



RESEARCH PAPER

Silent Struggles: An In-depth Content Analysis of Pakistani Abortion Laws and the Rights of Survivors of Sexual Assault in the Shadows of Taboo

Salbia Abbas, Dr. Muhammad Latif* and Dr. Razia Anjum

1. Associate Lecturer, Department of Psychology, GC Women University Sialkot, Punjab, Pakistan
2. Assistant Professor, Department of Education, GC Women University Sialkot, Punjab, Pakistan
3. Lecturer, Department of Psychology, GC Women University Sialkot, Punjab, Pakistan

*Corresponding Author: Muhammad.latif@gcwus.edu.pk

ABSTRACT

The primary objective of this study is to critically examine the intersection of Pakistani abortion laws and the rights of women who have experienced sexual assault, particularly rape, incest, and gang rape. The focus is on understanding the challenges faced by these women, both legally and socially, in a society where such topics are often considered taboo. The research methodology involves an examination of perspectives from legal professionals in Pakistan. Through interviews and analysis of legal interpretations, the study aims to uncover how these professionals perceive and apply Pakistan's abortion laws in the context of sexual assault. The research includes a review of relevant legal texts, cases, and societal norms. This study argues for the recognition of abortion as a right for raped women in Pakistan. By delving into the perspectives of legal professionals and the research highlights the need to reevaluate and reinterpret existing abortion laws to better address the needs and rights of women who have experienced sexual assault. Ultimately, the study advocates for a reconsideration of societal norms and legal frameworks to provide greater support and protection for victims of sexual assault. Current research suggests that there is a need for reevaluation and reinterpretation of existing abortion laws to better address the needs and rights of women who have been subjected to sexual assault.

KEYWORDS Abortion Laws of Pakistan, Illegitimate Child, Plight of Raped Women

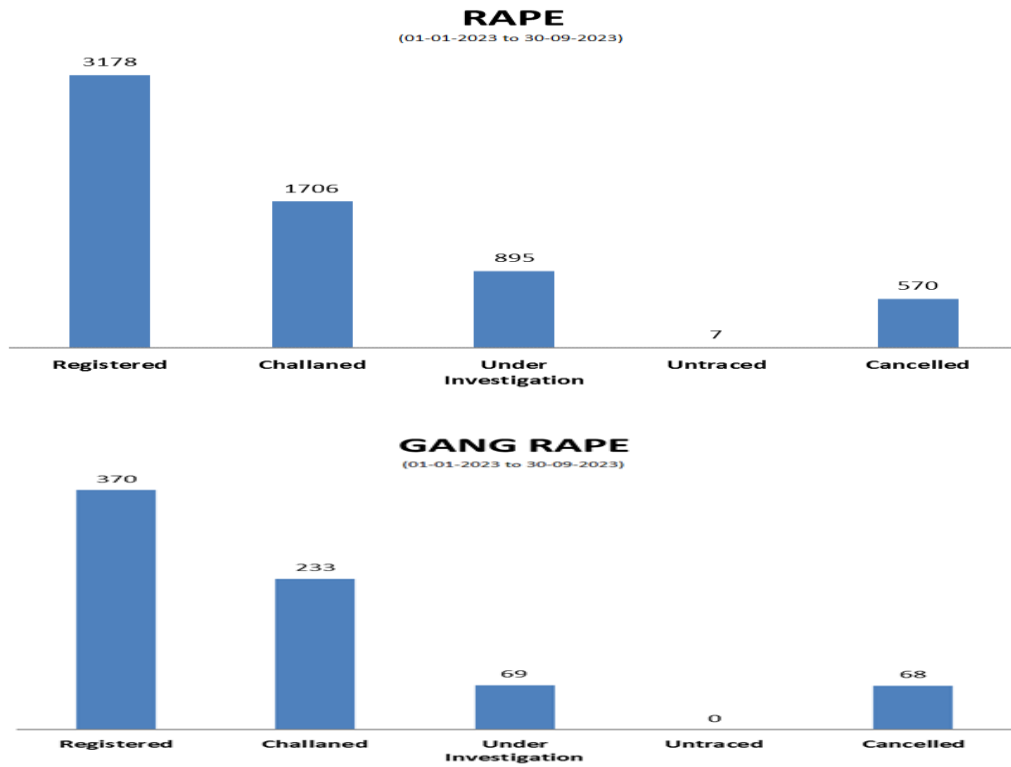
Introduction

Pakistan is a culturally diverse nation currently navigating a period of complexity. Its populace comprises various groups from regions such as AJK, Baluchistan, KPK, Punjab, and Sindh, creating a dynamic population. Given its ongoing struggles, a significant portion of the population grapples with issues like poverty, lack of education, unemployment, and conservatism. (ministry of planning and development, 2022)

