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CRITICAL APPRAISAL OF THE LAW ENFORCEMENT IN ABORTION CARE IN ETHIOPIA

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ABSTRACT

Objective: To illustrate the disparity in the law enforcement in abortion care and the widely reported induced abortion rates.

Design: A descriptive study.

Setting: The computer-entered data from the Federal Democratic Republic of Ethiopia Police Information and Documentation Center.

Materials and Methods: Two hundred and sixteen case files handled by the police in the last two years. The data of 326 subjects accused of alleged abortion related legal wrong doings were analysed for age, marital status, educational level, occupation and the due process in the court of law. The magnitude of induced abortions is reviewed from the available institutional based studies.

Results: The majority of aborting mothers, the service providers and their accomplices are found to be young, unmarried, poorly educated and of low socio-economic profile. The files that are under investigation and pending court rulings are remarkably high. The published incidence of induced abortion ratio of 318 per 1,000 live births is disproportionately greater than those that actually come under the attention of the law.

Conclusion: The 1957 law is not officially repealed and its restrictive nature is not influencing the prevalence of illicitly induced abortions since the legal instruments are not fully operational. This is the consequence of fewer complaints advanced to the police and/or lack of obligatory reporting system of the events by the service delivery points.

INTRODUCTION

A woman living in Addis Ababa will give birth to an average of 1.9 children during her lifetime, four children fewer than the national figure. The contraceptive prevalence rate is low (45%) and the rate of undesired pregnancy is put at 69.2% and is unprecedentedly high (1-3). Of the 1075 unsafe abortion cases surveyed in selected health facilities in Ethiopia, the second highest distribution of 25% was registered for Addis Ababa(4). A study conducted in five government hospitals in Addis Ababa yielded an abortion ratio of 318 per 1,000 livebirths(5). The sporadic institutional based maternal mortality rate, as a consequence of pregnancy or pregnancy-related causes, ranges between 560-871/100,000 livebirths(1,2,6). A survey of 32,215 Ethiopian households showed abortion to be the main cause of maternal death and illegal methods of abortion was documented in 92% of the cases(7). Generally, the portion attributed to complications of unsafely and illegally performed induced abortions, as the prime cause, is in the range of 22-54% (5,6).

Revisiting the 1957 Law that was enforced in 1958, induced abortion with the exception of therapeutic termination of pregnancy on maternal and foetal

indications is prohibited; and is punishable by the court of law. Furthermore, the advertising and prescription of contraceptives as a family planning method is not permitted by law, as stated under Article 802 of the Ethiopian Penal Code, since it is not officially repealed(8-10).

The aforementioned restrictive laws had no impact on the provision of post abortion care services within the context of emergency medical care, which in fact is integrated in the conventional health care delivery system. Such services are virtually available in all hospitals and 64.5% of the health centres. Moreover, it has been documented that 58.6% of all health institutions do provide post abortion family planning(11).

There is no means that enforces the reporting of the incidences by the health care professionals of the cases that have been established in induced abortions. The events are registered for management purposes and occasionally for medico-legal reasons but not for routine notification of the police. The objective of the study is therefore, to highlight the paradox of the reality in medical practice in contradistinction to the law enforcement. Moreover, efforts are made to increase the awareness of the policy makers and provide a venue for discussion of the issue.

MATERIALS AND METHODS

This was a descriptive analysis of 216 files of allegedly illicitly induced abortions reported to and handled by the police, and eventually brought to the court of law during the two year period from 1998-1999. The computer-entered data was obtained from the Federal Democratic Republic of Ethiopia Police Information and Documentation Center. This mainly involved individual police station reports, from the Addis Ababa City and its environs, of the 344 subjects who underwent abortion along with the service providers and their accomplices but with the exception of the women who lost their lives. All were charged for their alleged misdeeds against the law of the nation and the range of the penalties by category are presumed to vary according to their degree of involvement which is beyond the scope of the study.

