

# Perceptions, interpretations and implications of abortions: A qualitative enquiry among the legal community of Pakistan

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**ABSTRACT** **Background** The number of unsafe abortions is increasing across South Asia, also in Pakistan, where abortion is only permitted under special circumstances. The law on abortion is vaguely interpreted by the legal community. **Methods** Using Grounded Theory, 33 in-depth interviews of representatives of the legal profession and law enforcement agencies were conducted in 2010. **Results** Abortion is perceived as forbidden by both law and religion, and a punishable crime. Respondents believed that sentences are highly dependent on the social status of the woman who had the abortion. A few consider the current law as relevant and sufficient whereas the majority would support amendments. A number of them agreed that the high abortion rate reflects the denial of women's rights, social injustice, and a failure of public health intervention. **Conclusion** To facilitate access of women to abortion and related care, the knowledge of the existing law among legal professionals must improve. The implications of abortion for maternal health and its repercussions on a community governed by the Islamic dogmas must be publicised. The legal community could have an instrumental role in bringing about attitudinal changes vis-à-vis abortions in the society.

**KEY WORDS** Abortions; Islamic law; Legal community; Qualitative study; Reproductive health; Pakistan

## INTRODUCTION

### Background

Maternal death rates in South Asia are high and reproductive health issues across the region are inadequately

addressed<sup>1</sup>. Sexual violence, rape, unwanted pregnancies, unsafe abortions and resulting disabilities add to the gravity of the situation. In this highly patriarchal environment, doctors and professionals belonging to the

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legal community are mostly men. Lack of access to critical resources including quality health services reinforce women's lack of autonomy making their lives more vulnerable to physical, mental and emotional disorders<sup>2</sup>.

Unsafe abortions cause 13% of the maternal mortality worldwide. Of all these maternal deaths, 95% take place in developing countries<sup>3</sup>. In Islamic countries, the situation is further complicated by the restrictive laws on abortion, theological interpretations of religious scriptures, and cultural traditions about birth spacing and family planning.

Progressive interpretations of Islam have resulted in laws allowing abortion in early gestation, in case of rape or fetal anomaly. However, medical and social factors limit access to safe abortion services in almost all Islamic countries<sup>4</sup>. Most Islamic scholars agree that abortions are permissible before quickening, described as occurring around 120 days after conception<sup>5</sup>. Given the variation in the explanation and practice of laws on abortion in various Islamic countries, the interpretations have differed too. This has affected women's access to services.

## Situation in Pakistan

### *The incidence of abortion*

In 2002, a nationwide study recorded that nearly 890,000 out of 2.4 million unintended pregnancies, were terminated by induced abortion in Pakistan. The same study determined that the annual abortion rate was around 29 per 1,000 among women aged 15–49 years. This study further brought to light that around 197,000 women were hospitalised for treatment of abortion-related complications, which corresponds to almost a quarter (23%) of all Pakistani women who had undergone an abortion<sup>6</sup>. A recent national survey showed that 6% of maternal deaths are attributed to abortion-related complications<sup>7</sup>. Since abortion is allowed only in very few circumstances, women often subject themselves to clandestine and unsafe procedures. In particular, poor women cannot afford to pay for safe medical services, thus they usually rely on untrained providers<sup>8</sup>. Moreover, it is not known how many pregnancies are terminated in Pakistan on the basis of sex selection<sup>9</sup>. A community-based study in a Karachi squatter settlement revealed that, of all maternal deaths recorded, 8.8% were due to induced abortion<sup>10</sup>. When complications occur, women seek

care from government facilities. However, the government's family welfare clinics do not treat abortion complications and they also lack surgical facilities<sup>11</sup>.

### *Laws governing abortion*

In 1990, the Pakistan government revised the colonial-era Penal Code of 1860 with respect to abortion. Under the 1990 revision, the conditions for abortion depend on the developmental stage of the fetus – that is, whether the fetal organs are formed or not. Islamic scholars have usually considered organogenesis to be completed by the fourth month of gestation. Before this point, abortions are legal to save a woman's life or to provide 'necessary treatment'. Once the organs have formed, abortions are only allowed to save the mother's life.

