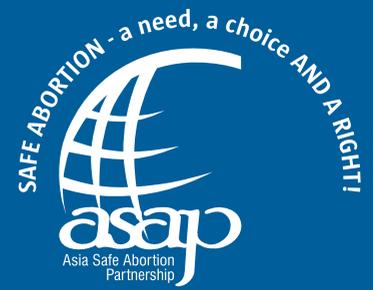


# A Study of Knowledge, Attitudes and Understanding of Legal Professionals about Safe Abortion as a Women's Right



## IN PAKISTAN







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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](http://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](http://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, 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

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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?

**Methodology:**

Semi structured questionnaires were administered to members of the legal profession<sup>1</sup> and law enforcement officials<sup>2</sup> from Pakistan. The sample was representative but not statistically selected and was largely self selected. The researchers did make a concerted attempt 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. However, in absence of persons from amongst the law professionals who had handled abortion cases, the interviews were

conducted with representatives from the profession who were willing to discuss the issue.

### Ethical Considerations

Respondents were informed in detail about the purpose of the study. They were given the option of not participating in the interview as well as quitting midstream. It was explained right at the onset that refusal to participate would not jeopardize their professional status. At the same time it was also clarified that no specific benefit would be accrued out of participation in the study. Throughout the study the confidentiality of the location and data collected was ensured. Anonymity of the respondents was assured and data was collected only with the informed consent of the respondents.

Strict confidentiality was maintained of the identity and coding was used. The location and names of the respondents was coded using unique numeric codes. The master list of names and codes was available only with the principal investigator of the study and till the completion of data collection (to ease repeat access in case of incomplete interview). No other person associated with the study had access either to the name or the exact location of the respondents. This ensured that the confidentiality of the respondents was maintained.

### Data Entry and Analysis

Interviews were transcribed in Microsoft Word in English. They were coded and analysed using Atlas Ti. Analysis was also done manually as and when necessary. Secondary data analysis was carried out to describe the legal context of the communities under study.

The analysis predominantly focused on description and demonstration of patterns, emerging themes, and specific characteristics if any 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)

Since the sample was small and largely self selected, though an attempt was made to highlight the differences in knowledge, attitudes, and perceptions amongst law professionals and enforcement officials regarding abortion laws, rationale, law enforcement mechanisms, inferences if any have to be drawn with caution.

**Sample:** The sample included 17 respondents from the legal fraternity. Of these five were law students, eight were practicing lawyers, and four were judges (both in service and retired). The experience of these respondents from legal profession ranged from less than a year to more than three decades. Eight respondents were from the police department with a minimum experience of 14 years and a maximum of 35 years. The respondents from police department included policemen, sub-inspectors and inspectors. Four Medico-legal Officers were also interviewed to get their views.

### Sample profile

		Number (29)
<b>Category</b>	Law Students	5
	Lawyers	8
	Judges	4
	Medico Legal Officers	4
	Police Inspectors	5
	Police Sub-inspectors	2
	Police Constable	1
<b>Years of experience (excluding students)</b>	<5 years	1
	5-10 years	11
	11-20 years	5
	>=21 years	7

## Context in Pakistan

The prevalence of induced abortion in Pakistan is difficult to determine with any accuracy because of lack of accurate data. The percentage of pregnancies ending in abortions either spontaneous or induced varies from study to study. In a longitudinal study conducted in a rural community of the 1576 married women followed throughout their pregnancies, 13.3 percent pregnancies ended as spontaneous abortions and 4.2 percent as induced abortions<sup>3</sup>. In another community-based study in the urban areas 11.7 percent of the women said they had had an induced abortion<sup>4</sup>. A study conducted by Population Council in urban as well as rural areas of four provinces at the turn of the century estimated that 890,000 induced abortions were performed during 2002. As per the estimates, the study determined the annual abortion rate of around 29 per 1,000 women aged 15–49 years<sup>5</sup>.

