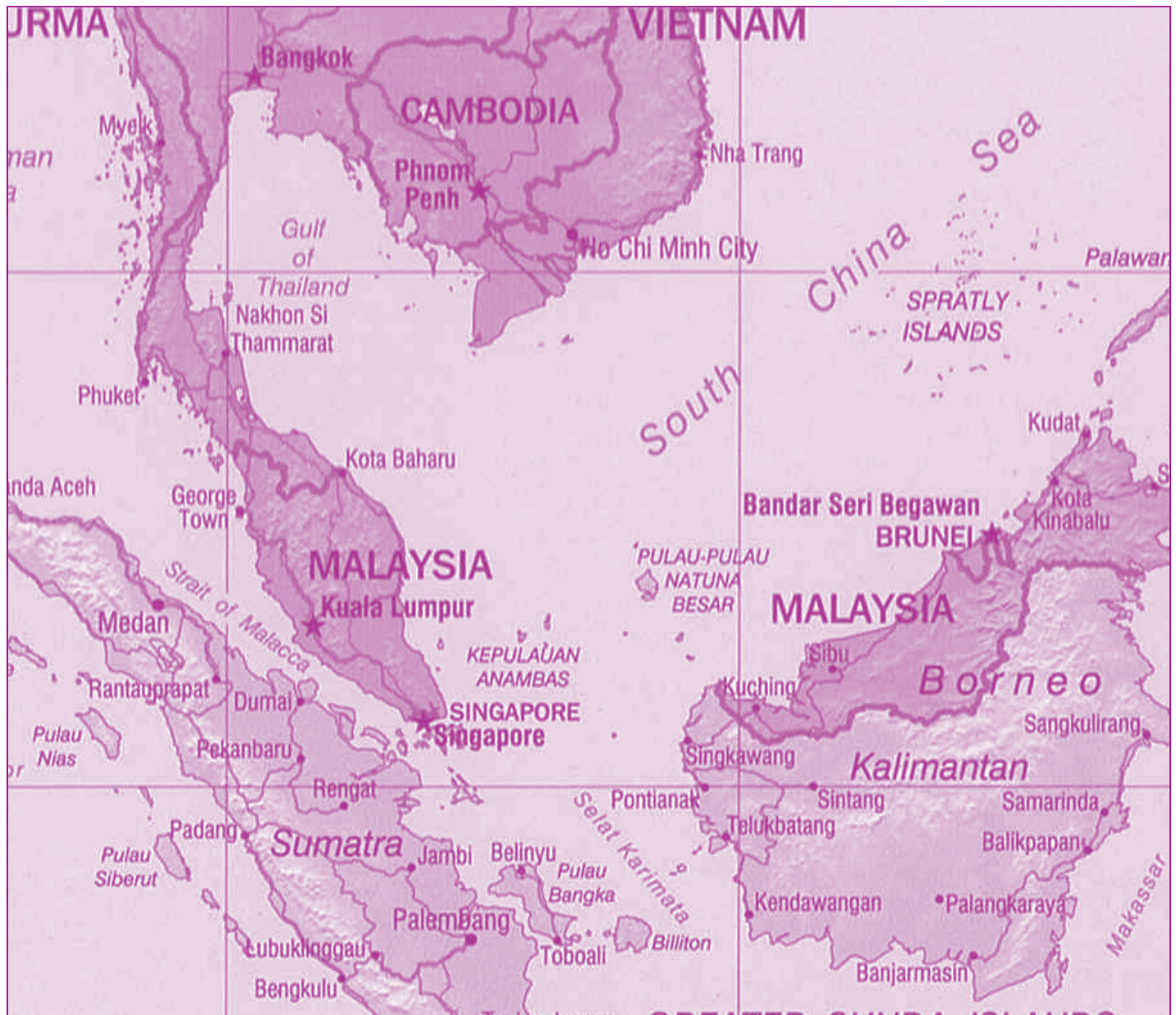


A Study of Knowledge, Attitudes and Understanding of Legal Professionals about Safe Abortion as a Women's Right



