

Pakistan's Safe Abortion Law: *An Analytical Perspective based on Public Health Ethics*

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Abstract

Abortion is a subject that is both morally and legally challenging in Pakistan. The legalization and appropriate understanding of legal clauses at any level of the nation will assist in diminishing moral conduct issues and provide a space to talk about sensitive themes. Most low- and middle-income nations continue to have restrictive abortion laws, and many countries have amended their abortion rules, with the majority moving away from absolute prohibition. The relationship of inadequate healthcare consideration with confusion caused by global abortion regulations, so that patients continue to seek hazardous abortions and practitioners avoid proper referrals. Instead of depicting abortion as a 'dilemma,' 'stereotype,' or 'sin,' medical curriculum and nursing education should utilize terminology or categories like 'safe' and 'legal' abortion to describe and compare different types of abortions. Public health regulations should be included in conversations for medical and nursing professionals, and raising awareness about legal and policy issues will aid in changing the system and stigma associated with safe abortion. Youth and adolescents who are affected by such actions and policies should be involved in decision-making.

Providers who can facilitate medical and surgical abortions and have additional training should be included in the law and policy reform process or legal and policy debates to make it more contextually appropriate.

This paper is an analytical review perspective considering the Pakistani Law of Safe Abortion and evaluates the understanding of Public Health Ethics.

Keywords: safe abortion, public health law, health care, reproductive justice

Introduction

Unsafe Abortion is a serious health and rights based matter for many in Pakistan; that sparks the most controversy, debate, and even some sort of violence. Recent developments in law and policy, improvements in medical technology, and maternal deaths

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from unsafe abortions, among other things, exemplify how vital prescribing safe and legal Abortion is to women's reproductive life.¹ Abortion is typically regulated using a grounds-based strategy where it is at least partially legal. When law and policy dictate that a person may only obtain a safe and legal abortion if they satisfy specific 'reasons', also known as 'exceptions' or 'special grounds', it is said to be using a ground-based approach. The grounds are 'circumstances under which abortion is merely safe and considered lawful or specifically authorized and prescribed by legislation'.²

In terms of definition, when a pregnancy is terminated 'before the fetus is viable' or 'before the fetus can live freely in the extra uterine environment, typically before the 20th week of pregnancy,' this is referred to as an abortion.³ Induced Abortion is a common practice across the globe. Still, the choice to end the pregnancy entails a variety of social, ethical, moral, and religious factors as well as medical, ethical, moral, and legal considerations. The opinions that have 'abortion' as their core idea are divided into two main categories: one ideology is that the fetus and his right to life is primary and the other ideology is prioritizing the women's life and health above all.⁴ In our Pakistani context, only few people have information or understanding of the legal and ethical frameworks associated with safe abortion practices. This typically makes Pakistan's inclination as anti-choice by not knowing proper associations and hanging towards societal misconceptions. This is case in other nations as well, and the strictness or flexibility among

¹ Marge Berer, 'Abortion Law and Policy around the World: In Search of Decriminalization', *Health and Human Rights Journal (HHR)*, 19:1 (2017).

² Winston P. Nagan, 'Social Perspectives: Abortion and Female Behavior', *Valparaiso University Law Review*, 6:3 (1972), 286-314.

³ Freddy Andrés Barrios Arroyave & Paula Andrea Moreno Gutiérrez, 'A Systematic Bibliographical Review: Barriers and Facilitators for Access to Legal Abortion in Low and Middle Income Countries', *Open Journal of Preventive Medicine*, 8:1 (May 2018), 147-68. Available at DOI: [10.4236/ojpm.2018.85015](https://doi.org/10.4236/ojpm.2018.85015).