The same Population Council study highlighted the high mortality and morbidity rates associated with induced abortions. About 197, 000 women were treated for abortion related complications i.e. almost a fourth (23%) of all Pakistani women who had undergone abortion were hospitalized for treatment of complications. While the exact contribution of induced abortion to the overall MMR is unknown, WHO estimates 2-12 percent of maternal deaths in Pakistan due to complication of abortion. A later study in a large public hospital in Karachi estimated that 10 percent of maternal deaths in 1981–1990 due to abortion, mostly induced abortion. But most of these studies are hospital based and therefore do not depict the true picture of the abortion related mortality in Pakistan. A community based study in a Karachi squatter settlement reported a lower i.e. 8.8 percent of all maternal deaths due to induced abortion.

In a FPAP study in three major cities of Pakistan, contraception related issues (too many children - 64% and contraceptive failure 43%) were reported more often as reasons for induced abortion. The Population Council study also reported induced abortion as a widely used method of preventing unwanted births in Pakistan. The reasons quoted in this for terminating pregnancies included desire for smaller family, contraceptive failure, poverty, sex of the foetus, pregnancy as a result of premarital/ extramarital affairs and foetal abnormality or other medical issues. The main reasons for abortion in a study of clients at 32 abortion clinics in three provincial capitals were similar to those mentioned earlier. Aga Khan University and Population Council also showed that despite religious concerns couples who desired small family opted for pregnancy termination. Research in the past decade also showed that women's fear of contraceptive side effects and unwanted pregnancy overtook any religious, legal or moral qualms that they had.

According to FPAP study induced abortions were generally sought by married (91.4%), multiparous (61% with parity  $\geq 5$ ) women beyond 30 years of age (63.3%). Of the 452 women interviewed at the 32 abortion centres that had had their pregnancies terminated in the last quarter of 1997, majority (91%) were married, 61 percent were multiparous, 40 percent were illiterate and more than a third were above 35 years.

Majority of women (89%) discussed pregnancy termination option with their husbands and in two thirds the decision for termination was joint. Poor women were more likely to undergo unsafe abortion and when complications occurred seek care from government facilities. But the government Family welfare clinics are not known to

3. Awan AK, Parvez MA. Abortions in a rural community. Lahore: Maternity and Child Welfare Association of Pakistan 1998, p. 11. 4. Fikree, Fariyal F., Narjis Rizvi, Sarah Jamil, and Tayyaba Husain. The Emerging Problem of Induced Abortions in Squatter Settlements of Karachi, Pakistan. Paper prepared by the Department of Community Health Sciences, The Aga Khan University, Karachi. 1996. 5. National Committee for Maternal and Neonatal Health. Guttmacher Institute. Facts on Induced Abortion in Pakistan. In Brief. May 2009.

treat abortion complications and also lack surgical facilities. While the findings from all these studies were similar, the study of abortion clinics also brought forth an alarming trend. Nearly two thirds of the abortions reported in this study were induced by inadequately trained persons. Only about a fifth (22%) of the abortion clinics were found to meet the World Health Organization (WHO) standards for safe termination of pregnancy. Further, dilatation and curettage (D&C) was the favoured method for terminating a pregnancy at these clinics. The redeeming development, however, is that a few NGOs have begun to offer treatment for post abortion complications. The efforts were pioneered by Marie Stopes Society, FPAP and the Behbud Welfare Association.

As far as the legal environment for induced abortion is concerned, abortion is illegal in Pakistan. Islam permits prevention and termination of pregnancy only for valid and exceptional reasons. The law does not permit abortion for foetal defects. Abortion is allowed only when the life of the mother is endangered. The justification for this being that the mother is the *“origin of the foetus; her life is well established, with duties and responsibilities, and she is also a pillar of the family. Her life cannot be sacrificed for the life of a foetus which has not yet acquired a personality and has no responsibilities or obligations to fulfill”*.

Till 1990 the 1860 Penal Code of British colonial era was in force. According to this abortion was a crime unless performed in good faith in order to save the pregnant woman's life. Article 312 of the Penal Code specified that any person performing an abortion was subject to imprisonment for three years and/or a fine; and if the woman was “quick with child”, the penalty was imprisonment for up to seven years and payment of a fine. The same penalty applied to a woman who caused herself to miscarry.

