

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



IN SRI LANKA





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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, 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

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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?

Methodology:

Semi structured questionnaires were administered. 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.

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.

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.

Analysis focus

Interviews were transcribed. 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.

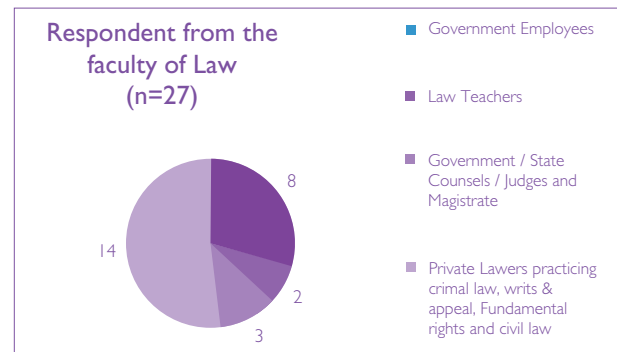
Analysis was done to describe and demonstrate patterns, emerging themes, and specific characteristics linked to

- 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 and enforcement officials regarding abortion laws, rationale, law enforcement mechanisms

Sample: The team interviewed a total of 25 respondents. All respondents belonged to law faculty. Eight of the respondents were females and 17 were males. Eight respondents were working as government employees while the remaining were private practitioners. Experience of respondents ranged between 3 years to 30 years.

Two respondents were law teachers, three each were government or state counsels, judges and magistrates.

The remaining fourteen were private practicing lawyers with specialization in criminal law, writs & appeals, fundamental rights and civil law.



Findings

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

Context in Sri Lanka

In Sri Lanka, due to the clandestine nature of induced abortions, there is a lack of reliable data. Various studies estimate induced abortion number anywhere between 150 000 to 175 000 abortions per year. A study conducted by the World Health Organisation in five tertiary care institutions showed that 6.5 percent of cases were either “certainly induced” or “probably induced”, and a further 16% were possibly induced. Data provided by the Ministry of Health also indicates that 7 – 16% of all admissions of females to government hospitals are probably due to complications of induced abortion.

A community based study using the Randomised Response Technique placed the incidence of induced abortion for the year 1998 at 45/ 1000 women in the 15-49 years age group. This implied an abortion ratio of 741 abortions per 1000 live births.

Studies show that abortion is sought mostly by women in the 30 to 34 age group. Majority of them are educated,

a fifth of them are employed and a large proportion are from middle or low-income households. The community based study mentioned above also showed that the incidence was very low among unmarried women as compared to currently married women but higher among the rural and multiparous women. The government data supported these findings. According to the government report majority (>90%) of them are married women. Unmarried constitute a very small proportion (10%) of the abortion seekers.

However, there has been an increase in abortions among young, unmarried women between the ages of 18-25. This increase has been attributed to increased incidence of pregnancies out of wedlock because of increasing gap between menarche and marriage. The government programme does not cater to the needs of the unmarried young even though there is no explicit diktat against provision of services based on age or marital status.

Reasons given by women seeking abortion in order of frequency are: child is too young (27%), employment prospects (15%), poverty (13%), and attaining desired family size (7%). Despite the government's best efforts to strengthen the family planning service coverage and promote family planning, the unmet need is estimated to be 6 to 12%. In a sample of women admitted to a tertiary care hospital almost a third said that the pregnancy they carried to term was unplanned. The same was corroborated through a field study in the North Western Province where similar proportion of women at ante natal clinics reported the pregnancies to be unplanned.

Contraceptive prevalence rate (CPR) has increased from 58% in 1982 to 66% in 1993, according to the DHS about 40 percent of married women still rely traditional methods. The unreliability of these methods is known and has implications for unplanned and unwanted pregnancies amongst women. These women are the prime users of abortion services. The findings of a number of abortion studies confirm that induced abortion is used as a means of contraception in Sri Lanka.

