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Abortion in Bangladesh: A Critical Analysis of Laws and Practices

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ABSTRACT

This paper represents a study on abortion from a theoretical point of view. It is based on the method of social document analysis and represents a complex perspective on abortion, highlighting items of medical, ethical, moral, religious, social, economic and legal elements. It is critical to have a discussion on subject in order to understand the effectiveness and flaws of existing legislation and to identify appropriate alternatives. A comparative study has been made to think in noble ways for reformation.

KEYWORDS

Induced Abortion, Pro-life, Circumstances, Reformation.

RESEARCH METHODOLOGY

The research is conducted using qualitative method making a comparative study to discuss elaborately in order to alleviate problems arising from practicing and relying on the current state of abortion laws and finding a solution for it. The incidence of induced pregnancy and the characteristics of women who rely on abortion have also been studied.

INTRODUCTION

Abortion means a pregnancy interruption “before the fetus is able to live independently in the extrauterine environment, usually before the 20th week of pregnancy”.^[1] This interruption is deliberate. Abortion is the intentional termination of pregnancy, whereas a miscarriage is when an embryo or fetus dies before the 20th week of pregnancy. The Act XLV, 1860, of the Penal Code addresses the matter of abortion under the term miscarriage and is the only code that does so. It states that abortion is only permitted if the pregnant woman’s life is in danger; in such a case,

¹ The Medical Dictionary illustrated from A to Z Bucharest Litera Publishing House, 2014.

the abortion must be performed by a physician in a hospital setting. This means that a woman cannot avail abortion on request, even under dire circumstances, such as rape and sexual assault, fetal malformation or congenital disorders, and socio-economic stresses, etc. unless the pregnancy threatens her life. Pro-choice is for female activists and their beliefs on women taking control of their own body and making their own decisions. The other side of the debate in abortion is pro-life, which is defined as murder, killing an innocent baby which has no say. It has been reported that anti-abortionists relate having an abortion to murdering someone. They believe that a murder is intentional and so is an abortion because you are planning to abort the baby (Currie, 2000,103). Section 312 to 316 detail the punishments for inducing miscarriage for the offending people (including the pregnant woman) imprisonment of between three to ten years, transportation for life, and/or liability for fines. For instance, section 316 states, "Whoever without lawful excuse does any act knowing that he is likely to cause death to a pregnant woman and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." There have been many different ideas that have sprouted trying to solve the issue on whether abortion should be illegal or not because everyone has different views on it.

A COMPARATIVE STUDY

A survey of 6,513 married women under 50 conducted by Bangladesh Fertility Survey (BFS) found that 80% agreed to abortion for pregnancy as a result of rape or premarital sex, 53% approved when there was danger to the mother's life, and only 17% wanted abortion for economic reasons. Therefore, it is clear that there are multiple reasons and consensus among Bangladeshi women. Besides, Data from a longitudinal demographic surveillance system are used to analyze the outcomes of about 75,000 pregnancies between 1982 and 1991 in Matlab, a rural area of Bangladesh. Outcomes among women in the Matlab treatment area, who have access to an intensive maternal and child health and family planning program, are compared with those among women in a comparable neighboring area who receive the standard government-sponsored services. The incidence of abortion was higher among women who had had six or more births or who became pregnant fewer than 12 months after the previous pregnancy. Induced abortion ratios were higher among users of the pill or traditional methods than among users of injectable contraceptives or among contraceptive nonusers. In most subgroups, women in the treatment area were less likely to have obtained an abortion than were those in the comparison area. Abortion ratios in the treatment area began falling after

1992 and returned to 16 per 1,000 by 1995.[3]² A high-quality reproductive health program offering use-effective contraceptive methods can reduce the burden of induced abortion. In Bangladesh, the unintended pregnancy rate declined 37% between 1990–1994 and 2015–2019. During the same period, the abortion rate increased 26%. The share of unintended pregnancies ending in abortion rose from 30% to 60%.[2]³ Now, a supportive point of view for abortion is presented here briefly by comparing among India and Bangladesh. Abortion in cases of pregnancy due to rape has been permitted in India but not in Bangladesh which doesn't seem justified to me as a report on April 5, 2020 of Ain O Shalish Kendro(ASK), during January to March, 2020 depicts that total 257 women were raped, 12 were dead after being raped, 50 attempts to rape and 4 women committed suicide after being raped. Again, the deeply conservative Muslim country is estimated to have one of the highest rates of abortion in the world. In Pakistan abortion is legalized for saving the physical and mental health of the women, social and economic reasons. Given a lack of clarity in interpreting the law, legal abortion services are difficult to obtain, and most women who have an abortion resort to clandestine and unsafe procedures. Abortion law should be liberalized because due to restrictive rules, women undergo unsafe abortions secretly which leads to increased maternal morbidity and mortality rate. Besides, a liberal abortion law does not ensure safety, service guidelines must be written and disseminated, providers must be trained and government must be committed to ensuring that safe abortions are available within the bounds of law. Specifying the place of act and authority of abortion as done in India, is a necessity in Bangladesh. The present laws of Bangladesh should be reformed in broader sense but not to encourage any unethical or immoral activities but only for the good cause as restriction compels even the dignified to use illegal ways.

INTERNATIONAL DOCUMENTS

The need for legal abortion to be safe and accessible was also supported by States at the International Conference on Population and Development (ICPD), held in Cairo in 1994. At that Conference, States recognized unsafe abortion as a major public health concern, and pledged their commitment to reducing the need for abortion through expanded and improved family planning services, while at the same time recognizing that, in

² M. Kapil Ahmed, Mizanur Rahman, Jeroen van Ginneken International Family Planning Perspectives Vol. 24, No. 3 (Sep., 1998), pp. 128-132.

