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En kritisk undersøgelse af diskurs i to abortlove i USA og Pakistan

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A Critical Study of Discourse in Two Abortion Laws in the United States and Pakistan

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## THE INSTITUTIONAL INTEREST IN CRIMINALIZING ABORTION

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**The Institutional Interest in Criminalizing Abortion:  
A Critical Study of Discourse in Two Abortion Laws in the United States and Pakistan**

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## Resumé

Specialet undersøger, hvilke diskurser, der påvirker anti-abortlovgivning i Alabama og Pakistan, med henblik på at belyse den institutionelle rolle i overtrædelser af menneskerettigheder. USA og Pakistan krænker kvinders menneskeret til en sikker og lovlig abort ved at kriminaliserer abort, hvilket fremhæver en splittelse mellem lovgivningen og internationale forpligtelser til at overholde menneskerettigheder.

Spørgsmålet specialet udforsker er: Hvilke institutionelle interesser har Pakistan og den amerikanske delstat Alabama i at kriminaliserer abort, og hvilke begrundelser findes der for disse restriktive og undertrykkende lovgivninger?

Specialet anvender kritisk diskursanalyse af *The Human Life Protection Act* fra Alabama og afsnit 338 fra Pakistans Straffekode. Analysen fokuserer på, hvilke sociokulturelle diskurser, der er i spil i de forskellige lovgivninger med fokus på skjulte meninger, magtforhold og ideologi.

Analysen af de to lovgivninger munder ud i en diskussion, der fokuserer på fire hovedtemaer: Reproduktiv styring, institutionelle ideologier, hegemoni, og det internationale perspektiv.

Sammenligningen af lovene viser, at begge lande kriminaliserer abort, men Pakistan umiddelbart tilbyder bedre beskyttelse for kvinders menneskerettigheder end i Alabama.

Islamiske indflydelser på loven viser at et foster ikke har samme rettigheder som en kvinde, og vagt sprog giver plads til en mere liberal fortolkning som kvinder kan drage fordel af.

Alabamas lov er mere restriktiv og kvindernes rettigheder fremstilles som trusler mod den kristen tro.

Undersøgelsen konkluderer, at lovene er tekstuelte forskellige, men viser værdier baseret på sexistiske og religiøse ideologier, som begrundelse for restriktionerne.

Analysen viser at Alabama og Pakistans mandsdominerede regeringer har interesse i at abort forbliver kriminaliseret for at holde hegemonisk maskulinitet. Undersøgelsen viser at,

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regeringerne er med til at indføre og fastholde sexistiske og religiøse ideologier i samfundet ved at beholde lovgivning som krænker menneskerettigheder. Dette skaber ulighed i statens repræsentation af kvinder og religiøse minoriteter for fordel for de dominerende grupper i samfundet. Til sidst finder specialet at på international plan er der mangel på lokal og global ansvarlighed når et land krænker menneskerettigheder, hvilet er med til at fastholde hegemoni i institutioner og ulighed i samfundet.

Keywords: *Abortion, human rights, abortion politics, reproductive governance, Alabama, Pakistan, critical discourse analysis, institutional interest, criminalize*

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## Chapter 1

### Introduction

Abortion is the subject of international debate and has been described as the most controversial of all rights (Patel, 2020; CCPR, 2018). In 2018, the United Nations (UN) affirmed that safe and legal access to abortion is a human right. Around the world, countries pass and enforce laws that criminalize, restrict, and sometimes completely ban abortions by law. The consequences of restrictive abortion legislation have been tied to social inequality and discrimination (Sharma et al, 2019; Hanschmidt et al, 2016), unsafe abortions, physical harm, and preventable deaths (Shapiro, 2013: 484; WHO, 2020). These are more often seen in developing regions of the world than in developed regions, where Islamic countries, in particular, have shown to be stricter and have higher rates of maternal mortality (Razzak et al, 2011. Shapiro, 2013). Some countries in developed regions that have moved away from more liberal views on abortion by adding legislative restrictions intend to impede the access to abortion care (Guttmacher Institute, 2015).

Before the affirmation in 2018, the UN had stated that hindrances to a woman's sexual and reproductive health were a violation of the right to health (Patel, 2020) but did not address abortion directly. The affirmation in 2018 was significant because it created a clear international guideline of women's rights regarding abortion. Some of the protections addressed were a woman's right to reproductive care such as abortion and that abortion was protected by a woman's right to life. The affirmation also confirmed that the right to life begins at birth, and that preventable deaths, caused by legislation compelling women to seek unsafe abortions, are violations of these rights (ICCPR, 2018). The UN and other international communities are committed to promoting and protecting human rights, preventing maternal deaths, and support access to reproductive care (Shapiro, 2013: 484; UN,

2018). UN's Human Rights Council released a statement about some of their work to educate and encourage reform internationally:

Human rights bodies have provided clear guidance on when there is a need to decriminalize abortion, and have emphasized that access to abortion is a matter of human rights. (2020)

There is a total of 125 countries with legislation that threatens or violates women's rights to abortion, despite the human rights affirmation and global effort to decriminalize abortion (Patel, 2020; OHCHR, 2020). Abortion politics have been studied from medical, global, political, and personal perspectives, but there is little research about abortion politics when abortion is seen as a human right. This raises the question of how there continues to be anti-abortion legislation despite global initiative to protect human rights. Justification and reasoning such as cultural, religious, or traditional norms and beliefs in society have been studied (Patel, 2020: 95), but the institutional role in abortion politics has been relatively untouched. This illuminates the need for studies that focus on governmental institutions as the source of abortion legislation.

Laws are representations of institutions and of society, which introduces the question of who benefits from the abortion laws? The public or the institution? The focus of this study is to explore why governments allow human rights violations, in the form of abortion laws.

### **Main Question**

The main question this thesis seeks to answer is:

What institutional interest does Alabama and Pakistan have in criminalizing abortion, and what is the institutional reasoning behind the restrictive and oppressive laws?

This thesis will study the discourse of abortion laws in the United States and Pakistan from a critical and comparative perspective and explore how the laws represent the

institutional voice. The study will approach abortion as a human right and aims to illuminate the how the governmental institutions justify the violation of human rights, and the reasoning and interest behind the continued criminalization of abortion. The investigation will compare abortion laws from two counties to enhance understanding of local and global representations of human rights, institutional interests, and abortion politics.

### **Objectives**

The first objective of the study is to analyze abortion laws in countries with different cultures, languages, religions, and beliefs, to understand which factors influence the institutional level of abortion laws. To do this, the study will be conducted using critical discourse analysis as the main methodology and the perspective will be grounded in human rights theory.

Critical discourse analysis (CDA) is a study of discourse that focuses on power, social injustice, and dominance and how it is constructed, produced, and perpetuated through discourse. CDA emphasizes ideological construction and hidden meanings behind the text. The critical perspective on language through CDA allows for research to reveal the relationship between language, power, and ideology (Foucault, 1982; Fairclough, 1995; Van Dijk, 1993, 1998). Concerning legal discourse such as legislative texts, one approach that compliments the main focuses of CDA, is the study of human rights.

Key goals of the study of human rights are to understand where human rights are not upheld and understand why human rights abuses occur. CDA in combination with a human rights perspective seeks to reveal the relationship between legal discourse, social power, and human rights abuses in legislation (Goldberg & Moore, 2012). The aim in using CDA in combination with human rights theory is to illuminate imbalance in power and representation in order to study the role of the institutions in the abortion discourse, as well as maintain a

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humanistic and evidence-based approach when investigating the laws to find institutional reasoning that the text may reveal in discourse, ideologies, and truths presented in the laws (Foucault, 1972; Anderson & Murdie, 2017).

Another objective with this paper is to compare the institutional interests and reasoning found in the abortion laws from the different countries. The restrictive abortion laws from the United States and Pakistan will be compared to examine if there are aspects of the institutional perspective that are unique to one country, or span across regions, religions, languages, etc. These countries were chosen based on factors such as the abortion laws, region of the world, structure of governmental institutions, and membership in the UN.