Abortions in the country affect the poor women. According to the FPA officials the rich women either go abroad for abortions or to nursing homes of qualified gynecologists. Abortion centres charge anywhere from Rs. 3,000 to more for every abortion. Poor women, with limited options because of lack knowledge and money seek services of unqualified providers who provide unsafe services and thus end up with complications such as acute infections and bleeding.

A large proportion of abortions are conducted using the MR procedure as more than 90 percent of women come when the gestation is less than 10 weeks. However the MR procedure is also performed upto 16 weeks of gestation. And some of these women have incomplete abortions and require hospital treatment. These hospital admissions have economic implications for the service facility too. Hospitals provide free treatment and every bed occupancy of such a case costs a minimum of US\$35.

Abortion also happens to be the leading cause of maternal deaths in the country. In 2003, the maternal mortality rate was estimated to be at 92 deaths per 100,000 live births and about a fourth of maternal deaths have been found to be attributable to unsafe abortions. The rate of decline in deaths due to abortions is lower than the rate of decline in maternal mortality ratio.

Abortion in Sri Lanka is illegal and falls under the Penal Code of 1883 based on the Indian Penal Code which in turn is based on an English act of 1861. These have changed in both India and England but the stipulations have remained same in Sri Lanka and the law has not been revised to date.

Section 303 of this Penal Code states: anyone voluntarily causing a woman with child to miscarry is subject to up to three years' imprisonment and/or payment of a fine, unless the miscarriage was caused in good faith in order to save the life of the mother. The penalty is imprisonment for up to seven years and payment of a fine if the woman is "quick with child" referring to an advanced stage of pregnancy with foetal movements, as opposed to "woman with child",

which simply refers to “being pregnant”. A woman who induces her own miscarriage is subject to the same penalties. If the miscarriage is caused without the consent of the woman, whether or not she is quick with child, the person causing it is subject to up to 20 years’ imprisonment and payment of a fine (Section 304). The same penalty is imposed if the woman’s death results from any act carried out with intent to bring about a miscarriage, whether or not the offender knew that the act was likely to cause death (Section 305).

As early as 1973, this legislation was studied by a committee of the Medical Legal Society, which recommended that in case of pregnancy resulting from rape or incest, and where there was a risk of severe physical or mental abnormalities in the child abortions should be permitted. However, no action was taken based on these recommendations.

In the same decade (1976) in a study of attitudes of doctors and lawyers, less than a tenth of the respondents reported being satisfied with the present law. Majority viewed large families as a economic burden, supported abortion services for poor women, and suggested that abortion should be covered by a separate statute that specified qualification of providers, registration of all abortion facilities; physician certification of women; and allowed abortions in unmarried women. However, the details of the process of amendments varied amongst the respondents.

In the early eighties the Ministry of Plan Implementation dealing with population control stated, “In the context of persisting social inequalities, to consider abortion from the moral point of view only seems unwarranted. Those who do so fail to consider the real social and economic factors involved. There is a need to formulate a strategy”, the report continues, “which will safeguard the dominant values of Sri Lanka society, while giving the woman the choice to decide when she wants a child. Abortion is a social problem to be acted upon rather than a condition which must be confronted with legal restrictions.”

In September 1995 again, the former Justice and Constitutional Affairs Minister tried to introduce amendments -- as part of a revamp of the Penal Code -- to legitimise abortion in the case of incest and rape. But the MPs objected to the pro-abortion proposal, forcing him to abandon the move and the penal code amendment was withdrawn. While withdrawing it was stated “Decriminalising of abortion is a feature of evolving legal systems in many parts of the world and (I) do not see any reason why Sri Lanka should be out of step with that general development”

Knowledge of respondents

Abortion trends

Six of the respondents, equal number of males and females, were unaware of the number of abortions that took place in the country. The remaining 19 gave different numbers and these ranged anywhere from 1000 to 1,50,000 per year.