³ Bearak J et al., Country-specific estimates of unintended pregnancy and abortion incidence: a global comparative analysis of levels in 2015–2019, *BMJ Global Health*, 2022.

circumstances where not against the law, abortion should be safe. The exact same language on abortion was adopted by States in the Beijing Platform for Action, which was agreed at the 1995 Fourth World Conference on Women.[4]⁴ Human rights mechanisms have expressed concern about criminal abortion laws and encouraged States to review their legislation to ensure effective and confidential access to safe legal abortion in cases when the pregnancy endangers the life or health of a pregnant woman or pregnant girls[5],⁵ would cause substantial pain or suffering[6]⁶ and in cases of pregnancy resulting from rape or incest[7]⁷. Treaty bodies have also recommended ensuring access to abortion services in cases of fetal impairment, while also putting in place measures to protect against discrimination based on disability[8]⁸. According to the UN: “Repealing anti-abortion laws would save the lives of nearly 50,000 women a year all over the world. In countries which prohibit it, women who seek health services for an abortion, whether to carry out the termination or seek medical care after a miscarriage, may be subjected to prosecution and imprisonment.” International and regional human rights norms have evolved significantly to recognize that the denial of abortion care in a range of circumstances violates women’s and girls’ fundamental human rights. The Human Rights Committee urged Bangladesh in 2017 to revise its legislation to provide for additional exceptions to the overly broad ban on abortion, ‘including in cases of rape, incest, fatal fetal impairment and for therapeutic reasons, and to ensure that women are

⁴ Fourth World Conference on Women, Platform for Action (1995), para. 106(k). See also United Nations General Assembly Resolution, A/RES/S-21/2 (1999) on Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development para 63.

⁵ Human Rights Committee, Concluding Observations on Poland, CCPR/C/POL/CO/7(2016) para; Committee on the Rights of the Child, Concluding Observations on Chad, CRC/C/15/Add.107 (1999), para. 30

⁶ 30 Human Rights Committee, Concluding Observations on Jordan, CCPR/C/JOR/CO/5 (2017), para. 21.

⁷ 31 Concluding observations on Argentina, CCPR/C/ARG/CO/5 (2016), para. 12; Concluding Observations on Bangladesh, CCPR/C/BGD/CO/1 (2017), paras. 15-16; Committee on the Elimination of Discrimination against Women, Concluding Observations on Trinidad and Tobago, CEDAW/C/TTO/CO/4-7 (2016), paras. 32-33; Concluding Observations on the Federated States of Micronesia, CEDAW/C/FSM/ CO/1-3 (2017), para. 37(b); Committee on Economic, Social and Cultural Rights, Concluding Observations on Philippines, E/C.12/PHL/CO/5-6, paras. 51-52; Committee on the Rights of the Child, Concluding Observations on Bhutan, CRC/C/BTN/CO/3-5 (2017), paras. 52-53; Committee against Torture, Concluding Observations on Peru, CAT/C/PER/CO/4 (2006), para. 23. See also, A/HRC/31/57, para. 72. (b).

⁸ 32 Joint Statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), 29 August 2018.

not denied medical services and are not prompted by legal obstacles, including criminal provisions, to resort to unsafe abortions that put their lives and health at risk.

LIMITATIONS

There remains lack of better family planning services in limiting abortion rates. Bangladesh has managed to maintain a very low abortion rate during its fertility transition but it faces increasing challenges in doing so in the face of continuing social transformation and population crowding. Inadequate awareness on SRHR among the people specially people living at village, lack of adequate skilled healthcare personnel, equipment and health financing of health. In spite of government strong will towards access to contraception and Menstrual Regulation (MR), too little has been done to stop unsafe abortion and care facilities, which are an integral part of the sexual and reproductive health needs facing women and young girls in Bangladesh. Besides, the laws are not reformed accordingly with passing time. Lack of rules regarding specified authorities and places are giving rise to illegalities. There are very few laws regarding abortion and only the grounds for which abortion is valid are mentioned and the grounds for which abortion should not be done are not mentioned in the law.

RECOMMENDATIONS

It can be demonstrated that better family planning services can help abortion rates remain low in situations where they otherwise might rise. Increase of contraceptive use can also benefit public health by reducing the health problems and burdens on health service resources that result from unsafe abortions in particular. The authority of carrying out abortion and the places where it can be performed safely should be specified to avoid any misuse. Laws have to be reformed mentioning all the circumstances and every aspects in detail for which abortion is not legal and the penalties in case of each of the illegal acts. Liberality should be only for the good cause and humanity concerns.

CONCLUSION

It is against the law of nature to do an abortion at any stage of pregnancy. Being against abortion is defending the unborn that is not present to defend herself now (Whitten, 2013). The pro-life arguments also state that there would be no need to abort if there are good adoption policies that allow people to give their babies for adoption. There are hundreds of explanations on why women get an abortion, but there is still no justification for taking away someone's life. But in other sense women shouldn't have to dread

motherhood or adoption, and they certainly shouldn't risk their lives to avoid it. We must support women and families beyond birth and cultivate a positive and supportive experience to protect women and preborn children. But any kind of encouragement must not be shown to the unethical activities in the name of claiming rights. Laws should be for protecting the humanity and penalizing the immoral.