The law was revisited to re-frame its provisions in accordance with the principles of Islamic law. The law was amended and provisionally came into effect in 1991. Through a presidential ordinance it became a permanent law in 1996.

As per the new law category of abortion offences are based on the pregnancy gestation. Abortions before or after formation of foetal organs (***Under Islamic law organs are deemed to be formed by the 4th month of gestation***) are prohibited except for the purpose of saving the mother's life or providing necessary treatment. If the provisions mentioned are violated, the punishment in case of former is that for the ***ta'zir*** crime (penalties other than the traditional Islamic penalties of retaliation and compensation) i.e. imprisonment for up to three years if it was with the woman's consent and up to ten years if without her consent. In case of latter, the punishment is the imposition of ***diyah***, or compensation to the heirs of the victim by the offender. If the child is born dead, the amount of ***diyah*** is one twentieth of that for a full person; if the child is born alive but dies as a result of an act of the offender, a full ***diyah*** is payable; if the child is born alive, but dies for any other reason, ***ta'zir*** shall be imposed consisting of up to seven years' imprisonment. Further, if there is more than one child in the womb of the woman, the offender is liable to separate *Diyat* or *Ta'zir*, for each such child.

## 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.

## Knowledge of respondents

### Abortion trends

Majority of respondents mentioned that abortion being illegal, the activity is done in a clandestine manner and since there are no records it is difficult to estimate the actual number of abortions that take place in a year in the country. Their guesstimates ranged from 5 to 80 percent of the pregnancies or 100 to 1000 abortions in a year.

A final year law student who also claims to practice Civil law for last six months said, ***“We don't know the counts; we***

*always talk about these things behind the law force. We don't discuss it in a meeting or during lunch. Men cannot talk about it much as women can. Sometimes even doctors don't say the truth; I am sure the reports are changed and are not on the fact basis”.*

Abortions according to them were mostly amongst 18 to 28 year old, unmarried, uneducated women from middle and lower class. One law student specified that while he could not estimate the number, in his view 100 percent of the pregnancies in unmarried women and less than 1 percent of the pregnancies in married women are terminated. The abortions of married couples are safe as they plan it but if abortions are done privately in a clandestine manner, they are unsafe.

According to the respondents the reasons for abortions ranged from poverty, health problems, family disputes, inheritance of family property, and pregnancies resulting from assault and `lust'. More than 90 percent of these abortions are not done by doctors and the 10 percent who do it are involved because of money they get. These are criminal abortions.

### Abortion laws

Almost all respondents said that abortion was forbidden by law as it was seen as a sin or a crime under Islam. All respondents were aware of Pakistan Penal Code and a few also talked about Hudood ordinance. The extent of awareness of details under both these varied. Respondents from the Police department quoted Sections ranging from 9 to 12, while the others mentioned Sections 312, 317, and 338.

Said a Session's Judge with 38 years legal practice, *“In the PPC there section 338 'a', should a woman decide to choose abortion her decision is punishable. If the life of the mother is in danger then abortion can be done after the doctor examines and confirms that the procedure has to be done to save the life of the mother. In this case law and Shariat give permission to save the life of the mother. The rationale behind is that the fetus, while it is in the mother's womb is alive, and aborting it is intent that amounts to killing a life”.*

An Inspector with experience spanning almost quarter of a century said, *“There are laws about it, but in our public, there are very few people who take the support of the law. People don't go to courts to save their honor. They do have a fear of bad name, they are afraid. There are laws like Hadood Ordinance, it is 16 and 1110. The laws are such that if correctly imposed and investigated, no criminal can escape”.*

When asked about specific law related to abortion, 13 mentioned that there was no separate law related to abortion, majority of these were from the police department. Sixteen respondents, mainly lawyers said that the law existed in the context of the principles of Islam. Abortion as per this law was a crime unless conducted for exceptional reasons such as saving the mother's life.