Likewise, the penalties for illegal abortion depend on the developmental stage of the fetus at the time of the abortion. Before the organs are formed, the offence is punishable under civil law (*ta'zir*), by imprisonment for three to ten years. After completion of the organogenesis, traditional Islamic penalties, in the form of monetary compensation (*diyat*), are imposed<sup>12</sup>. This became a law in 1996 through a Presidential ordinance. Until 1997, abortion was permitted to save the life of the mother but then the law was amended in the light of injunctions of the Qura'n and Sunnah. At that point, abortion also became legal in cases where it was necessary to provide treatment to the mother<sup>13</sup>.

### **Rationale for this study**

The 1997 amendment in the abortion law is still not known to many health care providers, policy-makers and legal professionals in Pakistan. Although the law permits abortion to preserve a woman's life, it is silent on the issues of rape, incest and fetal abnormalities, and it does not permit abortion on the request of the woman<sup>14</sup>. Cultural and religious norms entail that women have less power to negotiate contraception<sup>15</sup>. The combination of a high national fertility rate with a low prevalence of contraceptive use and a moderately high rate of abortion suggests that many Pakistani women are employing abortion as part of their strategy to avoid unwanted or mistimed births. This is in spite of the restrictive access to safe abortion services and the considerable health risks attached to clandestine abortions, as evidenced by the

large number of women who are hospitalised for treatment of complications each year<sup>16</sup>. The severely restricted status of abortion in the country needs to be widely debated, and the fact that the number of unsafe abortions is so high due to the lack of institutional services also must be highlighted.

Recent studies have looked at the issue of safe abortion services. The present study is unique in its attempt to move beyond the women/community-provider interface and to engage with other stakeholders and opinion makers. It is important to see how the legal community interprets the laws on abortion and how these stakeholders can play an important role in influencing women's access to safe abortion services.

### Aim and objectives

Our study aimed to assess the knowledge of representatives of the legal profession and law enforcement agencies, and their interpretations and understanding of the existing law on abortion. Another goal consisted in gaining their support to improve women's access to safe abortion services.

### METHODS

Based on the grounded theory of qualitative research<sup>17</sup>, a semi-structured questionnaire was used to interview members of the legal profession (law students, practising lawyers, magistrates, judges) and law enforcement officials (police personnel, guards in women's prison, and medical practitioners in prisons) in Karachi, Pakistan. We selected participants who were either involved in handling abortion-related cases, or who were in a position to initiate policy debate and advocacy. The sample included 33 respondents: five of these were law graduate students; eight were practising lawyers; and four were judges (both in service and retired). Twelve respondents were sub-inspectors or inspectors in the police department. Four experienced physicians serving as medico-legal officers were also interviewed. Having obtained their informed consent to participate in the study, strict confidentiality was maintained regarding their identity and coding was used to report data. The questions were designed to determine the respondents' level of awareness and attitudes towards abortion; their understanding of access to safe abortion as a public health issue; their perceptions on the impact of unsafe abortions on women's health – and to

formulate recommendations aiming at improving the situation of women and at increasing their access to safe abortion and post-abortion care. The interviews took 30–60 minutes.

As for ethical considerations, informed consent was sought from all the respondents, ensuring the anonymity and confidentiality of the information gathered during the interview.

Verbatim notes of in-depth interviews were transcribed to provide a record of what was said in the interviews. Recordings were made, where study participants allowed this. Transcription and translation of data provided us with a descriptive record. The final interview notes were shared with the interviewees for validation. Another check of the validity of transcriptions and the translations was done by a colleague who had not participated in the study until then. Analysis was carried out manually. Following the content analysis, coding or indexing was performed for the questions and the probes of in-depth interviews for developing the nodes<sup>17</sup>. Key findings and responses were aggregated as sub nodes and later analysed to develop the thematic areas. Information gathered from the interviews was then triangulated with the literature to find similarities and differences on the issues surrounding abortion.