The main variables considered for the purpose of the study included the current legal status of the cases and the age, marital status, educational level and occupation of the accused. There were no consistent data available for logical analysis with regard to the fees for service and the circumstances in which the termination of the pregnancy were performed. It was not part of the study design to analyse the medical, psychosocial and psychosexual consequences of the unsafe abortion.

A formal clearance is obtained from the Federal Police Commission for the conduct of the study and its publication. The identity of the concerned individual(s) or institution(s) is absolutely kept confidential and no intrusion into the private life of the subject(s) has been exercised. The compiled and analysed data is solely to be consumed for the good intent of the article.

Abortion care in this paper implies:-

- (i) provision of elective termination of a pregnancy on patient's request or for medical and social reasons either in the interest of the foetus or mother in a recognised centre.
- (ii) medical and surgical treatment of all abortion complications.
- (iii) post abortion family planning counselling and services to prevent future unwanted pregnancy and/or recurrence of similar event.

RESULTS

There was a total of 216 case files involving 121(35.2%) males and 223(64.8%) females who were under police custody for abortion related wrong doings during the period between 1998-1999. Of these, the data on 18 subjects (5.2%) were incomplete and hence excluded from the overall analysis, making available 326/344(94.8%) of the referent population composed of 111(34%) males and 215 (66%) females.

The individuals who were brought forth for possible criminal prosecution were relatively young with obvious clustering in the age bracket of 20-34 years (Table 1). The mean age for the total population was 26.6 ± 6.1 years while it was 27.6 ± 6.6 and 26.1 ± 5.7 years for the males and females, respectively. The age range for the males was 9-50 years in contrast to 12-43 years for the females.

Table 1

Age (years)	Male		Female		Total	
	No.	%	No.	%	No.	%
< 15	1	0.9	3	1.4	4	1.2
15-19	6	5.4	15	7.0	21	6.4
20-24	29	26.1	68	31.6	97	29.8
25-29	37	33.3	80	37.2	117	35.9
30-34	23	20.7	34	15.8	57	17.5
35-39	10	9.0	9	4.2	19	5.8
40-44	3	2.7	6	2.8	9	2.8
≥ 45	2	1.8	-	-	2	0.6
Total	111	100	215	100	326	100

Table 2

Marital Status	Male		Female		Total	
	No.	%	No.	%	No.	%
Married	38	34.2	110	51.2	148	45.4
Not Married	73	65.8	105	48.8	178	54.6
Total	111	100	215	100	326	100

Table 3

Occupation	Male		Female		Total	
	No.	%	No.	%	No.	%
Unemployed	11	9.9	81	37.7	92	28.2
Farmer	47	42.3	45	20.9	92	28.2
Private Enterprise	15	13.5	39	18.1	54	16.6
Government	28	25.2	8	3.7	36	11.0
Others*	10	9.0	42	19.5	52	16.0
Total	111	100	215	100	326	100

*Daily labourers, commercial sex workers, servants, housewives

Table 4

Educational Level	Male		Female		Total	
	No.	%	No.	%	No.	%
Illiterate	25	22.5	78	36.3	103	31.6
Elementary	36	32.4	53	24.7	89	27.3
High School	42	37.8	78	36.3	120	36.8
College/ University	8	7.2	6	2.7	14	4.3
Total	111	100	215	100	326	100

Table 5*Court proceedings of the accused versus files*

Status	Files	Male		Female		Total	
		No.	%	No.	%	No.	%
Under Investigation	70	37	33.3	60	27.9	97	29.8
Convicted	22	13	11.7	25	11.6	38	11.7
Acquitted	11	2	1.8	8	3.7	10	3.1
Closed	7	5	4.5	8	3.7	13	3.9
Pending	92	44	39.6	106	49.3	150	46.0
Not Found	14	10	9.0	8	3.7	18	5.5
Total	216	111	100	215	100	326	100

The current marital status of the accused revealed that 148/326(45.5%) were married and 178/326(54.6%) were not married (Table 2). The latter group is comprised of widows, divorced as well as singles including students and commercial sex workers. The defendants as shown in Table 3 are of low socio-economic strata, with the majority composed of the unemployed and subsistent farmers. The aborters, providers and their associates were engaged in the acts because of financial gains and/or fear of societal ostracism subsequent to the delivery of undesired child.