Almost all said that these were unsafe abortions sought usually by poor, illiterate women from rural areas. The reasons for seeking abortions were listed in order of frequency as economic constraints (11/25), pregnancy as a result of rape (7/25), lack of knowledge about prevention of unwanted pregnancy (6/25), contraceptive failure, pregnancies out of wedlock women (5/25) or a result of extra-marital affairs and pregnancies resulting from and incest and abuse (1/25).

A Magistrate commented, “It is *mainly due to unawareness about reproductive health, contraceptive methodsetc. This makes women resort to unsafe methods to terminate unwanted pregnancies. Mostly these are poor and ignorant women. In rich class also it is happening, but it is not reported*”.

A senior practicing lawyer said, “*Ladies employed in garment factories and those working in middle-east sometimes get sexually abused and as a result they conceive. They want to end these unwanted pregnancies and terminate these under absolutely unsafe conditions. Mostly these are poor women who get caught in these kinds of scenarios*”.

Abortion laws

All respondent said that they were aware of the law. Five of them quoted section 303 of penal code formulated in 1883 as abortion related law. As per the law abortion is illegal in Sri Lanka. Many mentioned that religion and culture have influenced the thinking that abortion is killing or taking someone's life.

To quote a magistrate, ***“As per Section 303 -Abortion is with the consent of the woman and is prohibited unless it is done for the safety of the mother. It is allowed to be performed by medical practitioners in a government hospital. Section 304 deals with abortion without the consent of the woman. Section 305 with miscarriage when the mother is about to deliver the baby and Section 306 defines abortion as causing death by causing miscarriage”***

A state counsel described the history of and rationale for this law, ***“Penal code provisions 303 and 304 provide for this. Penal code was introduced by the English during colonization. Religious and cultural values have influenced to make abortion basically illegal”***.

Since abortion is illegal in Sri Lanka all respondents said that it was an offence except in case of medical grounds or for ensuring safety of mother's health were permissible. Only qualified doctors (qualified in Surgery) in government approved hospitals are allowed to perform these abortions according to these respondents. None of them mentioned about the duration of pregnancy up to which abortions were allowed.

Almost all respondents said that there were no amendments to the law. A few said that several attempts at amendments were made but these failed at the proposal stage. They said that several NGO's and individual members had proposed amendments but due to social pressures they could not go any further. Religious leaders, extremists, conventional groups, conservative politicians, and civil/society organization opposed the move and NGOs, members of modern society and some lobby groups supported these amendments. One proponent of

these amendments lamented, ***“Socio - religious and moral issues have attained a political dimension”***.

Seven respondents were not aware of any international agreements. Remaining 18 respondents said that they knew about CEDAW but they hadn't heard of ICPD. CEDAW seemed to be a part of law curriculum as a few of them from the teaching community mentioned it being widely discussed in the class.

The main source of information about the law quoted by the respondents was law curriculum. Some said they also came to know about these things in the court. But many commented that they did not have any source for updating their knowledge.

Implementation and enforcement mechanism

Several implementing authorities were mentioned by the respondents. The key players in the implementation list were the Police (25), Courts (20), Attorney General's department (7), Prisons authorities (5), Doctors (3), Public health officers (3), Peace keeping officers (1), Child protection authorities (1) and Gram sewak (1).

The Police role included investigations, collection of evidence & filing of the case under the advice of the Attorney General. That of the Judiciary is interpretation and application of law. Public health officers and doctors are to help investigate the case. Prison authorities are expected to help correction of wrong doers. The Gram sewak plays a role in informing the police. The roles of others were not specified.

The State Counsel said, ***“Implementation is basically the responsibility of the police and the Attorney General's Department and after that the prison officials. The police are the investigative authority. They look into the crime, raid places, find evidence and file the case. The Attorney General's Department gets involve particularly if the mother has died”***.

However, there was almost unanimity about the opinion on implementation of the law, most respondents were as the opinion that the implementation was far from satisfactory.