The traditional marriage system in Pakistan remains largely unchanged, with arranged marriages, forced unions, and status quo marriages being more prevalent than love marriages. Moreover, in many cases, social norms view friendships between individuals of the opposite sex as unethical. The combination of these factors, along with the prevailing marriage culture in our society, often leads to dissatisfaction, frustration, and discontent among individuals. When these frustrations reach their peak, they can escalate into various forms of criminal behavior. These recorded crimes are theft, murder, domestic violence, rape and sodomy, incest, abusing activities, Dacoities-Robberies and gang rape.

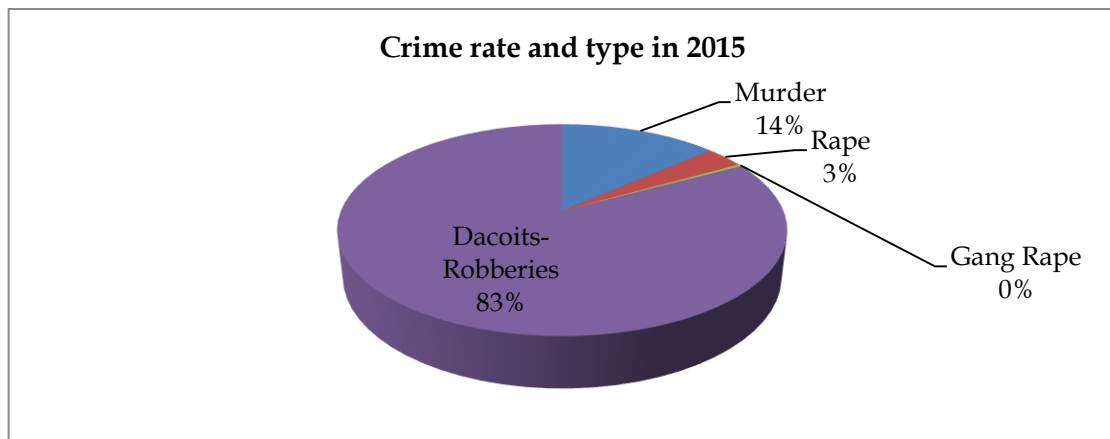
Crime Rates in Pakistan

As per the reporting of Punjab police (<https://punjabpolice.gov.pk/crimestatistics>). Rape and gang rape statistics are as follows.



These statistics vividly illustrate the harsh reality of female experiences with assault, with many untold stories remaining unregistered.

Crime rate of Pakistan 2015



Pie Chart depicts the frustration and dissatisfaction of people occurring from the prevailing culture of Pakistan. Among these crimes the focus of this research paper is on rape crime which is contributing in the rate of illegal abortions in Pakistan and is also responsible for the plight of raped women and their illegitimate and in addition punishments are given to victimized women in accord to terminating their pregnancies. Human Rights Commission of Pakistan recently reported that at least 11 rape cases are reported daily with over 22,000 such incidents reported to police in the last six years (2015-21). (The News,2020)