### RESULTS

The results of the analysis are presented below in eight themes. The content of each theme is described and, when required, relevant quotes are included.

#### Knowledge of unsafe abortion and practices in Pakistan

Most respondents mentioned that since abortions are illegal in Pakistan, they are carried out in a clandestine manner. Since there are no records of these unsafe abortions, it is difficult to estimate how many take place. Their guesses ranged from 100–1000 abortions in a year, whereas the actual number is 890,000 annually.

One law enforcement official said:

“We don't know the counts; we always talk about these things during lunch, and not in main meetings. Men cannot talk about it much, but women can. Sometimes, even doctors don't say the truth”.

According to our respondents, abortions are mostly sought by unmarried, uneducated women aged from 18 to 28 years, with middle- and lower-class backgrounds.

One law student guessed that: “All the pregnancies in unmarried women and less than 1% of the pregnancies in married women are terminated. If abortions are done privately in a clandestine manner, they are unsafe”.

Respondents from the police department expressed views on probable reasons for seeking abortions:

“The reasons for abortions could be [...] poverty, health problems, family disputes, issues of inheritance of family property, etc. It might be sought to terminate a pregnancy resulting from sexual assaults and extra-marital affairs. More than 90% of these abortions are not done by doctors and the 10% who do it are involved because of the money they get. Most of them perceive that these are criminal abortions”.

### Abortion laws

Most respondents believed that abortion was forbidden by law, as it was seen as a sin or a crime under Islamic law. All respondents were aware of relevant Pakistan Penal Code sections (Sections 312, 317, and 338) and a few also talked about the ‘Hudood ordinance’. The Hudood ordinance, enacted in 1979 as part of the then Islamisation process, implemented Islamic Shari’a law. It enforced punishments mentioned in the Quran and Sunnah for, among other things, extra-marital sex and consumption of alcohol. The ordinance has been debated for its misuse and was revised in 2006 by the Women’s Protection Bill. The respondents’ awareness of the details varied.

One lawyer commented: “[The] woman is only punished if [it is] proven that she was involved in extra-marital sexual relations and that caused this pregnancy [to be] aborted. She will then be penalised according to the Hudood Ordinance”.

Most lawyers maintained that the law existed in the context of the principles of Islam. According to this law, abortion is a crime unless it has been performed for exceptional reasons, such as saving the woman’s life. One of them said:

“In the PPC section 338(a), should a woman decide to choose an abortion, her decision is punishable, because aborting the fetus amounts to killing a life. If the life of the mother is in danger, then abortion can be done, after the doctor examines and endorses [the decision]”.

One lawyer 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 abortions are totally banned; on the other hand, [the] state has given permission to different NGOs that are providing these services”.

When asked about a specific law related to abortion, a respondent from the police department said:

“Laws implemented by the British are still in force. Though there is no space for abortion in our country [...] this law has flexibility [so that] when a woman is in danger because of childbirth or if she is to suffer in future pregnancies, then abortion is allowed, otherwise not. If pregnancy is of over three months, then abortion is not permissible”.

A police officer labelled abortion as an illegal act but added: “If you are in a desert, you can even eat a forbidden animal to save your life. In the same way, if abortion is necessary to save the mother’s life, then I think it can be done; otherwise it is an illegal act”.

The penalty for abortion was reported to range from a mere warning to ten years’ imprisonment.

A few respondents said that the sentence will depend on the circumstances. According to one lawyer: “The ordinance that came into existence in 1991 describes Isqat-e-hamal [aborting at less than three months’ gestation] and Isqat-e-jineen [aborting at more than three months’ gestation]. This ordinance defines punishment of seven years for the former and ten years for the latter”.

Surprisingly, there were a few respondents who thought that no clause of law exists at all for defining punishment.