IN MALAYSIA





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Background: Sexual and Reproductive rights and health for the women of Asia sometimes appears to be a distant vision. The ICPD, the Millennium Development Goals and the Beijing Declaration notwithstanding, maternal mortality continues to be high in many parts of Asia and patriarchal society structures reinforce women's lack of autonomy and decision making capacities thus putting their lives at risk on a daily basis through deprivation, physical and sexual violence, rape, unsafe abortions, and others. Unsafe abortions still contribute to 13-50 % of the maternal mortality in some of these countries.

The Asia Safe Abortion Partnership (ASAP) www.asap-asia.org was formed in March 2008 as the regional network supported by the International Consortium for Medical Abortion (ICMA) www.medicalabortionconsortium.org. The objectives of ASAP are to promote new technologies for safe abortion, serve as a forum for information and experience sharing, strategic thinking and planning for a collective vision aimed towards regional/ international advocacy and support members to advance the partnership goal in their country contexts through law and policy advocacy, capacity building, research and documentation and service delivery.

The ultimate goal of ASAP is : "To promote, protect and advance women's sexual and reproductive rights and health in Asia by reducing unsafe abortion and its complications; and where it is legal, by promoting access to comprehensive safe abortion services."

A number of studies, particularly in the recent past have looked at the issue of safe abortion services, their reach and the perspective of both users and service providers. Therefore, ASAP planned a multi-country study that went beyond the community- provider interface and explored the views of gatekeepers such as lawmakers and implementers who are outside the service provision field. A survey of legal professionals and law enforcement officials was planned with a view to assess their level of understanding and support for safe abortion as a women's right and public health issue in countries where abortion laws are restrictive and where it is legal.

The aim of the study was to obtain an understanding of the differences in knowledge, attitudes and understanding among legal professionals and law enforcement officials towards women's rights to safe and legal abortion in countries where abortion is severely restricted and where it is legal, in order to inform the strategies for advocacy to liberalize abortion in those countries.

In order to make significant changes in improving access to safe abortion reforming national laws and policies (especially in restrictive environment); setting forth more effective principles and guidelines for public information and service delivery (in countries with more liberal policies); and other changes may be critical. When it comes to examining the law as it is and the law as it should be, it is therefore important and necessary to look at the role of the legal profession as agents of change.

The legal profession, in its first sense, means not only the private practitioners, but also the judges, magistrates, law students, and law professors (academe). Lawyers after all,

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make use of the law to defend or prosecute women or abortion service providers who are held to account under the law; the academe's opinions are consulted by the judges and magistrates who in turn, interpret the provisions of the law and decide the fate of the woman/service provider accordingly. Legal experts (whether private practitioners, members of the judiciary or the academe) are always at the forefront in legislative advocacy - drafting of bills, as well as providing legal expertise and support for the sponsors of proposed legislative measures, to ensure that the proposed measure measures up to the agreed-upon standards, i.e., the Constitution and in many cases, the state's international commitments.

The court is a powerful arena to effect changes in society. Through the avenue of the courts, restrictive laws may be stricken down as invalid; failure to implement the law by state agents, may hold these state agents liable, in their official as well as personal capacity; refusal to heed the requirements of the law, may also compel the courts to enforce compliance by these state agents. Needless to say, the role of the lawyer in advocating for these reliefs, and of the judges / magistrates in deciding to grant and ordering the reliefs sought, are important in society purporting to be under the rule of law, where society evolves and changes are effected, in part, through the courts and justice system.

Legal profession, when used in this study, however, does not simply refer to those who have had formal schooling in law and are bestowed the titles as such. This study adopts an expanded definition of the legal profession and includes also legislators, high ranking police personnel, jailers, medical practitioners, head of hospitals, and other persons who are tasked with the implementation of the law, as well as those whose opinion and experience may be given weight in legal and policy advocacy.