⁴ Ibid.; Antonella F Lavelanet, Brooke Ronald Johnson Jr, & Bela Ganatra, 'Global Abortion Policies Database: A Descriptive Analysis of the Regulatory and Policy Environment Related to Abortion', *Best Practice & Research Clinical Obstetrics & Gynaecology*, Vol.62 (January 2020), 25-35.

their legal frameworks is designated or decided just on the social and contextual approaches of the most influential individuals in the society. The legal framework for abortion in a country is crucial in determining the enabling conditions for safe abortion. While most low-and middle-income countries still have restrictive abortion laws, many other countries have changed their abortion regulations, with the majority moving away from an outright prohibition. However, the effects of these reforms on women's access and quality of healthcare services and their health outcomes are uncertain.⁵

Globally, each year almost 25 million unsafe abortions take place. More than 90% of these take place in low-income countries, and one of these is Pakistan. More than that, it is a social issue in Pakistan connected to many legal mindsets and frameworks of jurisprudence. The attributes of unsafe abortions, which account for about 8% of maternal deaths, occur in developing nations, including Pakistan. Complications from unsafe abortions, such as bleeding or infections, bring almost millions of women to hospitals with worse health conditions and outcomes. These issues also have long-term complications if not handled in a safe and equipped healthcare setup.

It is estimated that treating severe complications arising from unsafe abortions costs low-income countries (including Pakistan) more than 232 million US\$ in economic damage every year. There is also evidence of harmful effects on children's health, well-being, and development. Unsafe abortion raises the possibility of poor birth outcomes and infant and neonatal mortality. In addition, women without legal and safe access to abortion are frequently obliged to term unwanted pregnancies. They may neglect prenatal care, raising the risk of morbidity and mortality in children. Access to safe and legal abortion services is frequently restricted due to many obstacles.⁶

From a data of 2002, health professionals survey, an estimated 2.4 million Pakistani women have experienced

⁵ Ibid.

⁶ World Health Organization (WHO), Safe Abortion: Technical and Policy Guidance for Health Systems, 2003. Available at: www.who.int/reproductivehealth

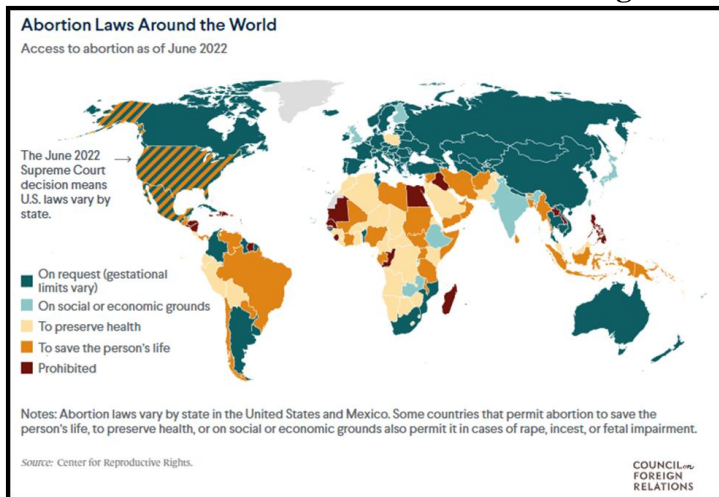
unintended pregnancies, and nearly 9,00,000 of these pregnancies were terminated as induced abortion. Women who seek abortions subject themselves to illegal and frequently dangerous procedures because it is only permitted in a minimal number of situations. Impoverished women are compelled by circumstances to rely on unqualified service providers. Studies of women, hospitalized for abortion, complications serve as a significant source of knowledge regarding unsafe abortion in Pakistan. Even though there is little information, it is evident that post-abortion complications cause a substantial fraction of maternal mortality in Pakistan.⁷

Global laws regarding practicing Abortion

By the year 2022, more than 60 countries have legalized safe abortions. The global laws on abortions have various clauses and conditions depending on the country's legislative and judicial discussions. Albania, Argentina, Colombia, Cyprus, Finland, France, Iceland, Ireland, Nepal, Portugal, South Africa, South Korea, Sweden, Switzerland, Thailand, Turkey, Vietnam and many others are on the list. In many other countries, almost half of the world is surviving without awareness about laws, poor health connections, and a lack of law-related coherence on safe and legal abortion. Many countries among this half still prohibit abortion and allow it under rigorous conditions and in many other countries it's still a criminal offense.⁸

⁷ Zeba A Sathar, Susheela Singh, & Fariyal F Fikree, 'Estimating the Incidence of Abortion in Pakistan', *Studies in Family Planning*, 38:1 (2007), 11-12. DOI: 10.1111/j.1728-4465.2007.00112.x

⁸ Foluso Ishola, U. Vivian Ukah & Arijit Nandi, 'Impact of Abortion Law Reforms on Women's Health Services and Outcomes: A Systematic Review Protocol', *Systematic Reviews*, Vol. 10, 2021.