Most of the law professionals mentioned law curriculum, websites, journals and monthly reviews of the Supreme Court as their sources of information on laws on abortion. A few mentioned training at school and the curriculum books.

### Enforcement mechanism

According to respondents from the law faculty, there are various implementing authorities such as the National Assembly, provincial assemblies, courts and the police. Respondents from the police department said that medical personnel, health department, non-governmental organisations (NGOs) and the police are the implementing bodies.

A lawyer described the pitfalls of the system saying: "In our country, the legislative body formulates a law but its implementation lies with other entities; so the implementation becomes a challenge".

Those who did not report the existence of any law had categorical responses similar to this one by a police official: "If there is no law, one wonders what the role of implementing bodies is". Physicians and law students were not very sure about the mechanism of enforcing law.

### Legal outcome and trends

According to the respondents, cases of illegal abortion hardly ever reach the court or gain any prominence. A retired judge mentioned: "Such cases are very rare. I have handled one or two [of these] in 18 years".

The most common reasons for the case not coming to the courts were reported to be 'the stigma attached to abortion' and 'the fear of lengthy court procedures'. Once the case comes to the court, the law takes its own course, according to the respondents. However, the outcome of the case is highly subjective and therefore varied, as explained by one of the lawyers:

"Cases of abortion are treated only as family cases. If a woman goes for an abortion procedure, she will be imprisoned; and there is a criminal procedure code in Pakistan. The accused have to provide evidence on the legitimacy of the pregnancy which in normal circumstances is very difficult. Yet, most of the people are released from such cases".

A woman's class, caste and socio-economic status were all reported to influence the outcome of these cases. While unmarried women face a harsher punishment of three to seven years of imprisonment, the rich are expected to manipulate the system and to evade punishment.

One police official said:

"A financially strong family can hire a competent lawyer who over-shadows and influences the magistrate. As the magistrate knows his decision can be challenged by an appeal in higher court, [...] he would not offend the lawyer. No severe punishments have ever been given to the influential to make them learn [a] lesson. On the contrary, the poor are always subjected to law".

### Relevance of the act related to abortion

Very few respondents found the existing abortion law adequate. The police personnel called for stricter provisions and a more authoritative law to exercise stronger control and to prevent abortions. One police official justified the fact by saying: "Our people are not literate enough to distinguish between right and wrong. So it is better to have a law to prevent society from going towards the disaster".

One lawyer said: "The law is not relevant. Specific sections should be included, which should [take into account] the phenomenal advances in medical science and [...] the situation of the society".

Yet a law student voiced his dilemma: "I think there is no need of any law related to abortion; instead we should promote more and more [the] use of contraceptives."

The law faculty also expressed its concerns about the law being ambiguous, as well as being neither Islamic nor modern. They also regarded the law as being completely unsuitable for ensuring social justice.

### Need for amendments in the law

More than half of the respondents were in favour of amending the existing law; they talked about the need to keep up with technological progress, changing times, improvements in implementation mechanisms and the need to make these laws stricter.

One judge said:

"The laws should be amended but in our country once such law is made, then it is difficult to change it. If anyone raises [one's] voice, then people take the cover of religion without knowing the need and rationale. Even the Quran gives us permission to change according to developments".

One law student argued in support of this viewpoint that: “every new day has new challenges and the law must respond to them. When our country came into existence we were just 30 million; whereas now we are 180 million or so”.

Those who opposed amending the law, were quite firm in saying that the present law is flawless and that there is no need to revisit it.

### **Abortion as a woman’s right, social justice and public health issues**

More than half of the respondents believed that abortion is a woman’s right but within marriage only. They did not support sexual and reproductive rights for unmarried women. One lawyer said:

“It is a natural law that an unmarried girl does not have the right to have a child. Delaying marriages also results in unwanted pregnancies out of wedlock. After marriage, if a woman does not want children, ideally she should inform the man before marriage”.

There was only one lone voice among study participants – a lawyer – who argued for abortion as a universal women’s right: “I think that a woman should have the right to conceive or not to conceive the child according to her will. Pakistan is signatory to international agreements to which we should all abide by”.