Literature Review

Crime statistics in Pakistan depicts that there are many types of crimes natives of Pakistan are confronting. In current research the topic of concern is related to implementation of abortion laws to the victims of rape or gang rape. Rape is not only a crime that hurts a female physically this also affects her emotionally, socially and psychologically in some cases financialy as well. According to Islamic research institute (1960) revealed that Rape stands as one of the most egregious acts perpetrated against women and their families, leading to both immediate and prolonged complications. The matter of abortion in cases of rape encompasses broader considerations of social justice, human autonomy, and women's health. Within the context of Pakistan, existing laws do not afford women the freedom to make abortion choices under regular circumstances, and they notably lack provisions addressing pregnancies resulting from rape. Moreover, it delves into the examination of rulings concerning rape and abortion, drawing comparisons between classical Islamic law and the contemporary legal system in Pakistan, exposing fundamental, substantive, and procedural gaps within the legal framework. Another research conducted by (Imran, L. 2022) revealed about the unsafe abortions among Pakistani female students, research indicates that this ratio is 37% but correct information concerning to this is still under discussion that the pregnancies are consented or comprised of rape. As per reporting of (Nayadur, 2020), more than 82% of perpetrators in cases of rape are familial relations, encompassing fathers, brothers, grandfathers, and uncles of the victims. According to Faridah Ali approximately 61% of cases belongs to the marital rape.

Forced Pregnancy

Forced pregnancy occurs when a woman or girl becomes pregnant against her will, and her ability to seek or desire an abortion is denied, hindered, delayed, or made challenging. These pregnancies may result from factors such as a lack of sexual education, limited access to contraception, or mistakes. However, particularly among young girls, many pregnancies are the result of sexual violence, often perpetrated by relatives or acquaintances. In situations where abortion is illegal or inaccessible, young girls face significant risks, either through resorting to clandestine and unsafe abortion methods or being compelled to undergo childbirth. Due to their youth, these girls are often neither physically nor emotionally equipped to carry a pregnancy to full term, give birth, or take on the responsibilities of motherhood. Unfortunately, without access to safe and legal abortion, they are compelled to endure these challenges, further exacerbating the harm resulting from the initial sexual violence. (Equalitynow.org)

Abortion Laws of Pakistan

In this section we will scrutinize the abortion laws of Pakistan. It will address that how abortion laws were constituted and how it ignored the convention on women's rights CEDAW signed by 192 countries including Pakistan.

Constitution of Abortion Laws of Pakistan

Until 1990, Pakistan's abortion regulations were governed by provisions dating back to the 1860 Penal Code. According to this law, abortion was considered a criminal act, with the only exceptions being made if it was conducted in good faith to save the pregnant woman's life. Article 312 of the Penal Code stipulated that anyone performing

an illegal abortion could face imprisonment for up to three years or a fine. If the woman was "quick with child," the penalty was imprisonment for up to seven years along with a fine. Women choosing to undergo an abortion were subject to the same punishment.

In 1990, the Pakistani government took action to reform abortion laws. The 1860 Penal Code was amended following a 1989 decision by the Supreme Court of Pakistan, which deemed it inconsistent with Islamic injunctions. Pakistan revised its stance on this matter, revising numerous provisions to align with Islamic legal principles. The revised law initially had temporary validity starting in 1990, and in 1997, it became permanent.

Under the new laws, an exception to abortion was introduced, with the focal point being the developmental stage of the fetus, specifically whether fetal organ formation had occurred or not. As per the consensus of religious scholars, fetal organ development was generally recognized to occur after the fourth month of gestation. Abortion was allowed only as a 'necessary treatment' before fetal organs had developed, and the goal was to save a woman's life or protect her health. After the fourth month, when organ development was complete, abortions were legal only if they were necessary to save the mother's life. It was considered a criminal offense to terminate a pregnancy at a stage when fetal organs had formed, and the punishment under civil law ranged from 3 to 10 years of imprisonment.

In 1996, a presidential order was issued, stating that if the fetus had developed, the offender would be required to pay blood money (diyat). Another amendment was introduced in 1997, allowing for abortion to protect a woman's health in accordance with the Quran and Sunnah. Regrettably, this amendment did not permeate the ranks of medical professionals as effectively as desired. (Karim Ullah Sarwar, 2004)

Segment 338 about Pakistan correctional code directing abortion states: 338. Isqat-i-Haml

Anyone who intentionally induces a miscarriage in a pregnant woman before her fetal organs have developed, without a valid reason such as saving the woman's life or providing essential medical treatment, is considered to be committing 'Isqat-i-haml'

Explanation

This section includes a woman who deliberately induces a miscarriage on herself

338-A. Punishment for isqat-i-haml

Whoever causes isqat-i-haml shall be liable to punishment as ta'zir:

(a) With imprisonment of either description for a term which may extend to three years, if isqat-i-haml is caused with the consent of the woman; or

(b) With imprisonment of either description for a term which may extend to ten years, if isqat-i-haml is caused without the consent of the woman:

Provided that, if as a result of isqat-i-haml, any hurt is caused to the woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death, as the case may be.