A final year student of law claimed, *“British came and implemented laws which still continue. There is no space for abortion in our country but this law has flexibility when woman is in danger because of childbirth or if her problems mean less chance for future pregnancies, then abortion is allowed otherwise no. If pregnancy is of three months then abortion is not permissible”.*

*“Abortion is a morally illegal act. Implementation of the law depends on the condition of the mother. If you are in a desert you can even eat a haram animal to save your life. In the same way if such situation occurs in which abortion is necessary to save mother's life then I think it is otherwise it is an illegal act”, said a law intern.*

A Medical Legal Officer with half a decade of experience of dealing with such cases was critical about the way the law is perceived and implemented in the country. He said, *“I think that there are two parallel abortion laws working in our country. One law says that legal or illegal abortions are totally banned no-one has permission to abort a baby. The act is punishable no matter who commits this. And on the other hand, you have given permission to different NGOs who are doing these things”.*

The police personnel were skeptical about the cases coming to the court and reaching the stage where punishment was meted out to anyone. To give a representative quote from an Inspector with vast experience in the police department, *“It is approximately a year, 6 months, 3 months, two years but in these kind of cases, mostly they are not given punishment. The woman gets punished but the whole family also suffers as their reputation is tarnished. The hearing comes after six months or after one year. In the end, she become so fed up that she stays at home. Sometimes, they make the other party agree to get married so that the lives of both parties become respectable”*.

A majority of the respondents were not aware about the details of the law, the gestation age related penalties and the consent requirements. Half said that consent of the woman was important but other half said that in case of married woman consent of the husband and in case of unmarried woman consent of her guardian was required. Most gave vague responses that abortions were allowed to be performed by doctors, in hospitals.

While a few respondents talked about some amendment made in the times of General Musharraf, most said that the law has not been amended recently. In fact, those who were unaware of the law said that there was no law to be amended!

Awareness about ICPD & CEDAW agreements was also poor. Only ten respondents reported having heard or were aware of it. Barring one, none of the respondents from the Police department had ever heard of these agreements.

It appeared that the police had very limited sources for updating information. Most of their information was gathered from informal source such as talking to others. A couple also mentioned training school & books. Law professional mentioned law curriculum, websites, journals and monthly reviews of Supreme Court as their sources of information.

### Implementation and enforcement mechanism

According to the respondents from law faculty, there are various implementing authorities like the National Assembly, Provincial Assemblies, courts and the police. Respondents from the police department said that medical people, health department NGOs, Government and the police are the implementing bodies.

A retired Sessions Judge mentioned, *“It's the parliament's job to make the law; the court of the country has to implement it. If a case comes to the court and is under prosecution, it means that the case is being dealt by such judicial officers who can do the investigation and carry out the trial. Police plays the main role because it is the job of the police to investigate. So they collect the evidence. It is on the basis of all the evidence collected by the police that the trial will be carried out”*.

A final year law student described the pitfalls of such a system, *“Actually in our country to formulate a law is easy but its implementation is difficult. Legislative body formulates it but its implementation lies with other body. The parliament passes the law while it is enforced by the police, doctors and other parties but no such law is being enforced. Law is formulated by others while it is enacted by the police. Offense is the responsibility of the state.*

Thus while most of the opinions on implementation and enforcement of the law highlighted the weaknesses in the system, those who did not report the existence of any specific law had the categorical response, *“If there is no law then what is the role of implementing bodies”*, said a couple of police personnel and law students.

### Legal outcome and trends

According to the respondents such cases hardly ever reach the court or gain any prominence. A retired judge mentioned, *“Such types of cases are very rare. Hardly one case is reported out of one thousand. I have handled 1 or 2 cases in the whole 18 years”*.

The reasons for the case not coming to the courts varied from the stigma attached to abortion to the fear of the lengthy court procedures.

*“You will hardly find a case of abortion in family courts. People don't bring such matters in courts; they think it is an abnormal matter. The process of our court is very lengthy. People are afraid of going to courts because once you enter the process it's very difficult to go back”.*

Once the cases come to the court, law takes its own course according to the respondents. However, the outcome of these cases is highly subjective and therefore varied.

