

Abortion via Necessity – the Pakistani Perspective

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Abstract

Penalties by criminal law and the far-reaching consequences of social/moral stigma on those accessing abortions, have not been able to curb or prohibit the need for the procedure within Pakistan. It is still highly accessed and practiced within the country. Pakistani law penalizes all forms of the procedure, unless they are carried out to save the mother's life or if they qualify for a defence of necessity (before the 120-day period of the foetus's life is reached). Legal and religious hurdles have stunted the growth of medical professionals and healthcare facilities providing access to abortions which forces women to seek help from poorly trained professionals which contributes to a high rate of maternal morbidity in the country. Since maternal mortality is a very likely consequence of abortion related complications, the country needs to provide access to safe abortions. This argument will be looked at from three different perspectives: one which argues for the fundamental right to choose as a female may deem fit for her own body, even when another life (the foetus) is involved; one which argues for access within the first 120-day period of the foetus's life, as supported by religion; and one which argues for access to abortions, within the same 120-day period of the foetus's life, for pregnancies resulting from sexual abuse.

Introduction

Arguments in opposition to and in favour of abortion are like two strong protagonists opposing each other: honourable, strong and in pursuit of a higher cause. Those who oppose access to abortion, do so for they believe that the unborn has a right to its life, like those who have been born. Those who favour it, largely do so to uphold the fundamental right to choose, which they believe a woman must have access to, given that a pregnancy has serious implications for her life. These opinions are not premised in one particular region on the planet, for both find tremendous support wherever one encounters this argument. Such is the conundrum of abortion, a riddle to which neither position offers a resolve.

Arguably, abortion is a crime and abortion is a right. Any discussion regarding abortion carries with itself arguments pivoting the life of the unborn child against the right to choose (with inherent implications for the right to life) of the mother. Countries throughout the world have not only been wary of legislating in favour of access to abortions but many countries (particularly those with religious beliefs dominating the dialogue) have purposely chosen to restrict access to abortions, usually by imposing heavy criminal penalties as a consequence. Pakistan does not legitimize the practice of abortion unless it is being done “in good faith for the purpose of saving the life of the woman or providing necessary treatment”.¹ The incidence of abortion in Pakistan has been estimated to be 2.25 million abortions per year (for 2012)² which evidenced an increase in abortions from 27 per 1000 pregnancies to 50 per 1000 pregnancies.³ Illegality and the associated stigma have prevented medical professionals from being trained in abortion related procedures and post abortion care which has contributed to the high number of complications arising from the procedure.⁴ Latest studies noted 622,600 women to have received

¹ Pakistan Penal Code, art 338.

² Population Council and Research and Advocacy Fund (RAF), *Induced Abortions and Unintended Pregnancies in Pakistan, 2012* (The Population Council Inc, 2014) 5.

³ *Ibid* V.

⁴ Anika Rahman, Laura Katzive and Stanley K. Henshaw, 'A Global Review of Laws on Induced Abortion 1985-1997' (1998) 24(2) *International Family*

treatment from abortion related complications in the year 2012,⁵ and this was the number despite severe underreporting of such instances. There is no recent study to estimate the maternal mortality rate for Pakistan for abortion related complications, however the number was estimated to be about 10% of all such admittances to a teaching hospital in Karachi from 1992-1998.⁶ These figures evidence the need for laws which address the need for the procedure in Pakistan, while allowing women to access safe abortion services and operating within the religious and social constraints. This would also induce medical professionals to seek training for abortion related procedures and post abortion care, as abortions are provided, by individuals not trained for such procedures.⁷ This paper will discuss the minimum protections which the law regulating access to abortions in Pakistan should encompass while keeping in mind the restrictions posed by Islam (the dominant religion in the country) and the need for abortion stemming from sexual abuse, gender preferences for off-springs, inadequate resources for the maintenance of families and the fundamental right to choose to abort a pregnancy, which the law should afford to females, given that pregnancy and childbirth have implications for the life of the mother: the very life itself and its subsequent quality.

A. Causes of Abortion in Pakistan

The World Health Organization (WHO) defines abortion as the termination of pregnancy before the foetus has attained viability i.e.