Figure 1- Grounds for Permission of Safe and Legal Abortion

Source: Center for Reproductive Rights (2022)

It is essential to understand that global health laws regarding safe and legal abortion still consider abortion as a dilemma. People have a choice over their bodies, and those who don't have a uterus should not be the decision-makers on this level to decide for those who go through this experience. A lot of time, specific conditions are kept in mind for permitting an abortion which is significantly influenced by personal opinions or social norms. The association of poor healthcare consideration with confusion arising from global laws of abortion, that people still seek unsafe abortions, and practitioners avoid proper referrals.⁹

These conditions also confuse individual practices and influence the decision-making of various nations, including Pakistan. In addition, the healthcare community is not involved in policy and law-making processes, and there is a sheer misunderstanding about the law among health sector individuals. They lack appropriate training and relevant skills in their curriculum and practice. Healthcare providers' values and lack of skills become a more significant issue to weaken the policy-level

⁹ Council on Foreign Relations. Abortion Laws: Global Comparisons. 2022. Retrieved from <https://www.cfr.org/article/abortion-law-global-comparisons>

implementation. The same is the case with the health sector in Pakistan, where, there is an absence of right based approach or reproductive justice as an essential component of teaching and learning or practice.¹⁰

Recent years have seen a new level of involvement in the advocacy for safe and legal abortion, based on examining how current laws impact women and girls and whether they adhere to international human rights norms. Some of the United Nations human rights organizations that are more visible working towards this advocacy of safe and legal access through progressive law for safe abortion practices include; (i) the Human Rights Committee, (ii) the Committee on the Elimination of Discrimination Against Women, (iii) the Committee on Economic, Social and Political Rights, (iv) the Working Group on Discrimination Against Women in Law and Practice, and (v) the Special Rapporteurs on the right to the highest attainable standard of health.¹¹

However, many local, national, and international organizations are connected to Pakistan and working on safe and legal abortion related awareness, advocacy and legal and ethical guidance. Young people in Pakistan working with organizations like Asia Safe Abortion Partnership or groups like Youth against abortion Stigma are some of the highlighted examples. Populations Services International, Ipas, Marie Stopes Society, Aahung, Human Rights Commission of Pakistan, Legal Aid Society, Shirkat Gah, and Greenstar are also some of the organizations or franchises of organizations in Pakistan working in the field of reproductive health.

Decoding Pakistan's Safe Abortion Law

A. Contextual understanding and perspective

In Pakistan, urban and rural communities of all four provinces were analyzed and monitored in the early 2000s for post-abortion care situations. The survey was conducted by healthcare providers,

¹⁰ Ibid.; Z. Sathar, et.al, *Post-abortion Care in Pakistan: A National Study*, Report published online 2013. DOI: [10.31899/rh3.1017](https://doi.org/10.31899/rh3.1017), Available at: <https://knowledgecommons.popcouncil.org/departments/sbsr-rh/155/>.

¹¹ Human Rights Committee, Equality of rights between men and women, General Comment No. 28 (Art. 3). 2000.

people with lived experience of post-abortion complications, and their partners.¹²

The findings from the survey are following:

- In Pakistan, there are thought to be 890,000 induced abortions each year.
- As per the providers, Dilatation and Curettage (D and C) is the most common method used when abortions are performed for economic reasons, to spread births, or to reduce family size.
- An estimated 196,671 women are admitted to hospitals due to induced abortion complications.
- Both rural and urban impoverished people are more prone to seek abortions in unsafe settings.
- Poor women are more likely to seek care from government facilities when difficulties arise.

Abortion is permitted in the early stages of pregnancy because of a 1990 amendment to Pakistan's Penal Code, which allows it to save the woman's life and provide the required treatment. This has increased the scope of legal authorization for early-stage abortions. This law states, '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'.¹³

It is well documented that women living in nations where abortion is illegal frequently seek it under risky medical circumstances, putting their lives in danger. High maternal death rates are closely related to the prevalence of unsafe abortions. As a result, policies that force women to use risky procedures violate their right to life. The human right of a woman to make decisions

¹² Zeba A Sathar, Susheela Singh, & Fariyal F Fikree, *op.cit.*, 11-12.; Z. Shaikh, et.al., 'Morbidity and Mortality due to unsafe Abortion in Pakistan, *International Journal of Gynecology & Obstetrics*. 110:1 (2010), 47-9.