A lawyer from a firm of lawyers that dealt with corporation, civil, criminal and income tax cases said, *“Independent cases of abortion do not come on record. These are treated only as family cases. If a woman goes for abortion procedure for family she will be imprisoned or the man who forced her will be punished so there is a criminal procedure code in Pakistan for it. The accused have to provide evidence which in these circumstances is very difficult is very difficult. And mostly people are released from such cases. In our society such cases are not taken seriously.*

Class, religion, income and marital status of the women were reported to definitely matter in determining the outcome of these cases. While the unmarried women face harsher punishment of 3 to 7 years imprisonment, the rich are expected to manipulate the system and go scot-free.

*“Outcome depends on how do you approach a lawyer, what game a lawyer plays and if it's against the poor then poor are always punished. Rich are safe”,* said a final year law student doing his internship with a well known law firm.

A magistrate with long standing experience agreed with the above view and gave his reasoning, *“A financially strong family can hire a competent lawyer who over-shadows the magistrates, and can influence the magistrate. As the magistrate knows his decision can be challenged by an appeal in higher court, hence he does not offend the lawyer. On the contrary, the magistrate would handle the poor party's lawyer accordingly. Religion also plays a very important role”.*

A retired judge with three decades of service and who now does legal counseling was more vocal on the issue. He said, *“Law is only for the poor, not for the rich. What I have experienced is that the poor is always subjected to law while the rich always escapes it.”*

## **Attitudes**

### Relevance of the Act

Only seven respondents thought of the existing stipulations under the law as irrelevant. Most thought that the laws were relevant in the current era but many could not explain why they thought the law to be either relevant or irrelevant. The lawyers rationalised relevance of strict stipulations of the laws in the context of poor awareness of amongst people and betterment of society in general.

A male Medico Legal Officer who believed that abortion was not a 'male' doctor's concern, justified relevance of the law as, *“Our people are not literate that they can make a difference between right and wrong. So to save the border of right and wrong the law implemented in our country is better, to save the society from going towards the disaster. So I think this law is relevant according to the conditions”.*

In his interview a Judge discussed irrelevance of the law citing reasons similar to those mentioned by the MLO, *“The law is not relevant. Specific sections should be included, which should be given due importance. The results of the phenomenal advances in medical science are apparent. National character of different countries is on the downhill. Some have absolutely no character. It is necessary if want to improve the society, otherwise there will be more deterioration”.*

A final year student who dealt with abortion and Karokari cases voiced his dilemma, *“I think there is no need of any law related to abortion because if one did have sex properly and used protective measures, she wouldn't need abortion. In our Islam the concept is totally different, if a man even wastes the thing he will be punished but we don't have the concept of safety. So according to Islam we should have a law for abortion.*

*But then in Islam abortion is considered very bad because through it we try to stop a life to come in this world. The concept of Islam is that if a child is coming in the world his RIZQ will be given by Allah and if we stop it, it means we are stopping the income which is going to come in future. If you stop a child from coming in the world, it means you are murdering him”.*

The law faculty also expressed its concerns about the law being ambiguous, are neither Islamic nor modern and being completely unsuitable for ensuring social justice. The police personnel on the other hand rooted for stricter provisions and the law being given more teeth to exercise stronger control to prevent the abortion crime.

#### Need for Amendments

A little less than half of the respondents, mainly law professionals were in favour of any amendments to the existing law. Those who supported amendments talked about the need to keep in pace with the changing times, improvements in implementation mechanisms and need to make them stricter.

