

Human rights, abortion and disabled women—A snapshot from Pakistan

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The word 'rights' very often seem so wrong—politically, socially and technically—in the Islamic Republic of Pakistan, at all levels of policy making and community gate keeping. When used in the context of Sexual and Reproductive Health Rights (SRHR) in general and abortion in particular, the word is even seen as threatening, no less than an explosive that will tarnish or destroy Islam, the country's dominant religion and its traditional/ cultural values. The dishonor, disgrace and discrimination entrenched in the words 'abortion' and 'abortion rights' are in fact, to varying degrees and dimensions, global.

It is unfortunate, but perhaps not surprising, that there is no importance given to the element of reproductive health rights of disabled women and girls in Pakistan, whether in terms of research, advocacy, public policy planning, legislation, social awareness or health interventions. In 1990, the Pakistan government revised the colonial British Raj Penal Code of 1860 with respect to abortion. Under the 1990 revision, the conditions for abortion depend on the developmental stage of the fetus; whether the fetal organs are formed or not. Section 338 of the Pakistan Penal code states that "Whoever causes a woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman or providing necessary treatment to her, is said to cause 'Isqat-i-Haml' (isqat=abort haml=pregnancy)". Such a person is liable to a punishment of three years imprisonment if the abortion is performed by the woman's consent, otherwise, a maximum of ten years.

Section 338 B and C of the Pakistan Penal Code provides that termination of a child whose limbs have been formed for any reason other than to save the life of the mother shall be liable to pay Diyat (blood money), and such a person is also liable for a maximum of seven years imprisonment.

The law does not allow abortion on the basis of fetal defects. Whoever causes Isqat-i-Janin shall be liable to half of the Diyat if the child is born dead. Full Diyat is liable if the child is born alive but dies as a result of any act of the offender. And imprisonment of either description for a term which may extend to seven years as Ta'zir (in Islamic Law, ta'zir refers to punishment, usually corporal, that can be administered at the discretion of the judge). If there is more than one child in the womb of the woman, the offender shall be liable to separate Diyat or Ta'zir for each child. If as a result of Isqat-i-Janin, any injury is caused to the woman or she dies, the offender shall also be liable to punishment for such injury or death.

Distinguished Pakistani lawyer, late Ms. Rashida Patel recorded in her book *Woman vs. man: Socio-legal gender equality in Pakistan* (Oxford University Press, 2003) that this explanation of penalty 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 Quran and Sunnah. At that point, abortion also became legal in cases where it was necessary to provide treatment to the mother.

It is pertinent to ask here, who benefits from an exception to the rule, and, who establishes the exception to the rule? The global trend of a higher number of back street or unsafe abortions, and a smaller number of "therapeutic/necessary treatment" abortions by expensive consultants is common in Pakistan as well. As always, those who need safe abortions the most, remain mostly deprived of them. During my active clinical life I found several woman doctors, nurses and health workers, trained and untrained, conducting all forms of abortion. As a physician mistaken for a gynecologist (woman doctors are commonly mistaken for either nurses or gynecologists/ obstetricians in my country) I used to get many requests for a 'DNC' by husbands (the dilation of the cervix and surgical removal of part of the lining of the uterus and/or contents of the uterus by scraping and scooping) for their wives. These men were of the view that family planning—through the use of condoms, birth control and so forth—is not allowed under Islam and Christianity. This

experience also made me understand that a woman's body is under the ownership of her husband or male partner. This says a lot about the autonomy of women.

Religion and culture are unashamedly twisted to further disadvantage and endorse the subordinate positions of Pakistani women and girls from all classes and faiths. Available research is almost silent on the predicament of non Muslim Pakistani women and girls regarding their sexual and reproductive rights.

Pakistan, being the world's sixth most populous country, having an estimated 37.9 million women in the reproductive age group (15-49 years) with an estimated 4.2 million births occurring annually, faces enormous population and development related challenges. Nine percent of Pakistan's teenage girls have already begun childbearing (the highest percentage in Sindh province (11 percent) and the lowest in Balochistan province (seven percent)) and the overall adolescent birth rate is seven percent.

Pakistan's annual abortion rate is about 29 per 1,000 women aged 15–49 years. If this persists, every Pakistani woman will experience an abortion in her lifetime. During 2002, 890, 000 induced abortions were performed. Nationally, about one in seven pregnancies is terminated by abortion. Associated mortality and morbidity rates are high—23 percent of all Pakistani women who get an abortion are hospitalized for treatment of complications, and some 197, 000 women are treated annually for abortion related complications.

According to Dr. Zeba Sathar, Country Director of Pakistan's Population Council, "What is strikingly clear from these estimates is that induced abortion is a widely used method of preventing unwanted births in Pakistan."

None of this and other related information profiles women and girls in connection with their disability status. According to research by the Population Council, the most documented reasons for abortions are: poverty, fetus abnormality, 5 percent medical reasons, desire of a smaller family, 65 percent after determining the sex, pre and extra marital affairs, contraceptive failures.