338-B. Isqat-i-Janin

Whoever causes a woman with child some of whose limbs or organs have been formed to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause isqat-i-janin.

Explanation: A woman who causes herself to miscarry is within the meaning of this section.

338-C. Punishment for 'isqat-i-janin'

Whoever causes isqat-i-janin shall be liable to:

- (a) one-twentieth of the diyat if the child is born dead;
- (b) Full diyat if the child is born alive but dies as a result of any act of the offender; and
- (c) Imprisonment of either description for a term which may extend to seven years as ta'zir;

Provided that, if there are more than one child in the womb of the woman, the offender shall be liable to separate diyat or ta'zir as the case may be, for every such child.

Provided further that if, as a result of isqat-i-janin, any hurt is caused to the woman or she dies, the offender shall also be liable to the punishment provided for such hurt or death, as the case may be. (Syed khurram azmat, 2011)

These laws of abortion hold nothing to aid a raped women, interbreeding or fetal defects. A lady can't conceivably request abortion in such cases, which will be unfortunately force raped women to give birth to a baby of rapist i.e. reproducing illegitimate child which will increase more problems in life of such a raped women.

The Convention on Women's Rights (CEDAW)

CEDAW advocates that women must be given the right for reproduction especially in case of rape because it not only ensures the safety of women but also supports the women to stand against the rapist who caused her to give birth to illegitimate child. The will also result in bringing down the power of male dominance (a rapist who feel proud that he not only sexually assault a women but also gave her a stigma of his illegitimate child) in our society. Countries like Pakistan (after signing CEDAW) not only violating the dignity of women and creating an atmosphere for committing more sex crimes but also confusing its nation that why two types of laws practicing in Pakistan are not representing the same meanings? This section aims to quake the readers mind than why government of Pakistan signed CEDAW if they are reluctant to follow it. (Women United Nations,1979)

Injustice To Raped Women

Pakistan is an Islamic Republic, confronting tests from claiming religious radicalism "around which is the situation of something like that known as Islamization. It is troublesome being women in Pakistan, both professional and domestic. While in context to women abortion and especially in case of raped women abortion is not the matter of getting rid of illegitimate child but an issue of unsafe healthy conditions (maternal deaths), social injustice to women and violation to the rights of women.

Comparison of Islamic Laws of Abortion And Pakistan's Laws Of Abortion

Pakistan's laws of abortion are totally in contrast to Islamic laws of abortion. As on one side Islam forbid to terminate pregnancy and on the other side encourages the ways for preventing pregnancy. But there is no hard and fast rule in Islam in any of the issues. Islam is always logical and flexible in nature. Here I would like to add that our

last Prophet PBUH quoted on some occasion that "When two forbidden things come [upon a person] together, then the lesser will be sacrificed for the greater." Correspondingly, in rape cases it is better to terminate or abort pregnancy rather than living like a death (both raped women and illegitimate child) but the condition is to abort within the first four months of pregnancy. This term is known as *al-ahamm wa l-muhimm* (the more important and the less important). (Pakistan penal court). Hanafi jurists and *Al-Munajjid* also permit abortion in rape cases but within 120 days of pregnancy. In Pakistan, rape and abortion both are taboo. One judge narrates in a study that: "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. Hence laws of abortion in Pakistan are developed in vague and were in contrast to Islamic law of abortion.

Material and Methods

Study Area

The present study utilized a qualitative methodology and employed a descriptive research approach. Information was gathered from a diverse data from the writings of the religious scholars and law professionals along with the policy makers.

Data Collection and Analysis

The collection of data for this study was meticulously sourced from rich historical narratives, statistical analyses, online libraries, scholarly writings, and the policies of Pakistan. To uphold the highest standards of objectivity and reliability, the researcher took great care in curating a comprehensive and diverse dataset. In the pursuit of an accurate portrayal of the current construct under study, the researcher opted for a narrative style of writing. This stylistic choice not only enhances the precision of presentation but also adds a layer of depth to the exploration of the subject matter, ensuring that the nuances and intricacies are effectively conveyed.

