

Reflections on Our Countries [Special Edition]

in Commemoration of the International Safe Abortion Day

State of Abortion in Asia and the Pacific:

Fiji - Pakistan - Philippines - Sri Lanka

September 2016



Every month RESURJ members will collectively share and reflect on some news highlights affecting sexual and reproductive, environmental and economic justice from the different regions and countries we work in...

Fiji: Providing abortion for women under any circumstance and without discrimination of any kind

Abortion in Fiji is mostly provided by private practitioners in a legal situation characterized by its vagueness and without any government or medical supervision or guidance. Section 234 of the Penal Code of Fiji states that a person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation, upon any person for his/her benefit, or upon an unborn child for the preservation of the women's life, if the performance of the operation is reasonable with regard to the patient's state at the time and to all circumstances of the case. While the article does not specifically mention abortion, it has been drafted with such detail and is therefore used for cases of abortion.

The Supreme Court in 1976 (criminal case no.16) further clarified the law by specifying that abortion is permitted when the performing physician had formed an opinion "in good faith" that the abortion is necessary to preserve the pregnant woman's mental and physical health, "taking into account the social circumstances of the patient". Thus, in practice the law is interpreted very liberally. An abortion may be performed on the grounds of fetal malformation, rape or incest as they may be interpreted as producing a risk to the woman's mental health; it may also be performed in cases of economic duress.

Despite the openness of the law, most women cannot access this legal service due to costing and/or unfriendliness of services for marginalized groups of women or women from LGBTI communities because of discrimination. When these women seek help from illegal practitioners or midwives, or when they are referred to hospital due to complications arising from the operation, these women are put on trial at a personal level. It has been very disturbing to know that women who had abortions at the hands of individuals not professionally trained to do so but doing so to help these women, are been accused of committing an indictable offence. This situation is to no-one's benefit, their trials serve to frighten legitimate providers away from helping women, while they should instead be forcing the public, the medical profession and the legal system to see what is happening and activate a process of change in law and practice.

Women's Human Rights defenders and abortion advocates are behind the good work in trying to get the Pacific Island nations to legalize abortions under all circumstances, because abortion is an integral issue for all

women regardless of our ethnicity, life status, sexual identity or disability; all women should have an equal right to make a decision over their bodies freely without any pressure to reproduce.

Pakistan: When abortion is used as a method of family planning

Sheena Hadi, Director of Aahung, and member of RESURJ

In 2002, a nationwide study (conducted by the Population Council) was conducted on unwanted pregnancy and abortion in Pakistan, which revealed that in that year alone, there had been close to 900,000 abortions in the country. In 2012, a comparative [study](#) (also by the Population Council) found that there had been 2.25 million abortions in country in the past years, of which [623,000 women](#) were treated for post abortion complications. A further analysis of the women who seek abortions shows that a majority of these women were married, had three or more children, and cited poverty and inability to take care of/afford another child as the main cause of termination. This suggests that in many cases, due to myths and misconceptions related to contraception use, supply side problems, and limited decision-making and women's control over their bodily rights; abortions are being used as a method of limiting family size.

The [abortion scenario](#) in Pakistan is complex for a number of reasons; it is a perfect storm of restrictive laws, a conservative socio-cultural context, lack of quality healthcare services, complicated gender dynamics; and a very high unmet need for family planning.

In 1990, the 1860 penal code with regards to abortion was modified in the country, making it permissible to abort a fetus under the gestational age of 4 months **to save a woman's life**. In 1997, a further clause was added stating that it is also permissible to provide an abortion **to provide necessary treatment**. Under this law, there is flexibility for the provision of safe services as necessary treatment may include social, emotional, mental and physical wellbeing. This law however does not uphold the right of women to ask for a pregnancy termination even in the case of rape, incest, or fetal anomalies. Yet, the abortion movement in Pakistan is hesitant to discuss decriminalization of abortion due to the risk of further tightening of the existing law, under which many providers do currently provide safe services to women. However, this comes with significant drawbacks including that many healthcare providers, as well as legal professionals [perceive](#) abortion to be forbidden under Islam and the law due to lack of clarity and knowledge.