Pakistan is a conservative Islamic country with restrictive abortion laws. Despite abortions being illegal, the country has one of the world's highest abortion rates (Guttmacher Institute, 2015). Pakistan is also in a region of the world with the lowest level of human rights protections (Vásquez & Porčnik, 2020). The United States is in a region of the world with the highest level of overall human rights protections. According to human rights groups and international organizations, the United States is a country with generally liberal views and laws, in comparison to countries in other regions of the world (Vásquez & Porčnik, 2020). On a national level, abortion is legal, however there are 45 states with legislative restrictions on abortion. One of these states is Alabama, that passed a restrictive abortion law in 2019 (Guttmacher Institute, 2020).

The United States and Pakistan have the same Federal structure of government. The countries are also both member States of the UN and ratified participants in the international human rights law, meaning they are held to the same standards of protecting and promoting human rights (OCHCR, 2020). The analysis will focus on the abortion law from Alabama, the United States, from 2019 (Alabama HB314, 2019) and Section 338 of the Pakistan Penal Code from 1860 and revised in 1997 (Pakistan, 2014; Hussain, 2015).

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There are fundamental differences in the comparison of a state law to a country law. By examining the institutional interest and reasoning behind the laws, the study will focus on the role of government, ideologies and power that perpetuate the criminalization of abortion. This sets this study apart from others that focus on the impact of the law. In this investigation, the effects are seen as part of the institutional discourse. Comparing the institutional aspect rather than the voices of individual groups highlights foundational differences and similarities between the two.

### **Current State of Research**

The purpose of this section is outlining the current state of research in abortion studies and establish the value and insight of this paper within the field of abortion studies and human rights. The section will review current theoretical literature and research methodology and identify gaps in research. The review will be followed by a brief justification of the methodology, countries, as well as motivation for this study. The conclusion of the current state of research offers insight into the value of this approach in the field of abortion studies will be addressed in the conclusion of this portion.

### **Current Theoretical Literature**

The literature review was conducted using PubMed to establish the base of theoretical literature in abortion studies. Abortion research has been conducted across many fields of study, using a variety of methodologies and approaches. This study focuses on the politics of abortion; however, the scope of the research is broad due to the prevalent interdisciplinary approach to abortion studies that found overlaps between topics, methods, and perspectives.

The main topics within abortion studies are:

1. Medical Perspective
2. National/ Global Reviews
3. Laws and Policies
4. Attitudes and Perspectives
5. Debate

Existing abortion studies show that the much of the research is within the field of medicine. In abortion politics, studies find the correlation between restrictive abortion laws

and unsafe abortion. Key studies have been conducted on the complications and risks of unsafe abortions (Stubblefield et al, 2013; Kamran et al, 2013), incidence and causes of maternal death, as well as studied measures to prevent unsafe abortions (Guttmacher Institute, 2015; IPAS, 2019; WHO, 2020; UN, 2018).

Much of the data studied in abortion research is derived from systematic reviews on a national or global level. The studies generally present incidence of abortion geographically, and review factors that contribute to the data. These studies are largely neutral (Jones & Jerman, 2014). Global comparisons are referenced in abortion research, and in the field of abortion politics, the studies agree that developing nations were more likely to restrict or ban abortion than developed nations (Shapiro, 2013; Patel, 2020).

Some existing research focuses on abortion by studying laws and policies. These studies were found to center around the reviews of abortion laws (Munson, 2018; Sharma et al, 2019; Hussain, 2015). These studies show that the abortion politics are greatly varied globally, and that that in recent years, the abortion has become more restricted by law, despite earlier progress (UN, 2018; WHO, 2020). Key studies suggest that reforming abortion laws may reduce maternal deaths (Latt et al, 2019).

To a lesser extent than the medical or legal perspectives of abortion, there are studies surrounding the effects, beliefs, attitudes, and stigma of abortion. These mainly involve the narrative or societal impact of the laws, stigma, or attitudes (Azmat et al, 2011)

The methodology to these studies is generally interview, individual or focus group (Kamran et al, 2013), and ethnography (Chahal, 2015; Fuentes et al, 2020). The research is largely on either a case basis (individual or community perspective) or cross-national basis, drawing on data over time. A prevalence of case-based or global studies displayed a gap in country comparisons, especially in countries that were not culturally similar or geographically close. The studies agree that globally and on an individual basis, abortion stigma, religious, and

cultural norms affect women negatively. The conclusions in these studies found that more in-depth research is needed into the dimensions of attitudes and perspectives of abortion, as well as the need for more comprehensive research in this topic in general (Hanschmidt et al, 2016).

Studies agree that the moral and ethical aspects of the abortion discussion contribute to the international debate. The progress and evolution of abortion law and debate is often tied to the historical background of the topic. The abortion debate was found to consist of disagreements surrounding the moral standing of a fetus. In the United States, influences and beliefs behind the pro-life and pro-choice movements have been studied along with the impact that the debate has on politics (Napier, 2011; Munson, 2018; Adamczyk, 2017). These studies show that the abortion debate is based on a complex mixture of personal, political, moral, and ethical factors.

**Overall findings.** Current knowledge on abortion is limited to a few main approaches. In studying abortion using a medical or systematic approach, the focus is on reaching conclusions based on statistics or other forms of quantifiable data. While there are studies that approach abortion using narrative and ethnographic methodology, the analyses and results focus on causation and incidence.

The existing studies are crucial in understanding who is affected by abortion restrictions and the impact of debate, controversy, and policies. They also establish where abortion restrictions take place, and the history and progress of abortion politics, as well as detail current events of social movements. Finally, the medical perspective highlights the physical effects and consequences of reproductive regulations from an individual to a global scale.

Key studies agree that restrictive abortion laws put women's health at risk by limiting access sexual and reproductive health care, and not providing adequate education or



resources for family planning. Furthermore, research shows that women's rights may be limited for religious reasons, due to cultural or traditional norms, as well as by negative societal stigma surrounding abortion.

**Gaps in research.** The findings from the literature review, as well as suggestions from some studies, highlight certain gaps in research. The current theoretical literature is largely focused on the effects of abortion politics, but few studies explore critical or institutional perspectives of abortion laws. The literature frames the *who*, *where*, *when*, and *how* of abortion politics, however the *what* and *how* were less apparent. There is little to no literature about the following perspectives of abortion: abortion as oppression, humanist or non-religious perspectives of abortion, gender and reproductive governance, or comparisons of abortion policies in developing and developed regions.

The studies generally did not research abortion laws beyond the aspect of legislation, which leaves gaps in studying how the laws have power or investigating abortion politics in a broader social perspective such as gender equality, human rights, and social injustice. The lack of human rights perspective in abortion studies illuminated the need for research based in humanism. This highlighted a gap in critical studies that focus on the role and interests of governments with abortion policies, women's human right to abortion, and studies that analyze anti-abortion policies.

## **Motivation**

This thesis is inspired by the humanist perspective of human rights, which, without theology, seeks to promote equality, eliminate human suffering, and protect reproductive and human rights. According to the World Health Organization (2020), 23,000 women die each year because of unsafe abortions and many thousands more are impacted by complications and consequences of legal abortion restrictions. While the focus of the international abortion

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conversation is on debate, morality, and ethics of abortion, 700 million women are impacted or at risk by living in countries that continue to restrict or ban abortions. The abortion debate politicizes and polices a woman's body and right to choose, but the fight for reproductive rights is not just a question of women's rights, but human rights. Religious, cultural, and personal argumentations are used to justify allowing women to suffer and die, rather than protecting access to safe and legal abortion as a human right. It is the government's responsibility to protect their citizens, and yet abortion restrictions persist.

This study is motivated by efforts to fight injustice and inequality perpetrated by abortion laws. Governments continue to deny women reproductive rights despite international efforts to protect women's health and human rights. As long as the focus of the abortion debate does not criticize the actions of the governmental institutions, there is less pressure on the countries to follow the international human rights law and decriminalize abortion. If there is going to be change, there has to be a shift in the focus of abortion politics from a woman's role and the morality of abortion to the groups responsible for the legislation.