Those who opposed women’s rights justified their views on the grounds of religious teachings. One law student said: “Islam guides us for our rights after marriage; if a husband [wants] a child, then [his] wife can’t ignore [his wish]. In my opinion, women don’t have such freedom”.

According to one lawyer: “A woman does not have the right to conceive or to abort a child [at her own will]. 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, whatsoever”.

Respondents had different opinions on why they thought of abortion as an issue relating to social justice, public health or woman’s rights. “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 and to take care of the children. Since it deals

with women’s health too, it is an issue of public health”, according to one judge.

“It is an issue of social justice if it’s done to save the life of a woman. It’s a public health problem because it can result in death [if the woman] doesn’t go to the right doctor,” according to a medico-legal officer.

As one lawyer said:

“It’s not a pure issue of social justice; it’s a crime and an offence in the law. A mother can die, so it’s absolutely risky and therefore it is an issue of public health. There is no such issue as women’s right[s]. Rights are only those which are legal; and abortion is not”.

A few looked at reproductive rights also in terms of the rights of the unborn child. One police officer claimed: “How can you make abortion your right, simply on the ground that the couple doesn’t want a child? Reproductive right is also the right of the fetus!”

Awareness about international agreements promoting women’s rights to maternal health (including the International Conference on Population and Development; the Committee on the Elimination of Discrimination Against Women; and the Millennium Development Goals) was extremely poor. Only a few respondents – almost none of those from the police department – had ever heard of the agreements. Few respondents expressed their concern about compliance with international agreements under Pakistani law as they believe that these are not appropriate in the context of Islam. One lawyer said: “Our international agreements are signed just to favour the Western countries. We cannot go against our Quranic teachings and Sunnah (the teaching of the Holy Prophet, peace be upon him)”.

The lawyers questioned would not support international agreements and the medico-legal officers too would prefer to abide by the national laws.

### **Expanding access**

Only six of the 33 respondents favoured expansion of access through increased facilities and de-medicalisation of services, meaning that, apart from doctors, other health workers must impart skills and training to provide abortion and post-abortion care. While talking about the pros of expanding access, a judge

said: “Abortion facilities should be available for unwanted pregnancy. Even [the] religious minded are now inclined to it. However, being a government servant, we are bound to follow and enforce the laws made by the government”.

According to one physician: “I feel de-medicalising the abortion service is the proper approach. Not everybody can have access to a doctor”.

A law student expressed the opinion that:

“There should be designated institutions and hospitals which can provide facilities so that a woman can abort safely. The government should make programmes to raise awareness among the people. Otherwise, people will continue to go to unprofessional service providers ending up with unsafe manipulations”.

However, some respondents from the law faculty were against this concept of expanding access: “It will

spread sex; it will promote non-Islamic values and increase vulgarity”.

One police officer said: “Access shouldn’t be expanded because it will be harmful to the woman, and result in more deaths. It will propagate sin and crime and there won’t be any benefit to Islam”.

According to one lawyer: “Services should be accessible but expansion of services will lead to more abortions and will promote moral deterioration”.

A law student commented on this aspect: “Services should be increased under the auspices of Islamic values and under the supervision of qualified professionals but allowing non-medical or untrained personnel to offer services may destroy the society”.

One lawyer wondered about the question itself, “given that abortion was illegal in the country, how can you make it accessible?” In his view, “With de-medicalisation, people will indulge in illegitimate acts. If Islam has rejected something, there are some very important reasons behind it”.

Table 1 Summary of thematic results.