A number of organizations in Pakistan have chosen to approach the problem by using health-based arguments to work with providers to limit maternal morbidity and mortality related to unsafe abortions. However, the barriers to women seeking quality, rights-based services are still innumerable and it is critical that stigma and discrimination around the issue of abortion be addressed alongside improved knowledge and skill for health care providers. In the end, until it is acknowledged that women have a fundamental right to control their bodies, decisions related to pregnancy will remain political and at the discretion of an often judgmental society.

Philippines: Taking matters into their own hands

May-i Fabros, member of Women Health Philippines and member of RESURJ

Every hour, 24 adolescent girls give birth in the Philippines. For the majority, it's their first or second child, but for others it may be their fifth. While neighboring countries in Southeast Asia are slowly curbing adolescent pregnancy, it is rising in the country.

This is the backdrop of two Supreme Court decisions in the last couple of years, which inadvertently institutionalised barriers for adolescent girls and young people to access life-saving services and commodities.

First, although, the recognition of the constitutionality of the Responsible Parenthood and Reproductive Health Law is laudable, it institutionalised parental consent, one of the potential/known barriers for adolescent girls in accessing health care.

Even if they've been pregnant, suffered a miscarriage or already have children, as long as they are minors, they cannot access life-saving reproductive services and commodities without the written consent of their parents or guardian, except in life threatening situations, or through information and education.

The Supreme Court decision put weight on the right of parents to exercise parental control over their minor-child to protect and strengthen the family as an inviolable social institution as espoused in the Constitution.

However, perhaps in a moment of clarity, the Supreme Court also recognised the right of the minor-child to access information on family planning and services that would enable the girl-child to take proper care of her own body and that of her unborn child, and appreciated the role of parents in assisting their child in making decisions - whether to accept or reject the information received. This is in line with the State's recognition of the importance of making informed decisions in the protection and maintenance of ones' health.

The Supreme Court recently decided (after 15 months) not to lift the Temporary Restraining Order (TRO) it imposed in 2015, despite the plea from the Department of Health and Food and Drug Administration. The TRO prohibits the Department from 'procuring, selling, distributing, or administering, advertising, and promoting

the hormonal contraceptive Implant and Implant NXT' and 'granting any and all pending applications for registration and/or decertification for reproductive products and supplies including contraceptive drugs and devices'. This has grave implications as it extends, beyond the prohibition of all actions related to contraceptive implants, the indefinite suspension of the provision of all FP contraceptives (given the Supreme Court's nullification of the certification and recertification of 77 applications issued by the Food and Drug Administration covering 77 contraceptive drugs and implants), threatening not only adolescent girls' and young women's lives but all women's lives. Furthermore, the decision is a set back to the full implementation of the RH Law as it brings the whole discourse back to zero, by making "protection of the unborn" the standard or indicator for what are abortifacients (given also the SC decision tasking the FDA to determine anew whether 77 kinds of contraceptives are abortifacients or non-abortifacients).

These decisions tighten the already restrictive space for adolescent girls and young people to make decisions about their own bodies pushing them to find alternative, albeit unsafe ways, to manage their health, control their fertility and prevent sexually transmitted infections.

In the absence of services and contraceptives, and conflicting information on sexual and reproductive health and rights, Filipino adolescents are left on their own, such that in lieu of a condom, a local brand of plastic for ice candy/lollies is used.

But in the event of an unintended pregnancy, adolescent girls are forced to take even more risks, resorting to backstreet abortions, drinking made up concoctions or combined with drugs if the other methods do not work, almost all of which are unsafe and may result in fatal consequences.

"It is primarily the poorest and the youngest who take the highest risks." (Beijing Platform for Action, Para 92). Again, in the absence of services due to institutional and cultural marginalization and discrimination, girls and young women take matters into their own hands.

Abortion is illegal in the Philippines, and so despite the policy on post-abortive care, women, especially adolescent girls, who go to emergency rooms bleeding, are assumed to have induced abortion and are treated like criminals, interrogated and hounded to admit that they've undergone abortion, sometimes prior to medical attention.