While the members of the legal profession are important agents of change in society, they cannot effect lasting change on their own. We recognize that these changes in the field of law and policy need to be propelled and informed by the experiences and wisdom of those at the ground level in the implementation of the law.

The study findings are expected to help in a greater understanding of the perspectives of this group and will inform future capacity building, attitude reconstruction efforts and the development of advocacy tools for action.

Research Questions:

The main research questions asked were:

- Are legal and law enforcement personnel aware of the abortion related law in their country?
- What is their attitude towards access to safe abortion being seen as a women's right?
- What is their understanding of safe abortion (or lack of it) as a social justice and public health issue?
- What impact do they perceive this has on access to safe abortion by the women in their country?
- What influences their position vis a vis women in the community in the context of the right to safe abortion services?
- What interventions can be recommended to ensure a more supportive role for these persons in enhancing women's right to safe abortion?
- What can be recommended to improve the situation for women in these countries to improve their access to safe abortion services?

1. Legal profession: Includes law students, practicing lawyers, magistrates, judges.

Methodology:

This study is unique in its attempt to move beyond the women/community - provider interface and look at gatekeepers outside the service provision field.

Semi structured questionnaires were administered to 25 legal professionals¹ from Malaysia.

An attempt has been made to identify those members who are involved in handling abortion related cases, or are in a position to influence policy debate, decision making process of the judiciary. Strict confidentiality was maintained of the identity and coding was used.

Secondary data analysis will be carried out to describe the context and characteristics of the communities under study.

The results of this study will be utilized to develop advocacy tools and strategies which will facilitate sensitization of legal professionals and create a feasible and supportive environment for enabling laws which create improved access to safe abortions.

Analysis focus

Data was analysed to describe and demonstrate patterns, emerging themes, and specific characteristics linked to

1. Abortion laws, rationale, law enforcement mechanisms
2. Knowledge, attitudes, and perceptions amongst law professionals, enforcement officials and gatekeepers regarding unwanted pregnancies and abortion (safe / unsafe)
3. Differences in knowledge, attitudes, and perceptions amongst law professionals, enforcement officials and gatekeepers regarding Abortion laws, rationale, law enforcement mechanisms

Sample: We interviewed 25 law professionals who were members of the Human Rights Committee of the Malaysian Bar Council*. Three fourths (19/25) of them have been practicing law for more than 5 years and the aspects of the legal system dealt with in terms of frequency are: civil litigation (14/25) followed by conveyance (4/25) and corporate (3/25) law.

*This pre-selection was due to the opportunity to get our self administered questionnaire filled during a meeting break as well as the particular group's interest in Human Rights.

Findings

The findings from the interviews of the legal professionals are presented against the overview of the abortion statistics and the legal context of abortion in the country.

Context in Malaysia

Information on the incidence of abortion in Malaysia is not readily available. The abortions to live births ratio is estimated to range anywhere from 1:3 to 1:5². According to a recent estimate by the government appointed demographer the abortion to live birth ratio in Malaysia is about 1:5 .The induced abortion ratios per 100 pregnancies reportedly more than doubled, with ratios in urban areas three times as high as in rural areas.

Acceptance of modern contraception in the country is low and has stagnated in the last 20 years. The Contraceptive Prevalence Rate dropped from 54 percent to 51 percent amongst married women in the decade 1994 to 2004. Of these only a third were found to use modern methods like the pill, IUD and condoms. In the 2004 national demographic and health survey, a fourth of the married women, though did they did not desire any more children, were found to be non-acceptors

2. Prof Tey Nai Peng's (demographer and advisor to the National Population Board) intelligent 'guestimate' based on other country studies with reliable abortion data and comparing CPR, birth rates, human development index and abortion rates. Presented at RRAAM/FRHAM meeting on ICPD review 2009.

of contraception due to fear of side effects or dissatisfaction with the available methods.