### **Methodology**

In current abortion studies, more common approaches to qualitative findings in abortion studies are narrative and ethnographic methods, as well as situation and discourse analysis (Chahal, 2015; Fuentes et al, 2016, 2020). These methods were not used because the aim of the study was to investigate an area within the gap of research and challenge the perspective of the current literature. The choice to compare two countries meant a narrative approach would be limiting, because the approach to personal experiences or attitudes may exclude power dynamics, abortion laws, and other discourses outside the realm of narrative discourses (Bruner, 2004).

Based on the studies using discourse analysis and the gap in studies from a critical perspective, critical discourse analysis (CDA) was found to be the most appropriate for this study. CDA is a study that focuses on social power abuse, and inequality that is produced, enacted and enforced through discourse, which was the most appropriate methodology for the study. While there are many key authors who have worked with CDA, the framework for the methodology was based on mainly theories from Michel Foucault, Norman Fairclough, and Teun van Dijk. Foucault is one of the most well-known contributors to CDA and his approach to power, ideology and discourse were the foundation for later adaptations (Foucault, 1972, 1982). Ruth Wodak's CDA focuses on denaturalizing the role of discourse, and while it plays a role in the analysis, the linguistic and textual analysis by Fairclough and van Dijk were used instead (Wodak, 2007; Fairclough, 1995; Van Dijk, 2008; Van Dijk, 1998).

The investigation was conducted using a comparative approach rather than studying one law or a region of laws because the conclusions made in research using comparative methodology can span farther than single cases. The comparison of two countries was selected in order to illuminate similarities and differences and allow for more detailed comparison than in the case of many countries (Esser & Vliegenthart, 2017).

Finally, existing research shows that while human rights are often a topic studied within abortion research, investigations using human rights theory are rarely conducted. Human rights theory is grounded in humanism, and concerns understanding why human suffering and human rights abuses occur (Andersen & Murdie, 2017; Moore & Goldberg, 2012). This provides a contrasting perspective to the existing studies, political, religious, or other conservative approaches to abortion. The critical analysis of abortion laws highlights social inequality, power imbalances, and ideological factors, which opens possibilities for future research. Using both CDA and human rights theory, identifying human rights

injustices and suffering is a contribution to a global call for action, to promote and protect human rights, fight inequality, prevent maternal deaths, and emphasize better access to reproductive care and abortion services.

### **Choice of Countries**

As indicated in the theoretical literature on abortion, abortion politics are complex and controversial, influenced by legislation, culture, attitudes, ideologies, and power. The motivation to study abortion laws in Pakistan and the United States, came from considerations after reading an article about human rights in Pakistan, which detailed the countries abortion rate to be one of the highest in the world, despite abortion being mostly illegal (Pakistan, 2014; Guttmacher Institute, 2015). Islamic countries have been viewed to be conservative and strict on abortions, a view that is often based on stereotypes about beliefs based on culture, Islam, politics, and mentality in certain regions of the world (Shapiro, 2013). Contributing factors to the abortion discourse in Pakistan were considered, such as the government, the views on abortion, the law, and if anything might draw a connection between the restrictions and the high rate of unsafe abortions.

The United States was chosen as the best country to compare to Pakistan based on various considerations such as society, government, and global influence. The pro-life/ pro-choice movements in the country have mobilized many communities and highlight the variety of views, beliefs, and attitudes found within a country which allow for research into the sides of the abortion debate. Abortion has been increasingly politicized in the United States, both domestically and abroad. The country has been viewed to have generally liberal views and politics (HRW, 2020; Patel, 2020). The United States has global influence and in 2017, the Trump administration reinstated a global gag rule that blocks aid to organizations providing reproductive services and abortions in countries such as Pakistan, Mexico, and Mozambique

in recent years (Planned Parenthood, 2019). Domestically, a law passed by Alabama in 2019 was at the center of controversy for being a near-total abortion ban, despite national law.

Another consideration was a comparison between Pakistan and India or adding Denmark to the comparison of the United States and Pakistan. India has a liberal abortion laws and the countries have a history of political, social, and cultural relationships and conflicts (Hirve, 2004; Kugelman, 2019). In a comparative study of Pakistan and India, an alternate choice would have been a narrative analysis of experiences and attitudes to illuminate social and cultural dimensions (Kalia, 2016). In terms of adding Denmark to the study, the consideration was to provide a different angle from a country where abortion is fully legal (Goldstein, 1998). However, this was excluded in favor of a more in-depth comparison between the United States and Pakistan.

### **Contribution**

As of early 2020, this is the first study that has been conducted as a critical discourse analysis of abortion laws with a focus on institutional interests and reasoning, a comparative study of abortion laws from the United States and Pakistan, and comparative study of the laws from the perspective that abortion as a human right.

This thesis is a critical study of the institutions behind criminalizing abortion. This study approaches abortion laws as human rights violations and directs the investigation towards the cause of abortion legislation, and not the effects. By investigating the discourse and institutional role, this study shifts the focus of abortion literature from the impact of injustice, to the root of it (Patel, 2020; CCPR, 2018; IPAS, 2019). This study took a new perspective on abortion research by critically investigating the institutions role in perpetuating injustice through restrictive laws.

This paper's methodology shows that:

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1. Comparative CDA of abortion laws is an approach to abortion research that can enhance understanding of politics, culture, power, and other elements of abortion discourse.
2. Perspective based in human rights theory can emphasize causes and reasons behind human rights abuses in legal discourse.

This study provides a new approach to the analysis of abortion laws, international abortion politics, and human rights. This approach branches across regions of the world and differences, such as language and traditions, and allows for a study of power, dominance and ideology that gives perspective into social and power structures, institutions, and interests in the text that are not apparent on surface level. Along with the contributions to abortion studies, the value of this study is that the approach and findings can be used in understanding the global abortion discourse, contribute to the movement to fight inequality, and support future research in areas to promote and protect human rights.

## **Chapter 2**

### **Background**

This chapter will present an overview of relevant background information for this study. Main topics included in this chapter are international human rights, institutions, abortion, and a brief history of abortion politics. This chapter will outline the current situations in the United States and Pakistan in relation to human rights, government, and abortion.

### **Human Rights**

Human rights are rights inherent to all human beings whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. (OHCHR 2020)

The United Nations (UN) is an intergovernmental organization made up of 193 countries. The purposes of the organization are to maintain peace and security internationally, develop friendly relationships between countries, work towards international co-operation of social problems, and promote and protect human rights (UN, 2020). The Universal Declaration on Human Rights (UDHR) was the first step in the international movement towards promoting and protecting human rights. In 1948, the United Nations declared 30 rights and freedoms that are inherent to all and continue to be used internationally to form the basis of international human rights law. The UDHR is not a treaty and has no legal force obligating countries to follow, but it demonstrates the shared values agreed upon by the parties recognizing that ensuring and protecting these rights is the foundation of justice, freedom and peace in the world (OHCHR, 2020).

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In 1976, the United Nations enacted the International Covenant on Civil and Political Rights (ICCPR), in addition to UDHR. The ICCPR is a treaty with 113 ratified parties, that supports the human rights declared by UDHR with legal force. All government entities and agents of ratified countries are obligated to comply with the ICCPR, which protects civil and political rights (ACLU, 2019). There are 27 rights protected under the ICCPR, some of which are: right to life; right to equality; right to freedom of thought, conscience, and religion; and freedom from arbitrary or unlawful interference (OHCHR, 2020).

The right to equality is broad and supports a variety of protections within the blanket term of equality. The right to equality based on sex and religious equality are among the protections, as seen in Article 7 of the ICCPR (2018):

All persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Intergovernmental and non-governmental organizations such as the UN and other NGOs, support the international human rights laws, and work to protect and promote the inherent rights and freedoms of all people. In 2019, the CATO Freedom Report found that North America was among the regions of the world with the highest levels of freedom and protection of women's rights, and South Asia was among the regions with the lowest. These findings were based on a variety of socio-economic, political, and cultural factors such as safety, rule of law, security, and governmental institutions (Porčnik & Vásquez, 2019).