Planning Perspectives 56, 56; Naheed Rahim and Anjum Ara, 'Reasons Due to Which Women Resort to Illegally Induced Abortions' (2008) 22 Journal of Postgraduate Medical Institute 309, 311; Population Council and Research and Advocacy Fund (n 2) 9.

⁵ Population Council and Research and Advocacy Fund (n 2) 3.

⁶ Guttmacher Institute and National Committee for Maternal and Neonatal Health (NCMNH), *Abortion in Pakistan* (In Brief: 2009 Series, No. 2, Guttmacher Institute, 2009) 2.

⁷ Rahim and Ara (n 4) 311-312.

become capable of independent extra-uterine life.⁸ There are two major types of abortion: spontaneous and induced. Induced abortions are those initiated by deliberate action undertaken with the intention of terminating pregnancy; all other abortions are considered spontaneous even if an external cause is involved, such as trauma or communicable disease.⁹ It is Induced Abortions which the law in Pakistan penalizes.

Despite the health risks, the criminal sanctions, the social stigma and the religious implications involved, abortion is still a frequent occurrence in Pakistan. It is largely resorted to by couples¹⁰ for unintended pregnancies,¹¹ poverty,¹² or to space births. Women from low socio-economic backgrounds were recorded to prefer opting for an abortion rather than using modern contraception.¹³ In fact, statistics show that 50 abortions per 1000 pregnancies is an unexpectedly high number of abortions to limit unintended pregnancies.¹⁴

Un-married women are the second largest majority¹⁵, followed by divorced, deserted or widowed women, fearing the burden of raising a

⁸ Report of a WHO scientific Group, *Spontaneous and Induced Abortion* (World Health Organization Technical Report Series No.461, World Health Organization Geneva, 1970) 6.

⁹ Ibid.

¹⁰ 97% were married females as estimated in 2012. Guttmacher Institute and National Committee for Maternal and Neonatal Health (n 6) 3; Zeba Sathar, Susheela Singh, Gul Rashida, Zakir Shah and Rehan Niazi, 'Induced Abortions and Unintended Pregnancies in Pakistan' (2014) 45 *Studies in Family Planning* 471, 472.

¹¹ 9 million pregnancies occurred in Pakistan in 2012- between 2002 and 2012 the total proportion of unintended pregnancies rose from 37.6% to 46%. Guttmacher Institute and National Committee for Maternal and Neonatal Health (n 6) 4; Population Council and Research and Advocacy Fund (n 2) 6, 8.

¹² Guttmacher Institute and National Committee for Maternal and Neonatal Health (n 6) 4.

¹³ Sathar, Singh, Rashida, Shah and Niazi (n 10) 471, 472.

¹⁴ Population Council and Research and Advocacy Fund (n 2) 9.

¹⁵ 3% of all abortions. Guttmacher Institute and National Committee for Maternal and Neonatal Health (n 6) 3.

child alone, for economic reasons or in order to avoid tainting their marriageability.

While legal and religious barriers have not been able to discourage abortions in Pakistan, they have however, lead to a higher incidence of unsafe abortions in the country.¹⁶ Health clinics cannot openly provide abortion services and women are therefore forced to seek help from unqualified individuals or to use traditional methods.¹⁷ Most post abortions complications arise when abortions are sought from midwives or administered by the women themselves.¹⁸ The private healthcare sector is responsible for majority of the abortion related services and a survey of 2013 showed 62 per cent of all abortion related services in the country to have been provided by the private sector, which has been reported to be of poor quality.¹⁹ Lack of appropriate care can lead to lifelong morbidity, contribute to maternal mortality, and adversely affect the health of future children.²⁰

Low knowledge of and apprehension to contraceptive use, adds to the problem.²¹ In certain cases pressure by spouses to produce a male offspring urges for female selective abortions (FSA).²² But these are not the only reasons advocating for the access to abortion in Pakistan or any other country in the world.

