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Joint Stakeholder Report
on

Sexual and Reproductive Health and Rights in Pakistan
submitted by:

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Forum for Dignity Initiatives is a research and advocacy forum working for sexual and gender minorities in Pakistan. FDI Pakistan is a nonprofit, nonpolitical, non-partisan, nongovernmental, nonreligious civil society organization promoting the rights of identified marginalized groups.
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Sexual Rights Initiative

The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and Southern Africa that work together to advance human rights related to sexuality at the United Nations.
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Asia Pacific Alliance for Sexual and Reproductive Health and Rights

APA is a network of national, regional and global civil society organizations that advocate for the fulfilment of sexual and reproductive health and rights (SRHR) for all persons in the Asia Pacific region.
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Sexual and Reproductive Health and Rights, women's health, transgender persons' rights, gender based violence, non-discrimination, stigma, Pink Tax, bodily autonomy, access to information, comprehensive sexuality education, youth friendly health services.

Executive Summary

1. This joint stakeholder report assesses Pakistan's progress since its third cycle review in meeting its obligations to respect, protect, and fulfill the sexual and reproductive health and rights obligations it has towards young people, particularly women and transgender persons. The submission focuses on access to safe abortion, the sexual rights of LGBT people, and access to sexual and reproductive health information, education and services.

2. Women in Pakistan lack the necessary agency and recognition of their bodily autonomy to allow them to enjoy a full range of their sexual rights including the ability to access safe abortion on demand, to engage in sexual activity of their choosing, and to access gender affirming healthcare.

3. For women and girls in Pakistan, particularly those who are young and/or unmarried, many barriers still exist to ensuring access to quality sexual and reproductive health services, education and information. Pakistan does not recognise comprehensive sexual education and SRH information, and available menstrual product varieties are limited and highly taxed. Based on the law, women still have no right nor control over their bodies and are not accorded the agency to make choices directly impacting their right to bodily autonomy. Abortion is not available on demand, and must be sanctioned by a woman's husband in cases where it is legally permissible. This ignores cases of marital rape, incest, unwanted pregnancies, vulnerable physical and mental health of women, and physical and sexual assault.

4. There are no laws prohibiting discrimination on the basis of sexual orientation in Pakistan, leaving LGBTQI people vulnerable to violence and discrimination, and unable to receive care for their sexual health nor access gender affirming healthcare. Same-sex marriage and civil partnerships are prohibited. Transgender people face barriers to accessing quality healthcare in Pakistan, largely due to marginalization. Healthcare providers lack knowledge on how to treat transgender people, causing many to seek care from unsafe, unregulated and extortionate service providers on the parallel market.

Introduction

5. This joint stakeholder report focuses on sexual and reproductive health and rights in Pakistan, with a particular emphasis on access to abortion, comprehensive sexuality, and discrimination in accessing sexual and reproductive health services. The report centres the experiences of young people, particularly women in their attempt to enjoy their sexual and reproductive health and rights. A particular emphasis has been placed on youth as Pakistan has a huge youth bulge, comprising almost 64% of the total population. Additionally, girls and women make up at least 51% of the total population in the country.

6. In developing this report, Forum for Dignity Initiatives (FDI) used a consultative model, and organized three consultations with a diverse group of young people including medical care providers, transgender community representatives, girls and young women from universities. A total 90 participants were engaged for these consultations. In addition, FDI also engaged 7 subject experts from the civil society sector, and policy makers directly involved in policy making and influencing the decision-making regarding health in general and women

health. Young participants from these three consultations have identified and prioritised the three issues to be presented in this shadow report.

Legal and Policy Context

7. Pakistan is a Muslim-majority country and is largely influenced by Sharia laws and practice. Everything associated with sexual health and rights, sexual and reproductive choices, bodily autonomy, sexual orientation and preferences is considered taboo, and is referred to as being against the religious beliefs of Muslims.

8. Women in Pakistan continue to be subjected to harmful social and cultural practices and have been controlled like a commodity. Women still have no right or control over their bodies and are not accorded the agency to make choices directly impacting their right to bodily autonomy. This lack of agency spans a broad number of decisions, for example concerning their sexual orientation, preferences or practices. Penal Code section 377 criminalises acts of 'carnal knowledge against the order of nature'.