**Abortion as a human right.** In 1994, The International Conference on Population and Development (ICPD, 2020), an intergovernmental conference under observation of the UN, introduced the concepts of women's reproductive rights and right to reproductive and sexual health (UNFPA, 2020). Abortion was not directly mentioned; however, it emphasized



a woman's right to sexual and reproductive health care and to choose if and when she has children.

In October 2018, the UN released a comment to be adopted regarding Article 6 of the ICCPR, the right to life. The Human Rights Council, part of the international effort to promote and protect human rights, is made up of 47 countries elected to the Council within the UN (OHCHR, 2020). The comment recognizes that included in the right to life, is the right for women and girls to have access to safe and legal abortions. Some of the remarks included in the declaration were that:

- Women must be protected from physical or mental pain that would be caused by being forced to carry a pregnancy to term
- States should regulate pregnancy and provide access to services to prevent women seeking unsafe abortions
- Protect the lives of women and girls
- Ensure access to “quality and evidence-based information and education about sexual and reproductive health” (ICCPR, 2018)

The Human Rights Council is advised by the Human Rights Advisory Committee, a group of experts who provide expertise and assist the Council in matters that mainly involve the promotion and protection of human rights. The Committee's expertise is derived from research-based advice and studies within the relevant fields (OHCHR, 2020). These groups, the Committee and Council, were responsible for the declaration of abortion as a human right.

Working alongside the UN to promote and protect human rights is the World Health Organization (WHO). The organization's focus is on international health, encouraging and supporting countries' care for people's physical and mental health, while maintaining a neutral political stance. WHO works with countries on preventing and monitoring unsafe

abortion globally, providing information on safe abortion procedures, contraception and other tools that support access to reproductive care (WHO, 2020). An estimated 25 million unsafe abortions are performed each year. Unsafe abortion is the cause of 4.7-13.2% of maternal deaths each year, with up to 95% taking place in developing countries (WHO, 2020; Azmat et al., 2012). The UN and WHO aim to prevent maternal deaths due to unsafe abortions. Restricting abortion by law does not reduce the number of abortions. Instead, it pushes women towards unsafe abortion, which are defined by WHO (2011) as “the procedure to terminate an unwanted pregnancy either by persons lacking the necessary skills, taking place in an environment lacking minimal medical standards, or both”.

**Human rights theory.** Literary studies on human rights are largely focused on studying human rights abuses and the struggle against human rights violations. The field of human rights is broad and interdisciplinary, spanning across cultural and media studies, international relations, sociology, philosophy/ethics, anthropology, history, journalism, politics, and law (Goldberg & Moore: 2012: 2-3). Humanist ideology is central to human rights literature. Humanism is based on the natural goodness of humans, believing that humans can live ethical lives without theology. Human rights literature recognizes suffering in society and relies on the recipient’s understanding of suffering through sympathy. In this way, literature can invoke the reaction of ‘righting a wrong’ (Goldberg & Moore, 2012:10). Empirical literature on human rights that study why human rights abuses occur, have been summarized into three main theoretical statements by Jessica Anderson and Amanda Murdie:

1. Human rights abuses are a way for an unrestrained state, especially the executive branch and its agents, to try to control individuals and hold on to power.
2. Respect for human rights is an international norm, and international socialization and pressure about this norm can affect behavior in certain situations.

3. The codification of human rights norms into international treaties may influence behavior but, similar to our understanding of the effect of other treaties on state behavior, states only bind themselves weakly, and certain conditions are necessary for treaties to affect human rights. (2017)

***Human rights perspective.*** This investigation will approach the analysis and discussion from the perspective that abortions are a human right, grounded in human rights theory. This perspective is based on human rights theory and the principles in the international human rights law. The foundation of the UN's decisions and principles is a neutral, evidence-based approach focused on equality, peace, freedom, and justice. This is in accordance with the humanist view found in human rights theory (Anderson & Murdie, 2017; Goldberg & Moore, 2012). This perspective will be an underlying consideration throughout the process of the paper, from the research, analysis, and discussion of the two abortion laws. The CDA method along with human rights theory will be critical of elements of the laws that may infringe upon, restrict, or otherwise relate to the human rights laid out by the UDHR and ICCPR. Along with critical elements, the study will analyze how human rights are presented through discourse and identify human rights abuses. The investigation will not discuss or theorize about the philosophical or moral status of the fetus, not determine or address if a fetus is a life or not. The approach of the study is based on the international human rights law, which states (2018) that human rights start at birth. This declaration will be the foundation for the study's approach to the representation and legal protection of a fetus in the law.

### **History of Abortion**

Throughout history, abortion has been recorded in discourses surrounding life, health, philosophy and even law. In fact, until recent history, there were not many restrictions on abortion. Abortions were recorded in Egypt as early as 1500 B.C.E and 500 B.C.E (Fox, 2019). In China as well as other well-known civilizations of ancient Greece, Rome, and the

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Renaissance. In ancient Greece, abortion was permitted and openly discussed by well-known philosophers such as Plato, Hippocrates, and Aristotle. In the Roman Empire, the law directly stated that a fetus was not a person (Munson, 2018, 16). While there were limited restrictions, however, abortions could be extremely dangerous or even fatal, using different methods such as ingesting herbal concoctions or doses of poison to medical instruments. If there were restrictions, they are mainly regarding the concept of the “quickening” (otherwise referred to as ensoulment, animation) which occurred when the woman could feel the movement of the fetus at around four or five months of pregnancy (Hessini, 2008: 23; Munson, 2018). These restrictions were often placed after the quickening to ensure the health of the woman, as they were at a higher risk of harm or death after that time. Abortions before the quickening were considered regular medical treatment and not considered what we call abortion today. Instead it was a treatment for a woman who had not had her period. These procedures were not subject to controversy until later in history (Munson, 2018:16-17).

The abortion discourse throughout history was not restrictive, controversial, or oppressive. The main causes for concern surrounding abortion were centered around the health and safety of the woman. As we progress into more recent history, there was a notable shift in how abortion was discussed and viewed. Concerns moved from the woman’s safety during the procedure to the moral status of it (Fox, 2019). The focus that had been on the woman shifted to the fetus. The quickening became integrated into religious ideologies and legal discourses as a way to measure if the fetus could be considered life. The time of the quickening depends on the religious interpretation. Some stricter Christian beliefs place this time at conception, while Islamic interpretations vary from 40, 90, to 120 days of gestation (Hessini, 2008: 23; Sharma et al, 2019). Variations of these beliefs carried into modern times, as the morality of abortion is often at the center of the abortion debate (Munson, 2018; Shapiro, 2013).

Today, abortion is viewed throughout the world as controversial because of its standing in moral, ethical, legal, and religious discourses (Patel, 2020; Adamczyk & Valdimarsdóttir, 2018; Austin & Harper, 2018). Abortions are common, with nearly 25% of all pregnancies resulting in induced abortions (WHO, 2020). In regions of the world with restricted or prohibited access to abortion, women may be compelled to seek unsafe abortions without access to proper medical care. Unsafe abortions are the cause of 4.7-13.2% of all maternal mortality (WHO, 2020). These deaths are considered entirely preventable, as they are caused by complications as a result of restricted access to abortion care. Access to safe and legal abortion varies geographically and many countries have conditional availability. Some countries may allow abortion on request, while others may be restricted unless in cases of medical necessity, rape, or incest. In other countries, abortions are completely banned, including as efforts to save a woman's life (Shapiro, 2013: 488-489). Out of the countries with abortion legislation, 93% of those countries are in developing regions of the world, which have higher rates of unintended pregnancy, unsafe abortions and preventable maternal mortality than developed regions. The rate of maternal deaths caused by unsafe abortions in Islamic countries is twice as high in comparison to other countries internationally (Razzak et al, 2011; Shapiro, 2013).

### **Abortion Politics**

**Abortion in the United States.** The controversy of abortion has sparked a movement and national debate surrounding the morality and availability of abortions. The United States has no national measurement of abortion statistics, so it is difficult to say the abortion rate (Munson, 2018:6), however there has been a decline in abortions recorded from 2011-2017, coinciding with stricter abortion laws limiting accessibility of abortions (Austin & Harper, 2017). The abortion rate in 2017 was approximately 13.5 abortions per 1000 women (Guttmacher Institute, 2015).