As the status of women as legal beings has been elevated globally, the concept of a female being the guardian of her own rights, the proprietor of her own choices, has also solidified. With popular concepts of feminism dominating ideas of modernity and liberalism, the right to choose to do, as

¹⁶ Sathar, Singh, Rashida, Shah and Niazi (n 10) 471, 472.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Sathar, Singh, Rashida, Shah and Niazi (n 10) 471, 473.

²⁰ Sathar, Singh, Rashida, Shah and Niazi (n 10) 471, 472.

²¹ Guttmacher Institute and National Committee for Maternal and Neonatal Health (n 6) 5.

²² Zeba A. Sathar, 'The Much-Awaited Fertility Decline in Pakistan: Wishful Thinking or Reality?' (1993) 19 *International Family Planning Perspectives* 142, 145; Barbara D. Miller, 'Female-Selective Abortion in Asia: Patterns, Policies, and Debates' (2001) 103 *American Anthropologist* 1083, 1086.

a female may please, has gained strength as a belief. This has applied to arguments of abortion as well by advocating for the right to legally permit a woman to choose to abort a pregnancy, should she so wish. Popular criticism paints females advocating for this to be supporting the murder of an unborn child. Rebutting this goes beyond the scope of this paper and is also impossible to ground as a viable argument in the jurisdiction of Pakistan as its most formidable opponent there would be the scepticism of the Pakistani society towards any interference with its reproductive norms, the local perceptions of Islam, with blatant rejection from its adherents along with moral/religious implications for mothers and any associated medical professionals.

B. Abortion and Islam

Pakistan hosts a majority of muslims and the Constitution mandates compliance of all laws with the injunctions of Islam, in order for them to be viable.²³ The highest order in Islam is the holy book of *Quran*, believed to contain direct revelations from God. It is considered the supreme law and any ambiguities are provided for by the *Ahadith* (traditions of the Holy Prophet) or by the consensus of the learned scholars, known as *ulema*. Opinion on abortion is inferred from the following Quranic verse which does not favour abortion: “*If they believe in God and the Final Day, it is not permissible for them to suppress what God has created in their wombs.*”²⁴

In between the two main schools of thought in Islam, the *Sunnis*²⁵ and the *Shiites*, there exists a general consensus which deems abortion, conducted after a period of four months from conception, to amount to killing the unborn child, unless there exists a definite risk to the life of mother.²⁶ The disparity amongst the schools as to number of days till which abortion may be allowed stems from the concept of ensoulment. It

²³ Constitution of The Islamic Republic of Pakistan, art 227.

²⁴ The Holy Quran, ch 2 verse 228.

²⁵ Further divided into *Hanafis*, *Malikis*, *Hanbalis* and *Shafais*.

²⁶ Tuba Demirci and Selçuk Akşin Somel, ‘Women's Bodies, Demography, and Public Health: Abortion Policy and Perspectives in the Ottoman Empire of the Nineteenth Century’ (2008) 17 *Journal of the History of Sexuality* 383.

is an important concept in this regard as it is believed that a human being is half body, half soul. The Islamic perspective on ensoulment in context of the developmental stages of the foetus is illustrated by the following *Hadith* (tradition of the Prophet): “(As regards to your creation) every one of you is collected in the womb of his mother for the first forty days, and then he becomes a clot for another forty days, and then a piece of flesh for another forty days. Then Allah sends an angel to breathe the soul into his body”²⁷. With reference to this *Hadith*, as a general consensus, majority of the schools of thought believe ensoulment to have taken place at one-twenty days from conception. And that after this, the foetus is believed to have developed into a human being possessing a body and soul, hence the potential right to life comes into existence .

The Shiites are mainly of the belief that abortion is permissible up to four months with consent of both the spouses where the mother’s life is at risk or the foetus is damaged.²⁸ Genetic anomalies such as major Thalassaemia or Haemophilia have also now been accepted as reasons where abortion may be allowed. However, Shiite authorities do not legitimize abortion in cases of unwanted pregnancies including ones resulting from adultery (*zina*) or rape.²⁹

The Sunni schools amongst themselves also differ in opinion. The *Hanafis* and *Shafais* are quite lenient and similar in their approach. According to the *Hanafi* school of thought, abortion is permissible within one-twenty days of conception as the foetus is not believed to be a complete human soul in this period. The procedure is considered *makruh* (discouraged) but is not forbidden where done for or with valid reason or moral justification which includes a woman’s inability to breastfeed or afford wet nurse.³⁰ The *Malikis* and *Hanbalis* have an even stricter opinion. As a general rule, abortion is forbidden under all circumstances as

²⁷ Sahih Bukhari (Volume 4, Book 55), no. 549.