It is worse for girls and young women compared to women of the legal age of 18 years old, they still cannot make decisions about their bodies, with government authorities exercising oversight and control in life-threatening situations.

The proportion of adolescent maternal deaths doubled from 5 to almost 10 percent between 2000 and 2010 (NSO 2013). Deaths resulting from unsafe abortion contribute to this rise, but given its clandestine nature the assumption is based on estimates.

The prevailing notion is that adolescent girls and young people are 'not yet ready' (physically, emotionally, mentally) to be mothers, thus the premature deaths. However, digging through studies on consequences of teenage fertility shows that if all things are equal - that means access to food and nutrition, information, services, etc., [obstetric outcomes are favorable for adolescents](#).

Institutionalizing barriers to access sexual and reproductive health services and commodities, such as parental consent perpetuates the discrimination against adolescent girls to decide over their bodies and subsequently their lives.

What is clear is that adolescent girls have the ability to make informed decisions (decision-making capacity - decisional autonomy), 'I am not yet ready to be a parent or I cannot have another child,' and the ability to carry out these decisions (executorial autonomy). Their actions reflect not just their capacity to decide, but their decision to take control of their life.

If the Supreme Court changes its decisions, perhaps adolescent girls and young women will have options and can make informed decisions about their sexuality and reproduction.

The ongoing battle for freedom of choice for Sri Lankan women

Lakmini Prabani Perera, Youth Champion of Asia Safe Abortion Partnership

It is estimated that nearly 1000 unsafe and illegal abortions take place in Sri Lanka daily (Family Planning Association Sri Lanka). Even some studies shows that induced abortions and complications that emerge from unsafe and illegal abortions account for 6% of maternal deaths and 7%-16% of admissions of females to public hospitals in Sri Lanka.

The existing law related to termination of a pregnancy has its roots in colonial history that was enacted by the British in 1883. This law hasn't changed since then.

Under the Penal Code of 1883 Section 303, abortion is a criminal offence in Sri Lanka except when performed to save the life of the woman. Any person performing an illegal abortion is liable to be punished with imprisonment for a term, which may extend to 3 years or with a fine or with both.

According to Section 304 in case of the death of such a woman, the person performing an illegal abortion shall be punished with imprisonment up to 20 years.

The law grants permission for women and girls to perform a safe abortion if they face life-threatening conditions related to the pregnancy. Yet many adolescent girls aren't aware of the current law and end by dying while giving birth.

There were several attempts that took place to amend the law. In 1915 Ministry of Justice presented a Bill to the parliament clause 3 of which would decriminalize abortion in the cases of rape, incest and congenital abnormalities that are incompatible with life. While presenting the bill in parliament clause 3 was withdrawn by the then Minister of Justice. So it was a failed attempt. Another bill was introduced in 2011 to amend the law by the [Commission of Law](#) – a legal body established by the President to review laws - but failed as well.

The Commission of Law is trying to engage representatives from the Sri Lanka Medical Council, the Sri Lanka College of Obstetricians and Gynecologists and the Sri Lanka College of Psychiatrists in a discussion around possible [amendments](#). Some of the points being discussed include who should seek abortions, which hospitals can terminate abortions, by whom a termination can be performed, the procedure that grants approval for a termination and the panel of professionals who approve.

As a result of these discussions, on 25th of August 2016, the Sri Lanka College of Obstetrician and Gynecologists launched a [campaign](#) to decriminalize abortion under three conditions: severe congenital abnormalities in the fetus incompatible with life up to 22 weeks of pregnancy, pregnancy resulting from rape and incest up to 20 weeks.

With the restrictive social, cultural and religious backgrounds existing in Sri Lanka it has been a hard battle to amend the law. Yet lives of thousands of women and girls are in danger of unsafe and illegal abortions and lack of information. Most of the people think implementing comprehensive sexuality education would stop unsafe and illegal abortions but it is equally important to amend the existing law. It is very positive to see the stakeholders engaged in discussions around amending the law and yet women and girls in Sri Lanka cannot claim they experience freedom of choice until they have the right to a safe abortion no matter what their condition is. It should be their right to choose.