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The main groups in the abortion debate in the United States are the pro-life and pro-choice movements. The pro-life movement aims to restrict abortion rights on the basis of morality. In this movement, the group focuses on the concept of life at conception rather than birth. The groups, members, and organizations who seek to restrict or end legalized abortions are referred to as pro-life or anti-choice. The foundation of the pro-life movement was the mobilization of members of the Catholic Church to challenge, oppose, and protest changes that contradicted Catholic beliefs, such as the country's view on women, sexuality, and abortion. Today the movement is centered around fighting to restrict and eliminate abortions in the country (Munson, 2018:41-42). On the other side of the spectrum, the pro-choice movement is an effort to expand and protect abortion access. The basis of this movement is that it is a woman's right to choose what happens with her body and that a woman should have the same decision-making right to her body as a man does. The pro-choice movement seeks to protect access to abortion, regardless of the woman's reason behind seeking one (Munson, 2018:7-8, 57-58).

The pro-life and pro-choice groups are represented in American politics, where abortion is politicized to serve a political agenda and used in political campaigns, discussions, and speeches in government. The topic is one of the distinct factors between conservative and liberal political parties. Donald Trump, the President of the United States, and a member of the conservative Republican party, has repeatedly promised to limit women's abortion access (Munson, 2018: 127; Patel, 2020: 95; Planned Parenthood, 2019).

The United States is a federal government, where powers are divided between state and federal governments. Both federal and state governments are made up of three branches: an executive branch, a legislative branch, and a judicial branch. The make-up of the United States Congress by majority is Christian men, where 75.8% of the members are male and 85.4% are Christian (Manning, 2020: 5). National laws are enforceable throughout the

country, while state laws are local to the state of origin. If a state law contradicts national law, or is unconstitutional, it may be reviewed by the Supreme Court. The United States Supreme Court is the highest tribunal for court cases in the country and has the responsibility to ensure “equal justice under the law” (Supreme Court, 2020). If a case is seen by the Supreme Court, the Justices have the power to rule in favor of the state law and effectively overturn national laws.

Abortion is legal according to United States Federal law following the Supreme Court decision of *Roe v. Wade* in 1973, which found that abortions are protected by national law until the third trimester of pregnancy, when the fetus is considered viable and can survive outside the womb (BBC, 2020; Oyez, 2020). Despite this, state governments have passed legislation and taken measures to restrict women’s access to abortion. In total, 45 states have legal restrictions on abortion and 21 of those states have either ‘hostile’ or ‘very hostile’ abortion laws (Guttmacher Institute, 2020). Some of these include the bills passed in Georgia and Kentucky in 2019, which would restrict abortion after a fetal heartbeat could be detected, which could be as early as 6 weeks (Blinder & Rojas, 2019).

In 2019, the Alabama Legislature passed a restrictive abortion law that would enforce a near-total ban on abortions. The majority members of the Alabama Legislature responsible for the law are Christian men. In total, 86% of the members are men and 86% identified as Protestant Christians (National Conference of State Legislatures, 2015).

Alabama’s abortion law is a near total-ban, considered to be the strictest abortion law to be enforced because it does not allow exceptions for rape or incest (Blinder & Rojas, 2019). After being challenged and sued by human rights groups in protest of the law, a federal judge granted an injunction that blocked the bill from being enforced until the case could be resolved in federal court. This meant that the law would be temporarily blocked from going into effect until a later court case would determine if the law is acceptable by

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national standards. According to BBC, the lawmakers have stated that the bill was expected to be blocked with the aim of the case reaching the Supreme Court, where it could potentially overturn national abortion laws by challenging *Roe v. Wade* (BBC, 2020). As of 2020, the case has not been resolved and the injunction remains in place.

Although the law has been blocked from being enforced, these laws show that Alabama's movement to criminalize abortion is not an isolated action, and indicates the government's, along with other states', attempt to use strict legislation to reverse the national law (Blinder & Rojas, 2019). This intention behind the law shows Alabama's law as a steppingstone in a larger movement to reverse human rights. The United States was known for strong human rights protections and has been found moving backwards in overall human rights protections since 2018 (HRW, 2020). The United States is in a region of the world found to have the highest protections of women and human rights (Porčnik & Vásquez, 2019). Before 2018, the country had generally strong protections for human rights, with the main violations found in the areas of immigration, civil justice, and national security. The country was also reported by the Human Rights Watch (2020) to have liberal and civil legislation. Since 2018 legislative actions and inaction taken by the government's current administration, led by President Donald Trump, have shown regression in the protections of human rights (Patel, 2020). The report from the Human Rights Watch (2018), stated that Trump's administration has "implemented an array of anti-immigration policies, and worked to undermine a national insurance program that helps Americans obtain affordable health care, including important reproductive care for women". The Trump administration has taken legal measures to roll back rights in areas such as the right to health, rights of non-citizens, women's and girls' rights, while simultaneously allowing discriminatory laws based on sexual orientation and gender identity (HRW, 2019; ACLU, 2019).



**Abortion in Pakistan.** Abortion is illegal in Pakistan, except in the case of ‘necessary treatment’ or saving a woman’s life (Pakistan, 2014). A national study by the Guttmacher Institute (2012) found that the rate was 50 abortions per 1000 women of reproductive age, which is nearly double the international average of 28 abortions per 1000 women. Consequences of unsafe and clandestine abortions at such a high rate are reflected the maternal death rate which is at 6-11% (Azmat et al., 2012). In 2012, it was estimated that over half (54%) of the 4.2 million unintended pregnancies were resolved through in abortions. Many of these abortions are unsafe due to the illegal and controversial nature of abortion in Pakistan (Chahal, 2015: 2). International organizations work with Pakistan in order to address the growing crisis of preventable maternal deaths due to unsafe abortion, which are exasperated by factors such as Pakistan’s patriarchal society, sexual violence, lack of reproductive and contraceptive care and services, religion, and cultural attitudes (IPAS, 2019).

Pakistan has a parliamentary government. The National Assembly is a democratically elected body of government which makes up the house and the Senate of Parliament (National Assembly, 2020). The National Assembly has 342 seats in total. Of these, 272 are directly elected and the remaining seats, 60 are reserved for women and 10 for religious minorities. The reservations are in place to ensure some representation for women and religious minorities in government. In 2018, women and religious minorities made up 20.8% of Parliament. The other 272 seats were mainly held by men and members of the Islamic faith (National Assembly, 2020; Hussain, 2015).

The law addressing abortion is found in the Pakistan Penal Code Section 338. The Penal Code was drafted in 1860, which was before Pakistan’s Independence, and the first law only allowed abortion to save the life of the woman (Pakistan, 2014). There has been one revision since then, that was proposed 1990 and went into effect in 1997 (Hussain, 2015).

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This added the stage of fetal organ formation to the law, which allowed abortions in limited other circumstances. Pakistan's government has shown some change in their abortion discourse since 1860, however the law continues to restrict abortion access. In 1997 when the last revision was made, the Commission of Inquiry for the Status of Women had made a statement recommending that "a woman's right to obtain an abortion by her own choice within the first 120 days of pregnancy should be unambiguously declared an absolute legal right" (Kamran et al, 2019: 39). This was not enacted into law. The law has remained unchanged since 1997. IPAS, one of the NGOs working with communities and promoting reproductive care and access highlights that there has been some movement towards social change, but the main obstacles are the laws and Pakistan's patriarchal attitudes (IPAS, 2019)

Pakistan is in one of the regions of the world with the lowest level of protections for women and human rights (Porčnik & Vásquez, 2019). In a report from the Human Rights Watch, it stated that in the patriarchal Islamic country:

Women, religious minorities, and transgender people continued to face violence, discrimination, and persecution, with authorities often failing to provide adequate protection or hold perpetrators accountable. (2020)

Upon taking office in 2018, the Prime Minister of Pakistan Imran Khan had pledged to work on social justice in the country, but according to the same report (2020), "his administration has increased restrictions on media, the political opposition, and nongovernmental organizations (NGOs)". The country does not have free press and the authorities have restricted media sources and arrested journalists for speaking out against the government. As of 2019, the country continues to enforce actions that violate human rights such as maintaining laws that criminalize blasphemy and same-sex sexual contact in the Penal Code, which have led to people being imprisoned or executed for the crimes. Pakistani Parliament also recently rejected a bill that would set the minimum age of marriage to 18

despite 21% of girls in Pakistan being married before they are 18 (HRW, 2020). However, the Pakistani government has taken some steps to improve conditions for women and girls, such as passing bills to close legal loopholes so murderers could be pardoned in cases of ‘honor killings’ and recognizing women’s right to unionize.