Themes	Graduate law students (male: 3; female: 2)	Practising lawyers/faculty (male: 4; female: 4)	Judges (retired and serving) (male: 3; female: 1)	Police officials (male: 10; female: 2)	Physicians as medico-legal officers (male: 3; female: 1)
<i>Abortion laws</i>	Precise and clear	Precise and clear	Precise and clear	Vague and varied answers	Vague and varied answers
<i>Implementation and enforcement mechanism</i>	Unclear	Understood well	Understood well	Unclear	Unclear
<i>Legal outcomes and trends</i>	Not clear	Explained clearly	Explained briefly	Explained clearly	Explained clearly
<i>Relevance of abortion act</i>	Disagreed	Agreed	Agreed	Disagreed	Not sure
<i>Need for amending the abortion law</i>	Agreed	Agreed	Agreed	Disagreed	Agreed
<i>Abortion as woman’s right, social justice and public health issue</i>	Disagreed	Agreed	Agreed	Disagreed	Agreed
<i>Expanding access</i>	Would favour	Would favour	Would favour	Would not support	Would favour
<i>International pledges</i>	Heard of and support	Heard of but would not support	Not sure	Never heard of	Would abide by the law

A summary of the main themes which emerged in our study are given in Table 1.

## DISCUSSION

This is the first study of its kind evaluating opinions of Pakistani professionals from the law community. Despite not being representative of the entire legal community in the country, it yielded some important results to build upon further research and interventions. Most respondents in our study had no idea about the number of abortions taking place annually, yet they labelled abortions as an outcome of poverty, health problems, family disputes, or unwanted pregnancies. A few of them have preconceived ideas of what Islamic and civil laws prescribe for abortions.

The majority of the respondents seemed to approve of the idea of further amending the present law and its clauses, in order to protect the physical and mental health of mothers. Most of them favoured expanding access to post-abortion care, but at the same time they would not offer this service to unmarried women.

There is a clear lack of awareness among medico-legal professionals of abortion being a woman's right, and an issue related to both social justice and public health. Although the law on abortion was amended in 1997, most of the abortion and post-abortion care is available from the NGO sector. Despite quoting the correct clauses of the law, the study respondents are unaware of the updates in the laws. Safeguarding woman's social status must also be considered in cases of rape and incest and therefore provisions need to be added to the present law<sup>18</sup>.

Abortion is not perceived as a major public health concern by the policy advisors and decision makers in the government. The amendment to the abortion law must be widely discussed and taken up as a priority to address the adverse consequences of abortions in the country.

### Strengths and limitations of the study

The study was unique in recognising the importance of the role of these stakeholders and in representing the views of the professionals dealing with law and legal affairs in Pakistan on a daily basis. However, including more representatives from the legal

community, especially women, could have enriched our findings.

## CONCLUSION AND RECOMMENDATIONS

There is an urgent need to address the limited knowledge about abortion in Pakistan by engaging with the legal community closely and frequently. It would be useful to generate discussions around Islamic dogmas regarding abortion, as understood by the legal community. At the same time, it is important to communicate information about research on abortion in Pakistan to all levels of the legal community. The goal is to improve the knowledge on the subject matter of the professionals concerned and to sensitise them on its implications for women's health.

In addition, the legislatures, legal professionals and policy-makers need to be adequately informed that the current law not only criminalises women, but it also drives forward the underground and unsafe practice of abortion. As for international declarations and agreements, there ought to be greater advocacy work to raise awareness among concerned stakeholders. It is imperative to sensitise all the key stakeholders on the long-lasting impact of unsafe abortions, often associated with social stigma, particularly among the poor and rural women<sup>19</sup>.

Addressing these issues will require a social change, demanding society to revisit the position, role and power of women in a patriarchal society<sup>20</sup>. A transformation in the attitudes of different sections of society will help to improve the women's access to safe abortion services. The legal community can play a vital role in this context. Targeted and nuanced advocacy messages must support the objective of making abortion-related services accessible to women who need them most and are at risk of submitting to unsafe practices.

### Authors' contribution

SKA conceived and planned this study, supervised data collection, reviewed the draft; MB planned and supervised the whole study and reviewed the final draft; BTS reviewed the literature, analysed the data, compiled the subsequent drafts and finalised the write-up; GM and WH conducted field work, collected and cleaned data.

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