9. Whilst Pakistan enacted the Reproductive and Healthcare Rights Act, it takes a very narrow approach that does not recognize "sexual health and rights" but only focuses on "reproductive health"[1] which is linked to the state's population and development objectives, namely, to lower the fertility rate through family planning and spacing.[2]

10. Additionally, the Act reflects the social moralisation of reproductive health such that its provisions are limited to married couples only. Indeed, Pakistan is still committed to the belief that married couples are defined as a "man and woman, both cisgender and heterosexual", given that same-sex relationships are still criminalised under section 377 of the penal code, and transgender people do not have the right to marry. Thus, heterosexual married couples have access to family planning information and services set up by the public and private sectors.

11. Despite what may seem like enabling policies with regards to family planning and reproductive health, the policies exist within a population and development framework, outside of acknowledging women as rights holders, and without grappling with the social and economic status of women in Pakistan and how their subordination can act as a barrier to accessing services and commodities, and to enjoying their rights. Thus, the government frames issues of sexual and reproductive health and rights, as Maternal and Child Health Issues or Family Planning issues, and not as issues pertaining to women's right to inter alia bodily autonomy.

12. Additionally, women cannot freely decide whether to marry and if so, who their spouse should be. Women and trans people also lack the ability to decide whether to have children, and if so, to choose the number or spacing of children, and they lack the right to freely choose to terminate a pregnancy as access to abortion is restricted.

13. Access to accurate information poses a challenge when it comes to making decisions about accessing sexual and reproductive health services and rights.

14. There is a lack of political commitment to allowing cis and transgender women to enjoy their rights to bodily autonomy and their sexual reproductive health and rights, as evidenced by the lack of adequate budgetary allocation for health in general. The health budget is less than 2%[3] of the overall budget, and there isn't a particular allocation for women or for sexual and reproductive health and rights broadly. This very tiny portion of the overall health budget covers maternal and child health in general, but it does not engage a sexual and reproductive health paradigm that considers women's varying health needs whether they are pre- or post-natal, nor does it provide for access to safe abortions, contraceptives or even menstruation hygiene kits.

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[1] Pakistan | Family Planning 2030 (fp2030.org)

[2] https://fp2030.org/news/president-pakistan-stresses-birth-spacing-amid-rising-population

[3] Budget_in_Brief_English.pdf (finance.gov.pk)

15. This is despite the promise that the Pakistan government made at the Nairobi Summit in 2019 to double "Federal and Provincial Population and Health budgets for Family Planning and Reproductive Health (FP/RH)", ensuring "timely releases", and to establish "a five-year non-lapsable Population Fund with annual allocation of Rs.10 billion (USD 63.7 million) for FP/RH services",[4] amongst other SRHR commitments. Major gaps remain at both service delivery and policy level, preventing adequate access to basic health facilities.

16. This contravenes key international commitments that Pakistan has signed on to, such as the International Conference on Population and Development (ICPD) Programme of Action (PoA), the Beijing Platform for Action (BPfA), and Agenda 2030 for Sustainable Development.

Access to safe abortion

17. We regret that Pakistan did not receive any recommendations directly on the issue of safe abortion. However, Pakistan received 21 recommendations on violence against women and accepted 20 of them, including the following recommendations:

    a) Strengthen its efforts to combat discrimination and violence against women and girls to achieve the exercise of their rights under conditions of equality. (Ecuador)

    b) Enhance activities aimed at eliminating discrimination against women and gender-based violence. (Kyrgyzstan)

18. Additionally, Pakistan received and accepted two recommendations on sexual and reproductive health and rights broadly, made by Iceland and Kazakhstan, which directly implicate access to safe abortion:

    a. Ensure women's rights over their sexual and reproductive health through an enabling policy. (Iceland)

    b. Take effective measures to improve women's access to health services, in particular reproductive health services. (Kazakhstan)

19. Abortion in Pakistan is covered under Pakistan Penal Code (Act XLV of 1860), Chapter XVI, Section 338(A)-(C), and it does not allow women to make independent decisions over their body nor have bodily autonomy, as abortion is not available on demand. Abortion in Pakistan is restricted, with the only exceptions under which it is permitted being to save a woman's life or to provide "necessary treatment", as long as the foetus' organs have not developed- which Islamic scholars estimate to be at about four months. Similarly, the penalties associated with illegal abortions hinge on the developmental stage of the foetus, before organs are formed, the offense is penalized under civil law (ta'zir), by imprisonment for 3–10 years. After organs are formed, traditional Islamic penalties, in the form of compensation (diyat), are imposed. Depending on the outcome of the abortion, imprisonment may be imposed as well[5]. Given a lack of clarity in interpreting the law, and restrictive religious and cultural norms and practices, safe abortion services are difficult to obtain and access to abortion is highly stigmatised.