### **Institutions and Governance**

This section will outline the concepts of government and governance. The study explores institutional reasoning and interests, and to do so, it is important to understand the structures and processes behind the laws, as well as what gives them power.

Government refers to the means used to direct or conduct the behavior of others.

Michel Foucault described:

Government’ did not refer only to political structures or to the management of states; rather, it designated the way in which the conduct of individuals or of groups might be directed – the government of children, of souls, of communities, of the sick ... To govern, in this sense, is to control the possible field of action of others. (1982: 790)

Government draws on relationships of power between the rulers and the ruled, for example, the state and citizens. The strategies and means of directing the conduct of others can be exercised in many ways, as long as the relationships of power are present, “the role of the state and its influence on society (and vice versa) is just one aspect of governmental relationships” (Little, 2014). Having power and influence in this context means that there is an authority figure, which could range from an individual to groups. In politics, government refers to the groups/institutions in society with the authority to exercise control over others (citizens/public) (Foucault, 1982; Little, 2014).

Governmental institutions, such as state or federal governments, have access to elite discourse genres, which are not available to the public. Laws as a form of sovereign power,

carry the weight and consequences of governmental institutions as well as juridical significance, which compels the public to either comply or disobey (Foucault, 1982). Laws are representations of an institution's views, ideologies, logic, opinions, etc. Through the institutional setting, the law's discourse produces, adopts, impacts, and perpetuates the positions of the institution. Studying the contents of legislation can reflect collective beliefs and ideologies of a governmental institution, as well as highlight power structures and imbalances between the public and institutional spheres (Fairclough, 1995: 14). Investigating governmental institutions through legal discourse may reveal conflicts in access to resources, dominant groups, interests, and elements of control in a social structure (Van Dijk, 1998).

**Governance.** The way that governments and governmental institutions exercise and enforce power is related to the concept of governance. Governance refers to the structures, processes, patterns of ruling and governing. These can be through laws, as well as the norms, values, and rules of the public. Governance relating to gender and reproduction are described by the terms *gender governance*, *governance of gender*, and *reproductive government*.

Studying laws as governance can highlight beliefs, norms, and societal structures in the laws, as well as indicate institutional reasoning, interests, accountability (Solution, 2018; Morgan, 2019; Kronsell, 2010; UNESCO, 2016).

Governmental policies that seek to change or influence gender regimes. Gender governance deals directly with women's issues (Kronsell, 2010). While gender governance is on a larger/global scale, governance of gender takes place on a more localized scale.

Governance of gender relates to "the values that permeate governance reflect traditional gender regimes" (Kronsell, 2010). State governments that implicitly or directly affect the lives of women in areas such as marriage, employment, and reproduction, may be examples of governance of gender.

Essential to the topic of abortion regulation through legislation is reproductive governance. The concept of reproductive governance was defined by sociologists Elizabeth Roberts and Lynn Morgan as:

The mechanisms through which different historical configuration of actors – such as state, religious, and international financial institutions, NGOs, and social movements – use legislative controls, economic inducements, moral injunctions, direct coercion, and ethical incitements to produce, monitor, and control reproductive behaviors and population practice. (2012: 243)

Reproductive governance is specific to governance that impacts or controls reproduction such as through restricting, forcing, criminalizing, or otherwise affecting access and choice regarding reproductive and sexual health (Morgan, 2019). These types of governance contribute to mobilization of gender identities, opportunities, and measuring the progress of the government in terms of complying with the international human rights laws. In the study of governance, identifying and examining ideologies may help in the analysis of factors that contribute to governance (Morgan, 2019).

Whether through legislative debates, committee reviews, public comments, or expert opinions, elected officials are regularly called upon to voice their support or opposition for the existence and scope of such laws, effectively deciding who gets what, when and how when it comes to abortion care. (Sharma et al, 2019: 126)

Reproductive governance is a political action, which involves processes before a law can be enacted. Ideologies in institutional or cultural discourse can perpetuate gender governance, governance of gender, and reproductive governance, are therefore important factors in understanding governance and the political process behind abortion laws (Kronsell, 2010; Roberts & Morgan, 2019).

## **Chapter 3**

### **Methodology**

This section will introduce the methodology that is used in the study. The chapter will provide a brief overview of key concepts and theories in critical discourse analysis and elements of comparative analysis. The conclusion of this chapter will expand upon the choice in methodology for the study and share challenges and restrictions of using this methodology.

### **Critical Discourse Analysis**

The investigation of the abortion laws is critical discourse analysis (CDA), a type of research stemming from discourse analysis. Discourse analysis is a research method that focuses on how language moves/changes/is formed by the social world. Spoken (conversation) and written (text) language represent the discursive formations in the social context they are in. Discourse analysis studies levels of what is beyond the language, from grammar and linguistics to broader social texts such as power and dominance. Much of CDA is based on the foundation of discourse studies and analysis by Michel Foucault. Foucault was a highly influential French social theorist and his works explored how discourses define the social world and the people who live in it. To Foucault (1978: 49), discourses are “practices that systematically form the objects of which they speak”. These objects include the ideas, knowledge, systems, and actions in daily life. Another important author within the field of CDA is Norman Fairclough, a professor of Linguistics. Fairclough (1995:7) described discourse as the “use of language seen as a form of social practice, and discourse analysis is analysis of how texts work within sociocultural practice”.

CDA is particularly interested in the study of discourse as a way to promote social action, which “primarily studies the way social power abuse, dominance and inequality are

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enacted, reproduced and resisted by text and talk in a social and political context” (Van Dijk, 1998: 352). A focus of CDA, is to uncover the hidden meanings found in the words themselves by analyzing the semantics and linguistics of a text (Fairclough, 1995; Foucault 1972; Van Dijk, 1998). CDA is also approached in broader contexts that study the macro aspects of discourse such as representations, social interactions, practices, groups, and institutions (Van Dijk, 2008; Fairclough, 1995). In discourse analysis, language is not transparent. CDA aims to reveal social structures, ideologies, relationships, and power relationships that can be uncovered by viewing language as a form of social action (Fairclough, 1995: 209; Van Dijk, 1990). Power is a repeated theme in CDA, described by Fairclough as the “asymmetries between participants in discourse events, and in terms of unequal capacity to control how texts are produced, distributed and consumed” (1995:1). The study of power in a social context focuses on power as control, i.e. how power controls public discourse, and causes social inequality. This can also refer to power caused by groups having privileged access to resources that may affect the production, distribution, and consumption of the discourse to maintain power.

Institutions such as governments, courts, educational systems, and militaries have certain control over society. By studying discourse, it may reveal aspects of a society’s norms, rules, laws, and/ or practices that show hegemony. Hegemony is the term used when a dominant group’s power is integrated into society to the point where it is normalized (Van Dijk, 1998: 354; Van Dijk, 1990; Foucault, 1978). Texts and practices can be directly influenced or manipulated by groups with the power to control discourse. Control may be enforced in different ways such as through persuasion, knowledge, authority (Foucault, 1978; Van Dijk, 2005). Discourse has the power to reproduce, confirm, enact, or challenge power and dominance in a society (Van Dijk, 2005: 353).

CDA does not have a universal methodology, instead different types of CDA share a similar theoretical framework. This is based on shared principles and elements such as critical awareness of language, and interest in power relations and social injustice.