Over half of the study population belonged to lower educational level (Table 4). The risk taking behaviour may be closely associated with their education and inability to weigh the pros and cons of the consequences of abortion and the legal questions. The files under investigation and pending account for 75.8% as opposed to the convicted, acquitted, or cases closed as shown in Table 5. The figures demonstrate that there is a protracted course of the implementation of the legal processes.

DISCUSSION

In the presence of undesired pregnancy, it is not unusual for essentially law-abiding or acceding citizens to resort to illicit abortion. The strict anti-abortion laws and barriers to safe services further contribute to the breach in the rule of law. The factors that promote the indulgence in elective induced abortion for non-medical reasons can be further compounded by lack of sufficient financial resources, good level of education on sexuality and reproduction as well as failure to meet societal and familial expectation(12). The frequency of induced abortion is widely reported in the institution-based studies. Paradoxically, the number of cases that come to the attention of the law enforcement agencies is remarkably low. Therefore, it is with this understanding that the article brings forth only the iceberg of the situation in contradiction to the reality in practice.

The accused, as highlighted in the paper, are poorly educated, non-health care professionals, low income group and moderately young. It is not a hard

task to speculate the sordid disabilities and deaths that such a group may have inflicted upon the sets of the society who are notably found to be young, students, unmarried, unemployed and of low parity and socio-economic strata which is in consistent with other studies(13-16).

The back-log of files under investigation and pending are numerically quite high. There is a protracted course of the due process of law. The absolute need to speed up the public trial in the appropriate court is of paramount importance if there is a presumption for an actual or potential grievous wrong. The bottom line in the legal significance of vetting the files, however, is crucial in the assortment of the cases according to their merits or credibility. It is to be underlined, at this juncture, that the authors neither have the capacity nor the mandate to question the processes in the judicial system and draw further conclusions.

It is a common phenomenon that clandestine abortions are performed by untrained back-street abortionists who are poorly paid and at times by trained health care professionals in a non-designated environment for an exorbitant fee which only very few can afford to pay (15-18). The code embodied in Hippocratic Oath is disregarded and fear of recrimination from the law prevails since it is contrary to the ones recognised in statute. The data presented herein corroborates this observation and poses queries and questions with regard to the circumstances in which the terminations were carried out especially in the former group of service providers(15).

Moreover, it is an often-talked scenario or ascribed labels implicating some individuals or private institutions that are engaged in elective abortion. With this respect, there is no police investigation underway nor has there been any, contrary to the sacrosanct laws that are designed for the maintenance and wellbeing of the society. It is obvious that the figures analysed do not necessarily reflect the true picture of the situation in the eyes of the law.

The existing restrictive national law prohibits induced abortion except on medical grounds with the consent of qualified specialists or health care service providers. Nevertheless, post abortion care is permissible under the jurisdiction of the law like any other medical emergency(10). The study appreciates the fact that there is no mechanism in place which otherwise would have subjected the postabortion care service providers to report all the confirmed or probable cases of illicitly interrupted pregnancies by non-delegated individual(s) or institution(s). Inferentially, this amounts to co-operation or collaboration with the culprits in keeping silent or disregarding the incidences without bringing them forth to the law enforcing bodies. The number of files presented would surely be much greater had the practice been in congruence with the above observation or in conformity with the law.