A lawyer practicing at the Supreme court and dealing mainly with Civil law, discussed the need for amendments against the background of religious opposition. He proposed a route leveraging the teachings of Quran and the existing processes in place, which in his opinion would make amendments more acceptable. He said, *“As the situations are changing the laws should be amended according to the changing times but in our country if any law is made than no one can dare to change it or raise any voice. And if anyone raises voice than people take the support of religion without knowing the need. Even our Quran gives us the permission to change according to the developments. In Pakistan husband and wife sign an agreement which we call NIKAH NAMA which is a civil agreement according to our law. If we put two or three clauses of abortion in NIKAH NAMA and if both the parties agree on it, and if bring this idea to the parliament then it could be legalized. If you deal with abortion as a crime then there should be a proper law for it. But I think these laws should be only for the married couples”.*

A magistrate with experience of working right from Subdistrict to the City level had a more pragmatic reason for supporting amendments to make the law more liberal, *“Every new day has new challenges and the law must respond to them. When our country came into existence we were just 30 million where as now we are 180 or 240 million”.*

Among those against amendments, a few expressed their concern particularly about the inclusion of provisions in compliance with international agreements which may not be appropriate in the context of Islam.

A final year law student argued against any amendment in line with the international agreements as, *“Our international agreements are signed just to favor the western countries. Our basic is that our hakim is ALLAH and we cannot move ahead of a certain limit. We cannot go against our Islamic teachings. We can not do things which are not allowed in our SUNNAH”.*

#### Abortion as Social Justice, Public Health or/and Women's Right Issue

In all 18 respondents responded that abortion is a woman's rights issue but in a limited context. Most of the respondents, mainly lawyers, perceived abortion rights as women's rights within marriage. They did not support sexual and reproductive rights amongst unmarried girls.

*“It is a natural law that an unmarried girl does not have the right to have a child. In our society sexual reproductive rights starts after marriage, there is no concept of it before marriage. Everyman and woman need a sexual partner after the age of maturity. Basically this act has increased because we have delayed marriages. It is the right of a woman to have a child when she wants but in our constitution every person has been given the right to increase his family. If a woman does not want children so she should inform a man before marriage. They are partners and both have equal rights”*, said a final year law student who also practices law.

There was only one lone voice from amongst the legal professionals who argued for abortion as a purely woman's rights issue. This lawyer with a decade old experience of practicing corporate, civil, criminal and income tax laws said, *"We think that a woman has only few duties like taking care but in any religion or law there is no such law to enforce this duty on her. I think that a woman should have the right to conceive or not to conceive the child according to her will. Husband should be involved but he should not impose. Pakistan is signatory to international agreements. Since it is signatory than to implement its international declaration on it is a contractual obligation for Pakistan. We are signatory of the universal declaration of human rights, so we should implement it"*.

More than two thirds (20/29) who also talked about the rights of the unborn child. A law student who was doing his internship at a reputed law firm said, *"You can get sexual reproductive rights only when you are married This right is not given to a single individual but to both husband and wife. If we talk about social justice so how can you make abortion your right? How can you argue for it, simply on the same ground that the couple doesn't want a child? Sexual rights are confined to the marital agreement. Reproductive right is actually the right of the fetus?"*

About a fifth of the respondents, mainly from law profession believed that foetal rights followed a time frame. The foetus had the right to be born and survive only when it develops a soul or has and also has property rights in case of demise of the father, according to them.

An advocate with nine years of legal practice in the context of the right of the foetus to be born said, *"First we should succeed in establishing the definition of life, whether life starts from the start or two months, ten months or after birth. This is an international problem, I am not aware that science has reached the extent to know the actual definition. When does a child start breathing? When does his life start?"*

Another lawyers with similar experience said, *"In my opinion in the first three months of pregnancy till an organ is not*

*formed the fetus has no right; it is the right of the woman carrying the child. But after that our laws or Islamic law says that if the child is still in the mother's womb and his/her father dies and he/she has already has siblings even than he/she has rights over his/her father's property"*.

Those who opposed these rights of women justified it on the grounds of religious teachings.

A law student justified his opposition to rights of women as, *"Islam guides us that after marriage they have the rights but according to our Islamic values. If a husband is willing for a child then wife can't ignore it. Women don't have such freedom"*.

*"A woman does not have the right to conceive a child with her wish or to abort a child with her wish. Marriage means to legally procreate so how can you stop it. Sexual rights of an individual are the legal rights of the husband over his wife. Women do not have any rights. They get married for pro-creation to give birth to children legally"*, said a Session's Judge with almost four decades of experience in the legal field.