All methods of CDA share certain principles, which are summarized by van Dijk based on the theories of Fairclough and Wodak (1997). These are:

1. CDA addresses social problems
2. Power relations are discursive
3. Discourse constitutes society and culture
4. Discourse does ideological work
5. Discourse is historical
6. The link between text and society is mediated
7. Discourse analysis is interpretative and explanatory
8. Discourse is a form of social action

(2005: 353)

The approach to CDA in this investigation is built on these same principles as other CDA methods. While different types of CDA focus on various levels of discourse, they all study text, discourses, and sociocultural practices. This investigation combines elements of different types of CDA to avoid one-sided analyses, which would focus on one level of discourse, rather than exploring a fuller image of the topic (Fairclough, 1995: 4).

The framework for this analysis was created by using a modified approach to linguistic and analytical elements of Fairclough and Van Dijk's CDA, with a general approach rooted in Foucault's theories on power, discourse, and government. Key elements of Fairclough's linguistic approach are utilized to provide a more detailed exploration into linguistics, exploring what can be learned from the textual level. From Fairclough's linguistic approach, the analysis will combine linguistic and intertextual analysis to study the text



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(Fairclough, 1995: 209; Fairclough, 1992). This type of analysis focuses on the text itself, including the meanings, forms, grammar, relationship between sentences and vocabulary (Fairclough, 1995: 133-134; Fairclough, 1992: 194-196). This works as a tool for exploring absence of text that can explore what is implicitly or explicitly absent, which can be significant in sociocultural analysis, and allows for analysis of the meanings behind what is not represented or included in the laws (Fairclough, 1995: 5). These factors add perspective into possible inequality or asymmetry between people and the discursive events, as well as reveal elements of the institutional voice and reasoning that may be hidden in the texts. Also stemming from Fairclough's CDA, the linguistic and textual analysis will include elements such as interdiscursivity, vocabulary, speech acts, voice, and lexicon (Fairclough, 1995).

Van Dijk's CDA encompasses many of the same linguistic elements as Fairclough's approach, but not to the same extent. This study's approach to the macro level of the analysis was based in van Dijk's CDA which, along with Fairclough, created the framework for the sociocultural dimension of the study. Van Dijk's approach (2005: 354) to "power as control", was a central theme in the investigation. The study focused on the institutional level of the abortion laws, and this choice allowed for the analysis of texts as control. This approach was also chosen due to the concept of social power, which is introduced in terms of the power of a group or institution. Van Dijk defines social power as:

Control exercised by one group or organization (or its' members) over the actions and/or the minds of (the members of) another group, thus limiting the freedom of action of the others, or influencing their knowledge, attitudes or ideologies. (2007: 84)

The CDA of the laws from Alabama and Pakistan were conducted individually. Each analysis focused on textual, and sociocultural/political levels. The goal was to use the findings from the analysis to reveal elements such as dominance, power, control, and ideology, that may illuminate the institutional reasoning and interests behind the laws.

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Studying the abortion laws using the method of CDA allowed for a better analysis of the position of dominance, privilege, and power that governments have over the less powerful groups. Legislation is an example of institutional discourse control, and using CDA, the analysis of the language in both laws aided in identifying and comparing institutional reasoning and interests behind criminalizing the human right to abortion.

The discussion of the CDA findings was conducted using a comparative approach. In comparing the two cases of abortion laws, similarities and differences were found in the analyses and attempt to reach conclusions that span farther than the single cases (Esser & Vliegenthart, 2017: 2). A comparative research method has benefits and challenges as well. A comparative approach can answer “a particular set of questions that are of crucial importance for our understanding of a wide range of communicative processes” (Esser & Vliegenthart, 2017: 3). Comparative research deals with identifying the contrasts between levels of society and communication, which was used in this paper to explore abortion discourse in two different countries. The comparison was conducted on findings from two individual CDA investigations, which provided a common theoretical framework to work with. Complimentary to CDA, comparative research enhances understanding of society and one’s place in society, and heightens awareness of cultures, systems, and patterns of thinking (Esser & Vliegenthart, 2017).

### **Challenges or restrictions**

A focus of CDA is in the interpretation of elements such as power and social injustice in discourse. Laws have power because they are discourse from governmental institutions, with power. This meant that there were known power structures behind the discourse and therefore the analysis had to focus on other aspects of the laws in order to provide a full image of the meanings behind the laws. CDA is based on interpretation, which means there is an element of bias and may result in some invalid or limited findings. An analyst using CDA

must have a clear position, which strays from the more neutral role in other forms research (Van Dijk, 2005; Fairclough, 1995). To reduce this, possible personal bias was identified in the study in order to make the investigation more transparent and reliable.

A challenge in the preparation for the paper was in creating the framework that would allow for analysis of the laws that would result in comparable findings. This was done by conducting an analysis on the individual laws and then taking a comparative approach to present and discuss the findings. However, the use of the comparative method had challenges and restrictions as well. The findings used were from separate analyses conducted on legal texts from two different countries. The original languages of the laws were not the same, and the lengths of the texts vary. These are some factors which draw attention to the element of comparability in the findings. Comparative research deals with finding causal links when there is a lot of unknown information (Esser & Vliegthart, 2017: 6-8), and this investigation attempted to find links between the laws based on the text, background information, and the interpretation of the findings.

## Chapter 4

### Document Archive

The document archive is the accumulation of the data used for the comparative analysis. The data used consists of mainly existing data, selected through a process before starting the investigation. The archive is document-based, discovering sources through research, online and through the library. The archive takes the form of books, literary articles, transcripts of interviews, population demographic information, legal sources and notes taken during the process (Rapeley, 2009: 10-15).

Selection of the documents for the archive was based on two criteria: relevance and credibility. Only document-based sources were used, excluding audio, and visual-based sources. This choice was made in order to maintain a document-based analysis, where the documents could be assessed and analyzed based on similar factors and variables. Audio-, and visual- based sources as well as social media posts, blogs, news sources and open-web pages such as Wikipedia were not used as a measure to ensure credibility. Due to these criteria, the typology of the documents was important to consider.

The factors used in determining credibility were accuracy, authenticity, and quality.

**Accuracy**- the content in the document is cited. Can the information/citation be verified?

**Authority**- Examining the qualifications of the author and possible prior contributions. Who published the document? Where was it published?

**Quality**- Has the document been peer-reviewed? Another factor to determine quality could be where the document was accessed. Was the document found through social media or a scientific search?

(Ravana & Shah, 2014)

Bias in the documents was another factor that was considered. How this was determined was by examining the authors, funding institutions, arguments, and overall texts to reveal if there was bias present or not. Peer-reviewed content was found to have less bias, while documents from religious institutions or opinions were found to have more (Ravana & Shah, 2014).

These factors and qualities were all used to select the documents included in the archive for this investigation. The existing empirical data that was deemed relevant built the framework for the investigation.

**Restrictions.** Gaps and research and the need for comprehensive abortion studies were found while gathering the document archive. While this contributed to the investigation by questioning the reasons behind the lack of research and theoretical literature in abortion studies, it was also a restriction in compiling the document archive and subsequent analysis.

A large part of the existing literature is in the medical field, which was a restriction in approaching abortion as a human right and from a critical perspective. This also showed that there have been advances in knowledge and resources within medical studies of abortion, as well as showed progress in the movement of abortion politics. This brought awareness to possible bias centered around the abortion debate and mindful of using more current literature to represent the current state of the research. The national attitudes towards abortion in the United States and Pakistan were a restriction, as the controversial and politicized nature of the topic has direct influence on the theoretical literature and availability of studies.

Another restriction was the language barrier. Pakistan's primary language is Urdu and because documents and web searches were limited to English, it may have restricted potentially relevant documents from being collected. Documents such as the Pakistan Penal Code, that were originally in Urdu, were translated to English.

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The documents primarily were found on PubMed, ProQuest, Science Direct, The National Center for Biotechnology Information, University of Southern Denmark's library, as well as a collection of websites, such as the UN website and the Guttmacher Institute. Some documents were not able to be used as they were closed or locked for specific institutions or other reasons.