¹³ Z. Shaikh, et.al., *op.cit.* Imran Ahsan Nyazee, The Rules for Abortion and Causing Miscarriage: Isqāt-i-Haml and Isqāt-i-Janin in the Pakistan Penal Code, Fatwā Issued for Virtual Sharī'ah Court on 9 March 2014. Available at SSRN 2406992 & https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2406992; S.K. Azmat, et.al., 'Perceptions, interpretations and implications of abortions: a qualitative enquiry among the legal community of Pakistan', *The European Journal of Contraception & Reproductive Health Care*, 17:2 (April 2012), 155-63.

about her reproductive life should be respected by governments. The resources and care necessary to safely end her pregnancy must be available if she chooses to have an abortion. Women who exercise their fundamental rights are penalized by governments that persecute and fine them for having abortions. When a woman who chooses to end a pregnancy must take a significant risk to her life or health, her rights are violated. Several human rights laws safeguard the right to life. The United Nations, have requested information from states regarding ‘any measures taken by the state to help women prevent unintended pregnancies and to ensure that they do not have to undergo life-threatening clandestine abortions’ as part of its elaboration of States’ obligations in reporting on their compliance with the right to life enshrined in the International Covenant on Civil and Political Rights.¹⁴ If we see and analyze the clauses, it safeguards ‘health’ in a broader perspective, saving an individual from everything that may be considered as a criminal act in a court of law when reported or identified.¹⁵

B. Analyzing Ethical Principles for Abortion Provision and Legalization

A fundamental human right, the right to safe and legal Abortion, is safeguarded by various national and international human rights codes. These laws provide the right to life, liberty, privacy, equality, non-discrimination, and freedom from harsh, inhuman, and degrading treatment as the foundation for safe abortion. Restrictive abortion regulations have been regularly denounced as violating human rights standards by human rights organizations. Given that people have a right to life and because abortion is one of the contentious issues covered in medical ethics, it is one of the most significant human rights issues in medicine.

¹⁴ S.K. Azmat, et.al., *ibid.*; A.C. Sharma, et.al., ‘Notes from the field: political norm change for abortion in Pakistan’, *Sexual and Reproductive Health Matters*, 27:2 (May 2019), 126-32. DOI: [10.1080/26410397.2019.1586819](https://doi.org/10.1080/26410397.2019.1586819).

¹⁵ Asia Safe Abortion Partnership, Country profile of Pakistan. Law related to Abortion. 2022. Retrieved from <https://asap-asia.org/>

1. Justice

The World Health Organization (WHO) has a Human Rights base and permits abortion on six primary grounds;¹⁶ it includes risk to life, rape or sexual abuse, significant prenatal abnormalities, risk to physical and sometimes mental health, social and economic reasons, and upon request.

Moving from ground 1 to ground 6, the results reveal that the number of deaths decreases with each new ground. Those nations that permit abortion on demand without restrictions have almost no deaths due to unsafe abortions. That is why justice and legal support can play a significant role.

Figure 2 - Grounds for permission for Safe Abortion by WHO (2022)



2. 'Do no harm'

Unsafe abortion has catastrophic physiological and psychological effects and can cause potential long-term complications. While proponents of abortion claim that it is a process alike other invasive procedures. If done correctly, by adhering to all surgical principles and aseptic protocols, does not create hazardous effects on health. At the same time, the health of women is negatively impacted by unlawful abortion. These circumstances save women's health, and a timely, safe, and legal abortion can secure her

¹⁶ World Health Organization (WHO). Access to safe Abortion critical for health of women and girls. 2022. Retrieved from <https://www.who.int/news/item/09-03-2022-access-to-safe-abortion-critical-for-health-of-women-and-girls>

physical, mental, social, and personal life from being disregarded, affected, and potentially harmed.

3. Autonomy

Different views on autonomy are prevalent in the context of abortion. A person's decision is not regarded as autonomous if complete disclosures about medical procedures and their known side effects are not made. The person making the decision does not have an adequate understanding of the information derived from these disclosures, the decision is not voluntary, and the patient lacks the necessary competence to make the decision. However, the main point about autonomy is that a person should be responsible and the only individual to take responsibility and make decisions about their body.