The conundrum regarding the legality of the

circumstances in which illicitly induced abortions are carried out poses a challenge to the application of the rule of law. Even, the advertising and prescription or proscription of any family planning method as part and parcel of essential elements of postabortion care is in violation of the existing law, which is not yet officially repealed(9). Hence, there is a gap between the practice in the field and the law in operation.

Therefore, it is of utmost importance for the law enforcing agencies to keep abreast with the reality that induced abortion is not a rare encounter. In order to decrease the death of countless women who suffer of severe abortion related complications and moral hazards at the hands of untrained and poorly educated service providers who rather initiate than complete the abortion processes, health education on sexuality and reproduction plays an important role. To circumvent this ill practice legally, it is worth to recommend that elective abortion should be made safe, easily available, affordable, acceptable and to be performed by trained health service providers in recognised institutions so as to uphold the law and effect it rightly under the umbrella of the law.

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REFERENCES

1. Health and Health Related Indicators. FDRE, Health Information Processing Team Planning and Project Department, MOH, Jan.1998.
2. Demographic and Health Survey 2000, Ethiopia. Central Statistical Authority Addis Ababa, Ethiopia. ORC Macro, Calverton, Maryland, USA, May. 2001.
3. Hailu, A. and Kebede D. High risk pregnancies in rural and urban communities in central part of Ethiopia. *East Afr. Med. J.* 1994; **71**:661-666.
4. Ethiopian Society of Obstetricians & Gynaecologists. Survey of Unsafe Abortion in Selected Health Facilities in Ethiopia. May 2002, BSPP. Page 17.
5. Seyoum Y., Adane, G; Eyob, T. *et al.* A survey of illegal abortion in Addis Ababa, Ethiopia, Dec. 1993.
6. Kwast, B.E, Rochat R. and Kidanemariam W. Maternal mortality in Addis Ababa, Ethiopia. *Stud Fam Plan.* 1986; **17**:288 - 301.
7. Kwast B.E, Bekele M., Yoseph S., *et al.* Confidential Enquiries into maternal deaths in Addis Ababa, Ethiopia 1981-1983. *J. Obst. Gynae. East Cent. Afr.* 1989; **8**: 75-82.
8. Negarit Gazeta: 16th Year Extraordinary Issue No. 1 of 1957; The Penal Code. Page 161-163.
9. Stehay W. Abortion under Ethiopian Law: The Law and its Application. Law Library (unpublished, 1998).
10. Peter H.S. Roman Origins of the Ethiopian Law " Law of the kings " (Fetha Negast). *J. Ethiop. Law.* 1980; **11**: 71- 89.
11. The Family Health Department, MOH. Proceedings of the safe motherhood needs assessment workshop. October 1996.
12. Radhakrishna A, Gringle R.E. and Greenslade F.C. Identifying the intersection: adolescent unwanted pregnancy, HIV/AIDS and unsafe abortion. *Issues in Abortion Care.* 1997; **4**:1-17.
13. Nebreed F. Assessment of Post-abortion case load and description of aspects of patient characteristics in three teaching hospitals of AAU-MF. Dissertation. 1999.
14. Zufan L. Report on health consequences of abortion: reproductive rights Department of Obstetrics and Gynaecology, AAU-MF. Nov. 1999.
15. Gebreselassie H. and Tamara F. Responding to unsafe abortion in Ethiopia: A facility-based assessment of postabortion care services in public health sector facilities in Ethiopia. Chapel Hill, NC, Ipas. 2002; Page 9.
16. Ethiopian Society of Obstetricians and Gynaecologists. A Data Base on Abortion Literature Review. October 2000; BSPP, Page 14-34.
17. Ethiopian Society of Obstetricians and Gynaecologists. KAP Study on Abortion Among Ethiopian Health Workers. January 2002; BSPP, Page 8-17.
18. Lukman Y. and Pogharian D. Management of incomplete abortion with MVA in comparison to sharp metallic curette in an Ethiopian setting. *East Afr. Med. J.* 1996; **73**:598-603.