²⁸ Amir H. Mehryar, Shirin Ahmad-Nia and Shahla Kazemipour, ‘Reproductive Health in Iran: Pragmatic Achievements, Unmet Needs, and Ethical Challenges in a Theocratic System’ (2007) 38 *Ethical Issues in Reproductive Health* 352, 357.

²⁹ Kiarash Aramesh, ‘Abortion: An Islamic Ethical View’ (2007) *Iran J Allergy Asthma Immunol* 31, 32.

³⁰ Demirci and Somel (n 26).

it is deemed to be *haram*.³¹ Some jurists belonging to the *Hanbali* school of thought allow for the procedure within forty days of conception.

Islam's position on abortion therefore, is not quite clear. What can be understood is that abortion is not encouraged. However, the religion does seem to permit the procedure, regardless of the development of the foetus, when a serious risk is posed to the mother's health or life. For reasons such as foetal abnormalities and non-fatal health complications the religion does not prohibit the abortion for the first 120 days of the foetus's life. This can therefore, be used to argue a pro-abortion stance, for the 120-day period, within Pakistani law, for instances where no serious risk is posed to the mother's life or health but she might still have valid grounds to access abortion.

C. Laws regulating Abortion in Pakistan

In Pakistan, the dominant school of thought is the Islamic *Hanafi* (*sunni*) school. Hence legislations are subject to follow the *Hanafi* jurisprudence whilst formulating laws with special reference to acts for which there already exists a penalty in the Islamic criminal system. Islamic jurists use Quranic references on infanticide to approach the subject of abortion and argue against its legalization.³² However, the view that the mother's life takes precedence over the life of the foetus, at least till the foetus attains the status of a person, i.e. possesses a soul and forms organs is quite an established precedent now. Islamic jurists are also of the opinion that certainty should not be overridden by doubt and that the roots cannot be cut to save the branch. Hence establishing that in case the mother's life or health is at risk, abortion should be permissible, and that the mother's life takes precedence over the life of the foetus.

This is a position reflected by the current law on abortion in Pakistan. Abortion, termed as *isqat-e-hamal*³³ and *isqat-e-janin*³⁴ in the

³¹ Ibid.

³² Mehryar, Ahmad-Nia and Kazemipour (n 28) 357.

³³ Pakistan Penal Code, s 338.

³⁴ Pakistan Penal Code, s 338-B.

Pakistan Penal Code, is classified as offences punishable under *hadd*, i.e. punishments prescribed for offences against God, as per the *Hudood Ordinance of 1979*. The Pakistan Penal Code 1860, in accordance with the Hanafi approach stipulate circumstances where abortion is permissible under law and penalties for non-conformation with the law under ss. 338, 338A, 338B, 338C. (1990 revision)

As per the Code, the permissibility for abortion is dependent on the developmental stages of the foetus. *Isqat-e-haml* penalizes abortions when the organs of the foetus have yet to be formed and *Isqat-e-janin* criminalizes abortions carried out when the organs of the foetus have formed. But the law does not provide an exact distinction between the stages of pregnancy discussed under these two offences besides providing a vague distinction based on “organs being formed”. Nothing further regarding this distinction has been mentioned by the Penal Code and given the lack of participation of the courts in the debate, no inferences from case law can be drawn upon to clarify the ambiguity. This discourages doctors from conducting abortions even when the mother may be in dire need of it, as they fear being made criminally liable. This also encourages women to access unsafe abortions, carried out by those with no medical board certifications, experience or training, resulting in serious complications which sometimes result in the mother’s death.