Said a Senior lawyer, “At **judicial level it is functioned, but I feel at police and prison level, still there are problems related to corruption**”.

Legal outcome and trends

Most respondents said that such cases rarely go to a higher court. While three said that in most cases accused are acquitted. The remaining respondents said that depending on the evidence if the charge is proved, the accused are convicted. Nineteen respondents said that the guilty is convicted & imprisoned. Almost all respondents said that the women and the doctor are charged. Only two respondents said that the husband could be charged. Some respondents said that if the woman dies, then the provider (doctor, nurses or others) are charged.

A few said that the Judge's attitude played a role in the outcome and conviction. The duration of imprisonment was mentioned as anywhere between 2 years to 20 years. Three respondents said that there is suspended punishment. One respondent said that the woman is given a warning. The remaining respondents said they had no idea.

A Senior Attorney elaborated on the penalties, “**According to Section 304 if it happens without consent of the woman the imprisonment shall be 20 years; and according to Section 305 if the woman dies in an abortion, punishment shall be 20 years imprisonment**”.

More than two thirds of the respondents felt that class/religion and income have no role to play. The judges tried to deliver the judgment within the limits of the law. As described by a government counsel, “**The judiciary does not go beyond the Section. Therefore most of the judgments are limit to the interpretation of the section. Expect the law and procedure there are no influences**”.

The remaining ones felt that class & income did play a significant role. Some said that the better off hardly come to the court. Only in case of the poor, prosecutions take place. Two respondents said that trial can be more hostile

towards unmarried women while others felt that marital status does not influence the case. There were also a few who mentioned that often the legal outcome is in favour of the woman who undergoes abortion as the judges take a sympathetic view of the act. To quote a few such responses,

“Judges do not take it as a serious issue. They look at it more as a humanitarian issue. Thus women who were found guilty are excused to a certain extent”.

“Normally judges look at the statute and make decisions in our system of law. Sometimes attitudes of judges may also influence the case. However only thing they can do is mitigate the punishment in consideration of the social and economic factors that compelled the woman to do abortion”.

“There are no influences, but if the judge is a woman the attitude will be different”.

Attitudes

Relevance of the Laws and Need for Amendments

Only three respondents said that present laws were relevant and need not be changed. These law professionals felt that if abortion is legalized, it will open floodgates for misuse of facility and unnecessary practices. Majority (20/25) respondents felt that the existing laws were not relevant in today's context and also irrelevant in the context of medical advances.

The respondents felt that the current stipulations were restrictive and should be liberalized to accommodate abortions in case of foetal deformities, poverty, under-aged mothers, and pregnancies resulting from rape and incest. Some were categorical in their criticism and said that the present law does not reflect the need of the society, is anachronistic and unfair.

A Senior Attorney said, “**The law needs to be amended because it does not recognize social needs. See the alarming increase of abortions; it shows the necessity of amending the law. More specifically when a rape victim conceives or when**

there is a deformity in foetus it is better to allow such abortions”.

Many said that the academia, activists and legislators should play a key role in amending the law and making it empathetic and in tune with the current needs.

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

Twenty respondents said that it is a woman's rights issue, 13 felt that it is public health issue and 10 felt that it is a social justice issue. All respondent except one agreed that the foetus once viable has a right to life too.

Senior lawyer, *“I feel, law must give the mother a complete freedom to decide whether she want the child or not.. I feel abortion should be decriminalized”.*

“Fetus also has a right too. If did not come voluntarily. There should be a balance between mothers' rights and fetus rights”.

The one who did not agree justified his stance as, *“Foetus need not be treated as a life; it does not have a mind”.*

Those who perceived it as a social justice issue said that they felt so because it has religious and economic underpinnings, it is a burning issue in the society and if legalized it would save women from social stigma. Those who thought of it as a public health issue explained that abortions by unqualified providers in unsanitary conditions led to high mortality among woman and therefore were necessarily a public health issue. Those who supported it as a women's rights issue said so because they felt that women should be allowed to take their own decisions, they had a right to dignity and prevent pregnancy and because women are the most affected and critical stakeholder in the issue.