On the other hand, pre-marital sexual activity of young is not recognised and young people are not even included in national demographic and health surveys³. This is despite the fact that the National Population and Family Development Board's survey among secondary school students showed that more than a fifth of them knew of friends who had illegitimate pregnancies and a tenth had friends who had undergone abortions. The sexually active young or unmarried people are often unable to obtain contraceptives from government and NGO services of the national family programme.

In Malaysia both 1st and 2nd Trimester abortion services are available right up to 22 weeks gestation. The methods most commonly used as D&E and hysterotomy. The traditional 'Jamu' (herbal remedies) and 'Urut' (massage) are used more often in rural areas. The cost of abortion varies from US\$80 to US\$800 depending on gestation size, ambulatory or in patient.

Stipulations under the law are not widely known. Many women therefore have difficulty accessing quality contraceptive and legal abortion services. A survey of reproductive health clients in 2008 found that as many as 41 percent of the women did not know the legal conditions for abortion. Laws pertaining to abortion are rarely discussed and there are no overt attempts to educate women on its legal status.

The legal provisions relevant to abortion are in Sections 312 to 314 of the Penal Code in Malaysia. Prior to 1989, the main clause under Section 312 made it an offence to perform abortions except when done to save the life of the pregnant woman. However, in April 1989, Section 312 of Act 727 of the Penal Code was amended which then allowed a medical practitioner registered under the 1971 Medical Act (meaning all medical doctors practicing legally

in this country) to "terminate the pregnancy of a woman if such medical practitioner is of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman or injury to the mental and physical health of the pregnant woman greater than if the pregnancy were terminated". All registered medical practitioners, not necessarily specialists, are permitted to perform abortions according to the Act.

Section 313 applies only when consent is not obtained and Section 314 when it results in the death of the pregnant woman which prescribes more serious penalties.

Any violation of the provisions of the Penal Code with the woman's consent merits fine and up to seven years' imprisonment for both the woman and the provider if the woman is "quick" with child; fine and up to three years' if she is not "quick" with child and 10 years' imprisonment for the provider if the woman dies. (Quick meaning when fetal movements are felt, usually at 16 weeks of gestation) If the woman does not consent, the person performing the abortion is subject to fine and up to 20 years' imprisonment payment of a fine.

Knowledge of Respondents

Abortion laws

Majority 19 (76%) of the lawyers indicated they know of some laws pertaining to abortion in the country and about half of them indicated awareness of the clauses and conditions permitting abortion. Ten respondents mentioned that abortions are permitted Malaysia to save the life of the mother, and nine said it was permitted to "avoid negative effects on the woman's physical health". About a fourth said that abortion is allowed in case of rape or foetal abnormalities.

Of those who were aware, half of them had come to know about these laws during their law education, while the rest

3. Prof WY Low was prevented from doing study on sexuality in govt schools stated at Malaysian O&G. conference 2009.

learnt about these laws during the course of their professional practice.

Only 4 lawyers said that they had heard of the international agreements relating to the issue of women's access to reproductive health services including abortion and three of them specifically mentioned CEDAW.

Legal outcome and trends

Only 2 out of the 25 lawyers indicated recalling any abortion related cases and 1 of them said the legal issues raised is the 'legality of the procedure' while the other indicated 'negligence of the surgeon'. As to whether the prosecution against the surgeon involved was successful or not and the basis of the decision, there were no response from the 2 lawyers above.

Attitudes

Relevance of the Act

Nine lawyers thought the laws are relevant in their current format, while seven thought otherwise. The rest of them, either did not respond or were not sure of existence of the relevant law.

Need for Amendments

Three fourths of the lawyers who were aware of the laws, believed that the current laws and regulations need some change/amended. Only one lawyer disagreed. Majority of these lawyers believed that the legal fraternity should play a key role in the process.