20. Per section 338 of the Penal Code, "whoever causes a woman a pregant woman 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 for her is said to cause Isqat-e-Haml." This is punishable by up to ten years in prison if caused without consent of the woman, and three years if caused with consent of the woman[6]. In order

[4] A complete list of Pakistan's commitments is accessible here:
https://fp2030.org/sites/default/files/Pakistan%20commitments%20at%20ICPD25%20Summit%20Nairobi.pdf

[5] United Nations Population Division, Abortion Policies: A Global Review, New York: United Nations, 2002.

[6]https://reproductiverights.org/maps/provision/pakistans-abortion-provisions/#:~:text=338.&text=%E2%88%92%20Whoever%2C%20causes%20woman%20with%20child,cause%20isqat%2Di%2Dhaml.

to access abortion under the exceptional grounds, women are required to obtain prior written consent from their spouse in cases where abortion is permitted, ignoring cases of marital rape, incest, unwanted pregnancies, vulnerable physical and mental health of women, and physical and sexual assault.

21. Pakistan has not made progress on providing access to safe abortion since it was last reviewed during the third cycle. This is despite the fact that Pakistan committed to providing access to safe abortion in the 2013 Asia Pacific Ministerial Declaration on Population and Development, and also committed to "reduce maternal morbidity and mortality to less than 70 per 100,000 live births by 2030" at the 2019 Nairobi Summit (ICPD25[7]). Respecting women's right to bodily autonomy through ensuring access to safe and legal abortion would help Pakistan fulfil this commitment.

22. The decision on whether or not to continue a pregnancy should rest with women, free from coercion or violence. Access to abortion has a crucial impact on Pakistani women's enjoyment of other rights. Despite the restrictions, abortions do take place, but this has a toll on women's health because they take place in unregulated environments which might be unsafe or performed by untrained or non-certified service providers. As a result, women are not provided with any pre or post-abortion care. Furthermore, women pay huge amounts to undertake these backdoor clinic options and the untrained/non-certified service providers extort money from these service seekers.

Sexual Rights of LGBT people

23. Pakistan received a number of recommendations on the rights of transgender persons including the following recommendations which it noted:

    - 152.88 Protect the rights of lesbian, gay, bisexual, transgender and intersex persons and take the necessary measures to guarantee their protection and a life free from discrimination (Mexico);

    - 152.90 Accelerate the enactment of laws for the protection of lesbian, gay, bisexual, transgender and intersex persons, in particular the Transgender Persons (Protection of Rights) Bill (France) (Noted)

    - 152.92 Ensure that the 2017 law, which is presently being reviewed, on the recognition of the rights of intersex and transgender persons pays the necessary attention to both transgender women and men (Albania);

24. We commend Pakistan on the enactment of the Transgender Persons (Protection of Rights) Act, 2018 on 8th May 2018, which prohibits discrimination against transgender people. However, in practice there are no penalties for transgressors of the law, and transgender and gender non-conforming people in Pakistan, particularly trans women, are still marginalized and vulnerable to violence and discrimination.

25. Transgender people face barriers to accessing quality healthcare in Pakistan, largely due to marginalization. Healthcare providers lack knowledge on how to treat transgender people, and approximately 70% of the transgender persons in Pakistan believe they receive poor quality of healthcare services[8]. Non acceptance, feeling ashamed, non-availability of Computerized National Identity Card (CNIC) and non-affordability have been reported as the major barriers in obtaining healthcare[9].

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[7] A complete list of Pakistan's commitments is accessible here: https://fp2030.org/sites/default/files/Pakistan%20commitments%20at%20ICPD25%20Summit%20Nairobi.pdf

[8] Manzoor I, Khan ZH, Tariq R, et al. Health Problems & Barriers to Healthcare Services for the Transgender Community in Lahore, Pakistan. Pak J Med Sci. 2022;38(1): 138-144. doi: 12669/pjms.38.1.4375

[9] ibid.