Said a teacher in the law school, *“It is a public health issue because unauthorized abortion centers are creating a threat to public health. It is a social justice Issue because it has religious and economic background and it is also a woman's rights issue because women should be allowed to take their own decisions”.*

Another said, “From the point of social justice, we need to allow abortion in order to save many women facing social stigma as a result of unwanted pregnancies. From health point of view, it is better to allow abortions rather than let women face health risks and even death due to illegal abortions. From women's rights perspectives, it is her right of self-determination and her right to dignity. All these countervailing interests have to be balance against strong religious norms. All major religions condemn abortion”.

The few who did not perceive it as a woman's right had arguments to support their view.

A senior lawyer said, *“A woman has a right to her own body, but when she conceives she has a responsibility towards fetus too”.*

“A woman has a right to her own body, but on the other hand she has a responsibility to carry the fetus because it is a legacy of the nature in case of women”.

A government lawyer said, *“It is not only a question of women's rights but it is of rights of the unborn child and of the husband,...etc. Finally we have to protect rights of entire society”.*

Expanding access

More than half (13/25) of the respondents were against expanding access to abortion services. Even those who were 'for' increasing access took a guarded stance in expanding access.

According to a female lawyer, *“Law is supreme in Sri-Lanka. Access can be improved only if abortions are legalized”.*

Another lawyer said, *“Access should be expanded. If access is expanded the costs will come down. But I feel felt that religious leaders would oppose the move”*

Respondents were specifically questioned about de-medicalising access or using methods like abortions pills. Half of them had not heard of these pills and the 13 who had, confused them with the ECP. Further, only three

respondents were in favour of de-medicalization. They said that such a step would reduce the cost and it would be good for women's health & also for their safety.

A former State Counsel made a fine distinction between her personal and social view, *“Of course, from a social point of view it seems to be wrong but from a personal point of view and cause and effect I would say it should be allowed. Abortions will come into the open, costs will reduce”*

The majority (22/25) were either vehemently opposed on cultural and moral grounds or had some reservations about implications of these for the health of the woman. A good number saw these steps to be potentially risky for the social system. They said that these would promote irresponsible behavior, the government may not be able to fulfill the demands and there would be cultural and moral clashes.

Senior government lawyer, *“Expansion of access would increase the amount of abortion and it'd be like opening of flood gates. It'd increase and go beyond the controlling limits. That'd be a challenge and a disadvantage of unlimited expansion; where can we draw the line for limited expansion is a challenge”*.

Discussion

Despite the stringent and restrictive law indictments for illegal / criminal abortion rarely occur and convictions are even rarer. Ironically the law contradicts a number of articles enshrined in the Constitution and still any move to amend it has met with scant success. The abortion restriction undercuts the very right to life which is included in Article 6 as the link between illegal and unsafe abortions and high rates of maternal mortality are well established in the country. Further, the Constitution of the country talks about the protection of mothers, children, and adolescents and guarantees women's right to medical, physical, psychological, and social health care.

The restrictive law also impinges on the enjoyment of Article 7, which ensures freedom from torture and cruel, inhuman and degrading treatment or punishment. Ethnic

conflict has contributed to an increase in sexual violence against women but pregnancy as a result of rape is not permitted under the law and thus suggests that failure to protect women victims of violence is a violation of Article 7.

There have been indirect reference to abortion is contained in a section on women's rights in the bill in the recent past. It says: "Women shall enjoy equal rights in all areas of private life including rights within the family and their private lives, and the right to control their bodies and rights relating to child birth.". However, as long as the implementers and enforcers of the law are themselves unaware of the intricacies of the law and opposition to expansion of services in the current context, as evident from the findings of this study, the right of women to terminate an unwanted pregnancy through safe methods, would remain a distant dream.

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