In cases where the organs are not formed, abortion is permissible to save the life of the mother or for providing “necessary treatment”.³⁵ Where organs have formed it can only be permitted to save the life of the mother.³⁶ What amounts to “necessary treatment”, however, has not been defined in the Code which adds to the confusion of s.338 of the Pakistan Penal Code.

It can therefore have various interpretations. The minimum stipulation for any procedure inducing an abortion is that it be carried out in “good faith” as per the Penal Code.³⁷ Saving the mother’s life is clearly a part of this ‘necessary treatment’ as it has been stipulated for by Section

³⁵ Pakistan Penal Code, s 338.

³⁶ Pakistan Penal Code, s 338(B).

³⁷ Pakistan Penal Code, s 338.

338 of the legislation. However, nothing beyond this can be comfortably argued to be within the bounds of the permitted “necessary treatment”. In fact, there is no case law allowing for inferences of what can be stated to be within this definition. The practice of abortion is shrouded in secrecy within Pakistan as it is impeded by moral/religious concerns and social stigmas. This impedes the development of jurisprudence surrounding the practice, by the courts. Therefore, the procedure, unless carried out to defend from serious threats to the mother’s life, is carried out in settings where both parties (the patient and the medical staff) prefer to not make the knowledge of the occurrence public. Encouraging this is the fact that whatever cannot be argued to be within the ambiguous grounds of “necessary treatment” accrues criminal penalties (imprisonment and fine) upon both the mother and the medical professionals involved.³⁸

The right to abortion does find support in international law for unimpeded access to it. Pakistan is a signatory to the Convention on the Elimination of Discrimination Against Women³⁹ which, in addition to various international instruments, activists and organizations, render denying a woman access to abortion, to be a violation of her human rights.⁴⁰ As stated above, abortion cannot be argued as an outright fundamental right within the jurisdiction of Pakistan, given the religious constraints. However, there are a few instances for which majority of the legal systems in the world provide access to abortions. These include instances of sexual abuse resulting in a pregnancy (for which courts of countries not permitting abortion have also been amenable to suggestion) or where the foetus is suffering from serious abnormalities. In addition to this, studies show that abortion is a procedure frequented within Pakistan⁴¹ and the practices usually surrounding abortions have gone unregulated, especially since it is criminalized in most instances, except for those falling within the ambiguous scope of “necessary treatment” or to save the mother’s life. This has allowed for medical malpractice for procedures of

³⁸ Pakistan Penal Code, s 338.

³⁹ Hereafter CEDAW 1981.

⁴⁰ Tamara Braam and Leila Hessini, ‘The Power Dynamics Perpetuating Unsafe Abortion in Africa: A Feminist Perspective’ (2004) 8 *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 48, 49.

⁴¹ Population Council and Research and Advocacy Fund (n 2).

abortion to be indemnified which leads to the high number of complications⁴² resulting from such procedures. Since death is a consequence of such complications, there is a need for the country to provide access to safe abortions to women who choose to access it out of need or necessity. This is a position supported by the Committee on the Elimination of Discrimination against Women which added prevention of coercion of women with regards to fertility and reproduction as a reason for its support.⁴³ This adds to the need for Pakistan to make amends to s.338 of the Pakistan Penal Code.

D. Should Abortion be Legalized in Pakistan?

“I wonder why a mother can kill her beloved child, who has not been embodied and ensouled, though she would sacrifice herself in order to prevent children in her lap from any small danger directed toward them?”⁴⁴

These words of the poet/journalist Namik Kemal arguing against abortion perfectly sum up the position of those who favour stricter laws for abortion. The choice to abort a foetus, regardless of its age, inherently carries questions of the morality and conscience of those favouring the choice. Anti-abortion advocates use religion as their primary tool to argue that, “the death of the foetus is a real death” and that the choice to abort is not a choice between a woman and her doctor but “between a woman and God” since it is a profound moral issue involving life and death, a choice between right and wrong.⁴⁵

⁴² n 4.

⁴³ United Nations Women, ‘General recommendations made by the Committee on the Elimination of Discrimination against Women’ (General Recommendation No. 19 (11th session, 1992), 24 (m))
<<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>
accessed October 20 2017.