Results and Discussion

The discussion at hand illuminates the urgent need to confront the limited data surrounding abortion among women in Pakistan. This imperative calls for consistent engagement with legal authorities to foster an informed dialogue. The multifaceted approach includes discussions on Islamic legal perspectives, dissemination of research on unwanted pregnancies, and the imperative objective of enhancing awareness among key stakeholders regarding the consequences of the existing legal framework. Regular and occasional engagement with legal authorities emerges as a crucial strategy. By initiating discussions on Islamic legal perspectives on abortion within the legal assembly, there is an opportunity to reconcile religious beliefs with contemporary societal needs. This engagement not only aims to broaden the understanding of relevant experts but also underscores the importance of aligning legal frameworks with the well-being of women. Moreover, the dissemination of research on unwanted pregnancies to all levels of the legal assembly is pivotal for informed decision-making. This strategic sharing of information seeks to bridge knowledge gaps and provide legal experts with insights into the implications for women's well-being. The objective is to create a comprehensive understanding that transcends mere statistics, allowing for a more empathetic and holistic approach to the issue. Crucial to the discussion is the recognition that the current legal framework not only criminalizes women but perpetuates the hidden and perilous practice of abortion. Meetings and awareness campaigns become instrumental in ensuring that legal experts and policymakers are well-informed about these implications. The objective here is not merely

to highlight the flaws but to catalyze a drive for policy reform that prioritizes women's health and rights.

To achieve universal acceptance and endorsement of these changes, extensive support efforts are deemed necessary. Raising awareness among concerned stakeholders, which include not only legal authorities but also community leaders, healthcare professionals, and the general public, becomes a collective responsibility. This broad-based approach aims to create a societal shift in perceptions and attitudes towards women's reproductive rights. A pivotal aspect of this discussion involves recognizing the severe consequences of unsafe abortions, often accompanied by societal stigma. Particularly among marginalized individuals and women, the repercussions are far-reaching. Addressing these issues calls for a societal transformation that challenges the existing patriarchal norms. By reevaluating the role and agency of women, society can pave the way for increased access to safe abortions and the eradication of harmful practices.

The legal assembly, as a key player in this transformative journey, can play a significant role in reshaping societal attitudes towards abortion. Focused and persuasive advocacy messages should underscore the goal of providing abortion-related services to women who need them the most. This targeted advocacy seeks to safeguard vulnerable populations from resorting to hazardous practices and advocates for a healthcare system that prioritizes women's reproductive health.

Conclusion

Conclusively, Urgent attention is required to tackle the dearth of data on abortion among women in Pakistan, necessitating regular and periodic engagement with legal authorities. Initiating discussions on Islamic legal perspectives within the legal assembly is valuable, as is disseminating research on unwanted pregnancies to all levels within this institution. The primary objective is to deepen the understanding of pertinent experts and brief them on the implications for women's well-being. Concomitantly, it is imperative to ensure that legal experts and policymakers are well-versed in the adverse consequences of the current law, which not only criminalizes women but also perpetuates the clandestine and perilous practice of abortion. Achieving universal acceptance and endorsement demands extensive support efforts to raise awareness among concerned stakeholders.

Education of all key stakeholders is paramount, shedding light on the severe repercussions of unsafe abortions, often accompanied by societal stigma, particularly impacting marginalized individuals and women. Effectively addressing these issues necessitates a societal transformation, prompting a reevaluation of the role and agency of women within a patriarchal framework. Altering the attitudes of various societal segments will facilitate enhanced access to safe abortions for women. In this transformative process, the legal assembly can play a pivotal role.

Focused and compelling advocacy messages should lend support to the objective of providing abortion-related services to women who are most in need and are at risk of resorting to hazardous practices. The strategic dissemination of such messages aims to safeguard vulnerable populations and advocate for a healthcare system that prioritizes women's reproductive health.

Recommendations

Current research suggests that there is a need for reevaluation and reinterpretation of existing abortion laws to better address the needs and rights of women who have been subjected to sexual assault.

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