I recall my days as the first Field Medical Trainer for the pilot project of contraceptives' social marketing by Population Services International DC-Us, through which I became aware of many such cases. What was tough to me at a personal level was the inability of health service providers to suggest any remedy besides harboring unpredictable degree of bias and judgment. The technical and professional failing of doctors and paramedics to identify and address the health and sexual and reproductive needs of the disabled in general, and women and girls in particular, is yet to be seen as a serious threat to the quality of medical teaching and health service provided by the concerned authorities within a government that spends two percent or a little more of its GDP on health and education.

A study entitled 'Perceptions, interpretations and implications of abortions: A qualitative enquiry among the legal community of Pakistan' conducted by the Marie Stopes Society, Pakistan in 2011 concluded that,

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 publicized. The legal community could have an instrumental role in bringing about attitudinal changes vis- a -vis abortions in the society.

Chairperson of the National Commission on the Status of Women and renowned activist Ms. Khawar Mumtaz observed that, "The law does not make a distinction between mentally challenged or sound women. There is no policy that I know of; but doctors may have developed some kind of unwritten code." The view of researcher and public health specialist Dr. Syed Zakir Hussain however, is that since Pakistan's current abortion law permits abortions to save the life of the mother and/or to provide necessary

treatment for physical, mental or social conditions, "in this way there is provision for mentally retarded women as the continued pregnancy would affect her mentally". He admits though, that there is no "data or system to collect the number of disabled women receiving post abortion care services."

An important determinant of health is education. The privileged few who happen to go to school here (Pakistan has the second highest rate of out of school children in the world, and 65 percent of its population is under 30 years) do not learn anything about general or adolescents SRHR. Some donor funded projects focusing on youth SRHR and women's rights advocacy have created some ripples, but these are limited to a very few elite institutions.

Generally speaking, there is a complete lack of attention to the issue of abortion and disabled women. Furthermore, the few short term project based approaches to address general abortion do not take local cultural factors and needs into account, and have thus failed to produce any meaningful or significant change in education or legislation. An evident social dismissal of the issue of abortion is an understandable impact indicator of the failure of such half baked actions.

Various research reports, studies and articles were unable to provide any substance or statistics about disabled women and girls who are victims of rape, gang rape and or incest leading to pregnancy. How many such victims can access abortion care at all, let alone the abortion? There is no information available about the mentally retarded women and girls who are repeatedly raped and become pregnant multiple times.

According to Ms. Abia Akram, a young Pakistani leader of women with disabilities,

The exact data or any evidence based research is not available. Since I am working with women with diverse disabilities from different geographic areas, I have heard about cases where women with intellectual disability got pregnant and their parents took them for abortion, especially in the flood affected areas. These cases are never reported, since they don't want to disclose the disability and secondly they don't have access to justice.

Barring aside the justified need of accessing a safe abortion without being judged by married and unmarried women who may be victims of rape, incest and unprotected sex in different situations, the predicament of disabled women and girls who conceive either under compulsion or by choice but want to abort the fetus are yet to be identified as an issue in mainstream activism, academia and advocacy on SRHR related issues. This differs from most developed societies, where the issue is mainly about the rights of disabled women/girls to be able to continue with the pregnancy and/or being able not to abort the fetus if any congenital anomaly is detected during antenatal care.

The stifling and nonintellectual Islamization induced in the late 1970s by General Zia's military dictatorship peaked in the last decade, resulting in the reluctance of intellectuals, writers and legislators to bring forth any alternative positions or initiate a liberal dialogue on tricky issues like abortion, control of women's bodies and so on. These subjects remain confined to a very limited group of activists (in no way united), who are very often accused of performing western donors' driven activism.

Disability cannot be cherished anywhere in the world, but being disabled in Pakistan for women and girls is the worst disadvantage a human being could experience. It is unfortunate that Pakistan has a significant percentage of physically and/or mentally challenged women. These women largely get pregnant as a result of sexual violence, and there is no safe way for them to terminate their pregnancies.

I look forward to the day when pro-people governance policies will be designed, when even marginalized groups would be included in the discourses on gender and SRHR and all individuals including disabled women and girls, can dream and decide about their lives with dignity, respect and complete protection from the State, if not society. I dare to suggest that as a step towards this ideal, it is time to revisit the Hippocratic Oath traditionally taken by physicians written ca. 400 B.C:

I will give no deadly medicine to any one if asked, nor suggest any such counsel; and in like manner I will not give to a woman a peccary to produce abortion. With purity and with holiness I will pass my life and practice my Art. While I continue to keep this Oath un-violated, may it be granted to me to enjoy life and the practice of the art, respected by all men, in all times! But should I trespass and violate this Oath, may the reverse be my lot!

[Translated version by Francis Adams]

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