26. Transgender women face barriers in enjoying their sexual and reproductive rights because of their inability to access gender affirming healthcare, as it is not available in public health facilities. This means that some transgender women are forced to seek out services and commodities on the parallel market, often at extortionate costs and without adequate safety regulations.

27. There are no laws prohibiting discrimination based on sexual orientation in Pakistan. Same sex marriage and/or civil unions are still prohibited- a form of discrimination against LGBTQ persons. The prevalence of homophobia, heteronormativity and genderism means that many LGBTQ+ people get into heterosexual marriages by choice or force, or 'live in the shadows. '[10]

28. Further, whilst the Transgender Persons (Protection of Rights) Act 2018[11] provides legal recognition to transgender persons, prohibits discrimination and harassment, and places an obligation on local governments to provide for the welfare of the community, it does not address transgender persons' right to marriage or to establish a family.

Access to sexual and reproductive health information, education and services

29. Pakistan received two recommendations on sexual and reproductive health and rights during the 28th session, and both were accepted:

    a. Ensure women's rights over their sexual and reproductive health through an enabling policy (Iceland)

    b. Take effective measures to improve women's access to health services (Kazakhstan).

30. For women and girls in Pakistan, particularly those who are young and/or unmarried, many barriers still exist to ensuring access to quality sexual and reproductive health services, education and information.

31. There is a lack of access to information about sexual and reproductive health and rights. The lack of age-appropriate sex education deprives women in Pakistan from a young age, from learning and equipping themselves to make well-informed decisions about their bodies and their sexual health, and to consent. Comprehensive sexuality education (CSE) will help young people to attain highest levels of sexual health and help them to recognize and protect themselves from sexual and other types of abuse.

32. Pakistan does not recognise CSE, and therefore it is not part of the school curriculum. General information is available under the title of "life skills-based education (LSBE)", which covers basic information about the difference between gender and sex, and good touch versus bad touch. However, it does not provide enough education to adolescent and young people to learn about sexuality, consent and sexual health.

33. Menstrual health is essential to the wellbeing and empowerment of women and adolescent girls. Yet, sanitary products are highly taxed in Pakistan. It is difficult to access hygienic and eco-friendly sanitary products; mainly all that is available is napkins- which add an additional cost burden to lower income households every month. To manage the monthly budget, most girls and women from lower income households rely on used clothes as napkins and reuse them several times, washing them with regular detergent. As a result they cause allergies or infections.

Recommendations for action

The following are recommendations for addressing sexual and reproductive health and rights in Pakistan:

34. Recognize sexual health as a fundamental right for all women, young people and transgender persons.

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[10] The Flickering Edge of Hope: Pakistan's LGBTQ+ Community Battles Prejudice and Discrimination, April 19, 2021 https://thediplomat.com/2021/04/the-flickering-edge-of-hope-pakistans-lgbtq-community-battles-prejudice-and-discrimination/

[11] Act available here: https://na.gov.pk/uploads/documents/1526547582_234.pdf

35. Amend the Transgender Protection of Rights Act 2018 to recognize and protect the right to marriage.
36. Include transgender health, including transition health (hormone therapy, gender confirmation surgery), in Bachelor of Medicine and Bachelor of Surgery (MBBS) curricula
37. Organize trainings for healthcare providers on transgender gender confirmation surgeries and hormone therapies
38. Amend the abortion law section 338 “Isqat-e-Haml” to allow healthcare providers to provide safe abortion services to women with all their diversity without prior written consent by their spouse.
39. Allocate at least 5% of the health budget to addressing young women and women’s sexual and reproductive health and rights
40. Remove tax on all sanitary products for women and girls. Provide free and eco-friendly personal and menstrual hygiene products to women and girls in all their diversity. Menstrual hygiene products for young and adolescent girls in school should be provided for free on both formal and informal school system campuses, with safe, clean toilets equipped with waste disposal systems and running water.
41. Set up youth-friendly health service centres across the country- not only within the premises of public and private health facilities, but also within educational institutions, sports complexes, community centres and playgrounds so that more young people have access and can visit the facilities and seek services, information, and counselling. Youth-friendly health services should also be trans inclusive.
42. Make age-appropriate comprehensive sexuality education part of the curriculum from elementary school level onwards, both in and out of school.