Abortion as Women's Right, Public Health or

Social Justice Issue

Majority of the lawyers (16/25) indicated abortion as a social justice issue, almost half thought of it as a public health issue and a third as woman's right issue.

Expanding access

While one third of the lawyers talked about the need for expanding access, three were in favour of reducing access

and one said that there should be a balanced approach to ensure proper use of the services.

More than half of the (15/25) lawyers indicated that either NGOs, Gynecologists or both should have a role in formulating laws and regulations on abortion.

Discussion

Induced abortion in Malaysia is permitted under specific conditions. Though pregnancies through incest and rape are on the rise, both these conditions are not specified under the law. Therefore different agencies make different interpretations of the law. The law allows abortions to be performed by a registered medical practitioner done in good faith, i.e. done with the woman's consent to save her life or to prevent adverse effects on her physical or mental health. Even if it is done without her consent and she dies, Section 92 specifies that it is not criminal act if there is a bona fide intention of the service provider was to benefit the woman. No qualified medical practitioner has ever been prosecuted for an uncomplicated termination of pregnancy till date in Malaysia.

The legal provisions are not restrictive and therefore are not a deterrent to accessibility of abortion services in theory. However, there are other constraints in practice. Despite its reservations about abortion services and sexual orientation Malaysia is a signatory to CEDAW and the Programme of Action of the International Conference on Population and Development (ICPD). However, the reproductive rights specified under these agreements are not reflected in its policies and services. There is also some religious opposition and this opposition differs from state to state.

The knowledge and attitude of services providers is a major cause for concern. A survey of 120 doctors and nurses found that only 57 percent knew the law in its entirety. This is not surprising as some government medical schools give minimal attention to training on termination of pregnancies. In a 2007 RRAAM survey of doctors and



nurses 38 percent said that women should continue the pregnancy resulting from rape and either look after the baby themselves or give it up for adoption rather than consider an abortion. The study highlighted the judgemental attitudes and lack of empathy of health professionals for these women. Many have also been reported to take traditional approach and quote the Hippocratic Oath on 'sanctity of life'. Further, though there is no mention in the penal code for a second doctor to validate the attending doctor's opinion; in practice some doctors do it as a precautionary measure. Unawareness and confusion about the legality of induced abortion and the lack of abortion services in government hospitals have created a situation where private sector is major but largely unregulated player.

All these factors make it difficult for the woman to access abortion services when needed, even though the law provides the opportunity to be interpreted in a liberal way.

In our study, majority of the lawyers had heard of the abortion related laws though they were not necessarily adequately informed about the provisions under the law. In contrast to the attitudes of the service providers mentioned above, a good number viewed induced abortion as a social justice, public health or a woman's right's issue. Many were in favour of expanding access. In fact, only three mentioned the need to make the law more stringent to reduce access to the services.

Women themselves in a study have endorsed conditions hitherto not included in the law. In the national fertility and family survey 71 per cent of the women supported abortion on the grounds of rape or incest; 54 per cent if the woman was unmarried, 52 per cent for health reasons and 35 per cent for economic and social reasons.

There are attempts to address the deterrants to safe abortion services to women in Malaysia. A meeting was convened by state authorities concerned with the implications of the present abortion laws on doctors and patients in June 2005, with representatives from the Malaysian Medical Association and Attorney General's

Office. The meeting concluded that the present laws provided sufficient protection for doctors who perform terminations of pregnancy in good faith and therefore further amendments were not required.

Reproductive Rights Advocacy Group Malaysia (RRAAM), a coalition of NGOs and individuals (doctors, lawyers, academics, women's rights activists etc.) concerned about the status of contraceptive and abortion services in the country has taken up the challenge to create awareness about women's rights to sexual and reproductive health in line with CEDAW principles.

The initiative by RRAAM will have to be supported by the policies, programmes and field level services for the realization of the intent of the agreements to which the Government of Malaysia has been a signatory.

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