Different respondents had different take on why they thought of abortion as a social justice or public health or women's rights issue.

*"Abortion is a social justice issue because there is gender discrimination, we have made it a duty of a woman to give birth to children; we have also pressurized them to take care of the children. Because it deals with women's health it is an issue of public health and women's rights"*, opined an advocate with ten years of legal practice

A final year law student said, *"It is an issue of social justice if it's been done to save the life of a woman. It's a bigger public health problem because it is woman's life and death issue if she doesn't go to the right doctor. Foetus has the right to live a life and mother has the right to live a healthy and good life"*.

*“It's not a pure issue of social justice, it's a crime and it's an offence in the law. It's risky, a mother can die so its 100% risky. So it is an issue of public health. There is no such issue of women's right. Rights are only those which are legal. If anything is illegal you cannot include it in the rights”,* said the Judge with three and half decades of experience in Labour courts.

### Expanding access

Only six respondents (five law professionals and one Medico-legal Officer) favoured expansion of access through increased facilities and demedicalisation of services. While talking about pros of expanding access three of them said the following: there would be no need to inform the doctor, it would become easy for people to abort and it will help avoid bad name and dishonour.

A Magistrate with 24 years experience said, *“Abortion facilities should be available for unwanted pregnancy. Even religious minded are now inclined to it. I am in its favor. However, as a magistrate and a government servant we are bound to follow and enforce the laws made by the government, whether or not we agree with them”*.

*“There should be institutions and hospitals which can provide facilities so that a woman can abort safely. Government should make institutions who can give information and awareness to people. There is no such institution that is the reason they go to unprofessional ladies called DAI which is unsafe for her.”*, said the final year law student.

A retired Judge with more than three decades of experience as a Judge said, *“I feel de-medicalizing method is fine. Not everybody can have excess to a doctor. It is always welcomed by the educated families, even the illiterate class also feel it is needed”*.

Some emphasized on the disadvantages and said, 'it will spread sex', 'it will have negative effect', 'and it will expand non-Islamic Values and increase vulgarity'. These respondents were from law faculty. Of the police personnel all said that access shouldn't be expanded because it will

be harmful to the uterus; the woman will become 'loose', death will increase, there will be no children, it is sin, a crime and there won't be any benefits in the light of Islam.

*“Services should be accessible but expansion of services will lead to more abortions and increase in moral deterioration”*.

*“Services should be increased under the circle of Islamic values but de-medicalization will destroy the society”*.

One lawyer wondered at the question itself given that abortion was illegal in the country. He said, *“Abortion is illegal than how can you make it accessible. When demedicalization becomes common people will give preference to illegitimacy. If Islam has rejected something it has a history behind it, there is a background; there are some very important reasons behind it”*.

### **Discussion**

The state structures, institutions and laws in Pakistan are created to conform to the tenets of Islam. Sensitive matters pertaining to sexual and reproductive health therefore do not find place in public domain even in the form of performance on indicators of women's health. Though the population programme aimed at population reduction launched by the government has been in existence for more than four decades, sexual and reproductive health information is largely available from the NGO interventions or the research studies taken up in limited population. Thus, consistent non-availability of reliable and comprehensive data on reproductive and child health indicators across the various provinces in the country is a major issue.

In 2002 Pakistan launched its landmark first-ever population policy that went beyond the demographic targets to defederalization of the program to individual provinces. The Interim Population Sector Perspective Plan

2012, a product of this policy included a comprehensive strategy for population stabilization, public-private collaboration, advocacy, and improved service delivery. The major lacuna in the progressive and forward looking policy was the complete silence on abortion despite the overwhelming evidence of it being a major method of meeting unmet need amongst women. Neither the National Health nor the National Population Policy made any mention of abortion. In absence of data on induced abortion, abortion has not been perceived as a major public health concern by the government.

Till the 1990s the Pakistan Penal Code of 1860 recognized abortion as a criminal act. However, there are almost no instances of the service providers having been prosecuted for termination of pregnancy. Once again the clandestine operations and lack of data has come in the way of implementation of the exiting penal code.