⁴⁴ Demirci and Somel (n 26) 406.

⁴⁵ John Seery, ‘Moral Perfectionism and Abortion Politics’ (2001) 33 Polity 348.

While this approach may have elements with merit in religious arguments, it cannot be used to promote a legal stance against abortion, as it has negative consequences and implications for women who try to access abortions, even when they are in dire need of them. This approach labels these women as sinful and unforgivable and favours the institutionalised discrimination against women. A rights-based argument, which argues for the egalitarian consideration of the existing genders in terms of the choices allowed to them regarding their own body, would disagree with such claims. Abortion is a “reproductive choice” and in this sense, is no different than any other choice made by a man or a woman when deciding for the course of reproduction favoured by them. The inclusion of a human foetus throws the comparison off by painting abortion to be the equivalent of murder of a human who has gone through the process of birth. While it is hard to argue for this image to be different for full term pregnancies (abortions of which are quite rare) a reasonable argument can be grounded for foetuses in the early stages of pregnancy, as then, the foetus which has no major biological system developed, can be technically described to be an accumulation of cells dividing to reach a stage from which more sophisticated functions of biology can be executed, which will eventually engender a human. This stage (before the 120-day mark as agreed by most *ulemas*) is where evidence for the Islamic concept of ensoulment is not found and this paves the way for an argument, legitimizing need based abortions, until this stage is reached.

Keeping in line with this, abortion (resorted to for “acceptable” reasons) is permitted by countries with Muslim majorities, for up to a very limited duration of time. In 1997, the Commission of Inquiry for Status of Women, was set up in Pakistan to look into the laws to end the inequities towards women and headed by a judge of the Supreme Court recommended that "A woman's right to obtain an abortion by her own choice within the first 120 days of pregnancy should be unambiguously declared an absolute legal right". This is corroborated by the *Hanafi* jurisprudence evidencing religious support for the argument. However, no legal affect was given to the said recommendation and it was not even remotely considered in any subsequent amendments to the Pakistan Penal Code.

The law therefore, does not allow access to abortions for the 120-day period unless the criteria for “necessary treatment” (for which no definition has been provided) is fulfilled. The only distinction it makes is of the types of offences involving abortion⁴⁶ based on another vague difference of “organs being formed”. After the organs of the foetus have been formed, it is only serious risks to the mother’s life or health which the law in Pakistan permits as grounds for abortion.

Since the very idea of abortion in Pakistan has been tainted by its perceived existence in the shadow of evil, a sensible distinction can be made between necessary and “evil” abortions. Necessity, like the Pakistan Penal Code’s “necessary treatment”, is an ambiguous term. What this paper would like to argue for inclusion in this definition, despite its vagueness, is the instance of pregnancies resulting from sexual violence. Sexual discourse is a taboo in Pakistani society and majority of Pakistanis believe in strict adherence to the pre-existing sexual etiquette in the country. This dictates morals, perceptions of characters and especially for women, has far reaching consequences in terms of their marriageability. Any sexual activity beyond the bounds of marriage is frowned upon and any woman found implicated in any such practice is rendered an outcast, a social pariah, morally unfit for acceptance within the society. Women and girls who face sexual violence are not, in popular opinion, shaded from these consequences and a resulting pregnancy only adds to the problem for such females. The law in Pakistan does not make any allowances for instances of rape resulting in pregnancy and therefore fails to address the needs of females who are already victims of an egregious violation of their rights. In addition to this, the poor social treatment of children born out of wedlock adds another dimension of arguments which support this line of reasoning. To grow up unwanted and or in discrimination destroys a child’s mental and emotional health. It also hinders their development and personality. It is important to link the health and wellbeing of children with that of women and emphasize that the right of every child to be a wanted child is linked to a woman’s right to self-determination.⁴⁷ Even though no Islamic authority within the country has promoted such a

⁴⁶ *Isqat-e-hamal* and *isqat-e-janin*.