4. Respect

Bodily respect and dignity are prime areas that should be considered and given priority when it comes to safe abortion. The presence of services for safe and legal abortion will preserve the dignity of an individual and prevent complications or negative experiences for the person. Many countries like Canada have considered 'safe abortion' as a medical procedure to be dealt with within healthcare to support respect, dignity, confidentiality, client privacy, and other fundamental human values.

5. Utility

According to the principle of utility, an individual's prosperity and happiness should be prime things anyone must consider. If a person denied abortion is not feeling content or potentially getting into mental health issues like depression or anxiety, this is not the right decision. Ethically, the provision of safe and legal abortion helps everyone to start fresh and make decisions about life positively. Proper information and understanding of the law and access to secure services will be an experience of utility for every individual seeking an abortion.

C. Gostin's Framework

Gostin's framework¹⁷ is used here to analyze the various other relevant areas which can be in detail studied or observed to see the ethical association of the legal aspect of safe abortion in the context of Pakistan.

Identify Risk	Risk to a person's health if Abortion is not performed.
Demonstrate the Intervention's Effectiveness	If Abortion is performed can support the mother's overall health and future planning.
Assess Economic Cost	Safe and legal Abortion prevents out-of-pocket health expenditure and save cost incurred for future life issues or complications and overall improves the chances of better health and better economic stability.
Assess the Burden on Individuals	Prevents frequency of violence related to legal issues.
Assess the Fairness of Policy	Abortion is associated with higher risk and the law or policy can mitigate all associated risks and potentially prevent their intensity.

Potential Sources of Resistance in Pakistan

There are potential sources of resistance associated with safe abortion-related legal aspects and regulations in Pakistan, which can hinder strategies and plans related to the above recommendations. Still, they can be dealt with by networking, expertise, social mobilization, cohesion, and health education. These sources of resistance can be:

- Lack of understanding about details, clauses, and primary information of law
- Healthcare providers' level of knowledge about safe abortion practices and skills
- Social stigma and stereotypical behaviors
- Attitudes of people, community, and health workers.
- Media and social platforms' representation of abortion as a negative phenomenon

¹⁷ Sheelagh McGuinness & Jonathan Montgomery, ‘Legal determinants of health: Regulating abortion care’, *Public Health Ethics*, 13:1 (April 2020) 34-40.

- Patriarchy and cultural customs
- Political instability and personal agenda setting
- Control over bodies is a rigid concept for many individuals to follow, especially in the context of women.
- Influence from regional or contextual laws
- Self-assumptions and lack of context-based research
- Use of religion as a restrictive factor representing abortion as 'sinful.'

Conclusion and Recommendations

Safe and legal abortion is an ethically and legally challenging area. Hence, the legalization and proper understanding of legal clauses at every level of the country will help decrease the issues of ethical dilemma and debate and will consider the provision of safe abortion based on the right based approach and human and health grounds.

Abortion should be considered a healthcare procedure and a matter that should be dealt with by healthcare providers with positive and reasonable flexibility in the regulations attached to it. This should now be a mutual work that law agencies and healthcare professionals should do as advocates and involve provincial judiciaries to start from provinces. This will support decreasing rates of unsafe abortions and healthcare providers will take responsibility to support the procedure.

Social scientists and human rights activists should play their part in decriminalizing abortion law. At least it should be decriminalized to an extent and should have some safe zone for aiding people to decide about their bodies and act accordingly. This will decrease the shame and stigma associated with discussion and practices related to abortion.

Medical curriculum and Nursing education should use terms or categories like 'safe' and 'legal' abortion to describe and determine the comparisons between kinds of abortions rather than representing it as a 'dilemma' 'stereotype' or 'sin'. Public health laws should be a common part of discussions for medical and nursing professionals as well and awareness generating about legal and policy would help in changing the system and connotation associated with safe abortion.

Youth and adolescents who suffer from such decisions and policies should be part of the decision-making process. The providers who can support medical and surgical abortions and have additional training should be part of the law and policy revision process or legal and policy dialogues to make it more relevant to the context and experience. This will avoid many biases and stigmas associated with abortion services.