In 1990's, the law was revisited and attempts were made to make its provision compatible with the Islamic laws. In the same decade a commission of enquiry for women recommended that, "A Woman's right to obtain an abortion by her own choice within the first 120 days of pregnancy should be unambiguously declared an absolute legal right"<sup>6</sup>. However, this remained a recommendation merely on paper. Pakistan, a signatory to ICPD and CEDAW, had its reservations about abortion services as per Islamic law and the 1997 amendment to the Pakistan Penal Code (PPC) therefore only made concession enough to allow early termination of pregnancy to save the woman's life and provide necessary treatment. The conditionalities specified in the new law, particularly the latter gave the service providers' scope to provide services as per their own subjective assessment. The ambiguity about the term "necessary treatment" and lack of clear demarcation of the two stages of pregnancy that delineate the penalties as per the older PPC were open to interpretation. Some service providers interpreted these in

the interest of the women, while others used these very conditionalities to restrict services.

Further, mere existence of law itself is not good enough for meeting women's health needs, attitudes of service providers is another major determinant. Only Gynaecologists and MBBS doctors certified by Pakistan Medical Council are permitted by law to provide these services. Abortion is also a part of formal residency training in Pakistan. But a study done to understand attitudes indicated that majority of these health care providers (67%) had an unfavorable attitude to induced abortion though all of them were aware of the abortion laws of the country. About 38 percent wanted the law to be changed and majority of them (81%) wanted the law to be stricter! Most believed that the laws were relevant in the current situation in Pakistan where illiteracy, poverty, and poor awareness of amongst people necessitated a clearly articulated law in place for betterment of the society. However, this betterment of the society was perceived to be product of stricter provisions and stronger implementation to prevent the 'abortion crime'.

In Pakistan, 86 percent people are Sunni Muslims and majority of them follow Hanafi school of thought. The Hanafi jurists permit abortion until the end of the fourth month of pregnancy and also without the husband's consent but not without any reason. Interestingly, this liberal view of jurists is not reflected in the attitudes or the laws. All these findings indicated that personal beliefs had a greater impact on the practices than the training.

Abortion, an illegal and criminal activity, except under special circumstances, invited strict punitive measures such as imprisonment and monetary punishment. Enforcement of the law is the joint responsibility of the medical, police and legal professionals. Their awareness and attitudes about the circumstances that lead to abortions, the legality of abortion and the international context is therefore critical to provision of safe services to women who seek abortion.

6. Recommendation of the Commission of Inquiry for Women, Pakistan, August. 1997.



This study was an attempt made to understand the knowledge and attitude of the section of the Pakistan society that is associated with enforcement of abortion laws. Majority of respondents in our study had no idea about the actual number of abortions that take place in a year in the country, though all of them were aware that these happen and are very common in case of poverty, health problems, family disputes, or unwanted pregnancies due to any reason. Most respondents were aware that abortion was a crime under the Pakistan Penal Code and therefore deserved penalties. More than half of the respondents in this study were also aware of the subsequent amendments in the law and did talk about abortion being a crime unless conducted for exceptional reasons such as saving the mother's life.

The sources of information about the law were few and often informal. The respondents were categorical about their views on poor implementation of the law, particularly because of the effect of extraneous factors such as the clandestine nature of the activity, and the socio-economic and marital status of the woman.

Abortion was not quoted as a woman's rights issue by most in this study despite the country being signatory to the ICPD and CEDAW agreements. Sexual and

reproductive rights and abortion were seen as women's rights issue mainly in the context of marriage. Demedicalisation or expansion of services was not entertained as it was seen as an unfettered access of women to a 'criminal' activity. Tenets of Islam were quoted as justification for all these views.

Thus, absence of clear policy, stringent and restrictive law, lack of reliable data, deterrent attitude of service providers and law enforcement officials, and unawareness of law enforcement officials about legality of abortion, together seemed to adversely affect the availability of safe abortion services to women in the country.

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