⁴⁷ Braam and Hessini (n 40) 50.

dialogue in favour of female victims of sexual abuse, one Islamic proponent of the idea is found in Egypt where the Grand Mufti advocated for legalizing abortions for victims of sexual violence.⁴⁸ This evidences there to be room for religious advocacy for access to abortion for victims of sexual violence. Therefore, the law in Pakistan needs to make an exception, for instances of abortion, where the mother has conceived a child following sexual abuse.

While one may be able to follow these arguments on paper, the inherent stigma and moral implications leave there to be no end in sight for this dialogue. Anti-abortion advocates claim that the moral issues involved in abortion transcend legal procedures and remedies as killing the foetus is tantamount to murder, and all the Supreme Court or legislative declarations in the world cannot excuse murder.⁴⁹ But this is not a reasoning which the law has not been made privy to and it is within the ambit of the legal system's power to frame values and give legitimacy to notions of morality. It is also its duty to prioritise the lives and rights of its subjects. With life being the overarching priority in pursuance of which other rights are prioritised, the law usually waives off rights for the preservation of life and since abortion is essentially terminating the existence of a foetus, it seems logical to argue, following this line of reasoning, that abortion should be prohibited. However, for the restrictive grounds of access to abortion being argued to be permitted to victims of sexual violence within the 120-day period, is not an argument advocating for the life of the foetus to be waived off when it doesn't suit the mother's preference. It is an argument which asks for clemency for those who have already been made to suffer greatly and for whom, not only does the pregnancy serve as a tangible reminder of the abuse they suffered, but it also prolongs its effects. The entire life of the female is shifted to accommodate the violence she has suffered and ending a pregnancy resulting from such abuse works to serve as a respite for the victim and to

⁴⁸ Leila Hessini, 'Abortion and Islam: Policies and Practice in the Middle East and North Africa' (2007) 15(29) *Reproductive Health Matters* 78 <<http://www.who.int/bulletin/volumes/95/7/17-197442/en/>> accessed 20 October 2017.

⁴⁹ Seery (n 45).

prevent the rejection and abuse (given the dictates of the Pakistani society) which the unborn child will eventually suffer.

Right to life is a fundamental guarantee of human rights law which Pakistan subscribes to and aspires to uphold its own law, to the standards of. This right not only argues for the protection of the very life itself but also to provide access to a good, healthy life according to whatever one may be able to access legally for themselves. Therefore, it also guarantees the quality of life. Criminalizing access to abortion therefore violates the mother's right to life as well.⁵⁰ Arguing in favour of a life which has the potential to materialise, to the severe detriment of a life which exists, is not an argument which resonates with reason. Therefore, the Penal Code in Pakistan needs to be amended to provide access to abortion for pregnancies resulting from sexual abuse.

Conclusion

Access to abortion is not viewed as a reproductive right in Pakistan. Talking in terms of pregnancies resulting from sexual abuse, it is the duty of the state to protect its subjects from harm. Such victims have suffered greatly and criminalising access to abortions, which will ease their suffering, is a violation of the rights of the victim, whose right it is to have access to a safe, stigma free abortion. Provided that the country legalises such abortions, it is likely to achieve two ends. Primarily it will alleviate the burden of suffering of victims of sexual abuse. It will also engender a fissure within the perception of abortion in the country, from being viewed as a practice much deserving of criminal sanctions, in which full term pregnancies are being terminated, to a procedure carried out for pregnancies in very early stages, for females who opt for the procedure based on sensible choices or due to their own personal need. It will open up a dialogue favouring women and access to their reproductive rights in

⁵⁰ Bulletin of the World Health Organization, 'A global database of abortion laws, policies, health standards and guidelines'

<<http://www.who.int/bulletin/volumes/95/7/17-197442/en/>> accessed 20 October 2017.

Pakistan which will pave the way for better reproductive care and health in the country. It will also ground the idea of females being capable of making their own choices, which will likely affect other issues with a much needed, pro-female approach. Most of all it will highlight the need to prohibit sexual violence in the country and reflect a protective attitude towards those who have been made subject to such a violation, instead of the usual shame and stigma, which they are made to bear.

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