The search also indicated that there were several sources with a clear bias in the document. Part of determining the relevance of sources was also in exploring the documents to see if they were about the debate of abortion, or if they were part of the debate. Documents about the debate may have a historical or neutral perspective and relate evidence-based facts and findings, whereas documents that were found to be part of the abortion debate were might focus on proving or disproving a view on abortion or be based on personal opinions. Documents found to be part of the abortion debate were not used to eliminate obvious bias and maintain credibility in addressing the topic. An opinion-based essay, for example, could be misleading, even if the bias is not visible on the surface. Tone, author, publisher, and journal were considered while building the document archive to pinpoint possible biases (Ravana & Shah, 2014). This was particularly important regarding religious or politically charged documents, as there could be false, misleading, or uncited information to further an agenda.

Restrictions with collecting statistics regarding abortion in the USA and Pakistan were found during this process. Neither country collects abortion statistics nationally, which means that statistics come from independent sources. This was a consideration in determining if the statistics could be included in the research (Munson, 2018: 9; Hessini, 2008: 25).

## Chapter 5

### Document Analysis

Document analysis was used as a research method to analyze the sources for the investigation. The document archive builds the foundation of the comparative analysis, which was used as the foundation for the investigation in the United States and Pakistan's abortion laws (Bowen, 2009: 30).

The data used has been collected through existing studies and literature rather than created for the purpose of the investigation. Potential flaws in choosing this method presented themselves as unstable retrievability of documents, potential bias selectivity, and documents with insufficient detail (Bowen, 2009: 31-32). The data was collected, first by exploring what exists and later using that data to compare the documents that exist for each country. The document analysis was a process of constant comparison of data that emerged to other data from the document and other materials (Rapeley, 2007:126).

**First phase.** The document analysis was conducted in phases in order to identify content, themes, and possible flaws. The first phase was initial document collection: Specific keywords were used in the searches to narrow down the documents. The established keywords were combinations of “abortion” “law” “usa” “pakistan” “human rights” “international law” “politics” “perspective” “religion” “statistics” “women’s rights” “ban” “restrictions” “catholic” “christian” “church” “islam” “human rights theory” “united nations” “reproductive rights” “unsafe abortion” .

To narrow down these search results, the titles were skimmed and documents containing relevant keywords and themes were saved. the choice in literature was based around two factors. The first was the timing of the UN’s affirmation of abortion as a human right in 2018 (OCHCR, 2020), and the second was the historical aspect of abortion politics.

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The choice of main theoretical literature was from documents published between 2010-2020, in order to use current and relevant data, but also to show progress within abortion studies in the last 10 years. 2010 was the earliest year for main sources because it frames a more recent view of international human rights and shows current information and findings from studies on abortion politics worldwide. This choice was made to highlight the current state of the abortion laws and the countries, as well as stay up to date on potential studies from a human rights perspective that may have been similar to mine. At the time of writing this, however, no such investigation conducted has been conducted. The same date criteria were not used for historical, methodological, and general background sources. These sources were chosen based on relevance to the framework of the investigation.

Before moving on to the second phase of the document analysis, the abstracts or summaries of selected documents were studied more thoroughly. This was to identify which documents could contain pertinent information, as well as eliminate documents that did not meet the search criteria, had clear bias from author or publisher, focused on other countries, could not be accessed or opened, or fell out of the selected time-frame of relevant literature (Bowen, 2009: 32).

**Second phase.** The second phase of the document analysis was reading the documents to identify characteristics and elements that were relevant. Observations, notes, and repeated themes were recorded. The main considerations during this phase included:

***Overall Text-*** What is in the text and what is not in the text? Is it first-hand or second-hand document? Is there something that is missing? The absence of data, studies or topics can also have meaning in finding thematic patterns. Consider the original purpose of the text.

***Background-*** Important aspects such as the time in which the document was written to establish background information. The author(s) background can indicate potential bias as well as establish the document's credibility.



**Content-** Identify the main argument, important points and themes in the text, the perspective and point of view. What is the meaning of the text?

**Organization-** The rhetorical work of the text, identifying how the topic is presented through the structure and organization of the document.

**Sources and Knowledge-** What sources are used in the document. Are ethics considered? Has the document been reviewed? Available information about the publisher should also be noted and reviewed.

(Bowen, 2009; Rapeley, 2007)

Codes were applied to the documents to identify emerging themes, arguments, questions, and other materials that could be present. Some documents were eliminated in order to refine the frame of the investigation, and the remaining were sorted into categories to organize the documents. The categories were found using repeated themes and patterns in the documents. Literature for the methodology and theories were sorted into the categories “CDA” “Document Analysis” “Discourse Analysis” “Comparative Analysis” and “Ideology” The themes (still under the blanket theme of abortion) were “Law” “Human Rights” “General” “Religion” “Policies and Demographics”. Under each category, there are subcategories that separate the documents into the relevant geographical location such as country or region. Some documents did not specifically focus on the USA or Pakistan but contained pertinent background information and were sorted into categories based on repeated themes. Documents used for establishing theories and methods were also sorted and saved in a separate category (Bowen, 2009; Rapeley, 2007).

The typology of the documents was then considered from a list of possible typologies. These typologies would determine what could be included in the archive, as well as provide a categorization for sorting the chosen documents in this phase. The types of documents that were considered and used could include:

Article in periodical (printed, online)

Book (whole, chapter, section)

Legal document / Bill/ Legislature/ Penal Code

Essay (Historical, Critical, etc.)

Interview

Models

Plans

Questionnaire (survey)

Report (Demographic, NGO etc.)

Statement (politicians, UN, etc.)

Thesis/ PHD

Web link

Web Page (DOCAM, 2020)

The documents in each theme were classified and then sorted based on typology. Due to the nature of the investigation (CDA), typology related to social media, or any audio or visual sources were not included. There may have been possible issues with credibility and bias in those forms of media and were excluded in order to focus on text-based documentation.

**Third phase.** The third phase was analyzing the content and reevaluating the documents against other sources of information objectively and sensitively. The documents are content-specific, and the third phase involved comparisons in data and exploring sources used (Bowen, 2009: 33). If contradicting information was found in different documents during the comparisons, it was noted and investigated further to uphold, reevaluate, or discard the findings based on sources and supplementary materials. This built the validity of the documents used.

The documents' credibility and representation were examined to determine the quality of the research. The topic of abortion has many layers, perspectives, and arguments that may be conveyed in the documents. While those documents may be used in the analysis, it was important to be aware of the content and possible biases. The primary aim of this phase was to identify the documents with more objective research, transparent findings, and motives to establish credibility for the analysis (Bowen, 2009: 38).

The main themes identified were: Law and Policies; Demographics; Perspectives; History; Religion; and Cause and Effect.

### **Choice of Countries**

Choosing the United States and Pakistan had some advantages and disadvantages. For the United States, the main advantages were based on the ease of availability of studies. Much of the existing research stems from the United States or NGOs with the cooperation of the United States. Information, studies, and the Alabama law are in English rather than another language, which made information more easily accessible. The United States has a variety of laws to choose from and study between state and national laws. Abortion is legal on a national level, which allowed for the study to approach the United States as a more liberal country in a comparison (Munson, 2018; Austin & Harper, 2017). Another advantage was that because abortion is legal nationally, state restrictions could be approached as examples of disconnection between the state and federal governments.

The pro-life and pro-choice movements in the country meant that there are dynamic and varied conversations about abortion and divided opinions (Munson, 2018). This was an advantage because it showed ideologies and attitudes that may be present in the abortion debate nationally, as well as internationally. The law from Alabama used in the analysis is from 2019, which is after the UN's affirmation of human rights (CCPR, 2018; Blinder &

Rojas, 2019). This opened the possibility to explore the history and progress behind the laws and abortion attitudes.

Some disadvantages to choosing the United States were that there are 50 states and 45 of those have some form of abortion legislation (Guttmacher Institute, 2020). In choosing one state law to analyze, only depict a small portion of the country's abortion politics was depicted. This was also a disadvantage in terms of the comparison to Pakistan's law, which represents a country. The other disadvantage from choosing the United States was that it excluded the possibilities of studying countries with less research surrounding them, or a country where abortion was not challenged by law. This led the investigation in a critical direction, rather than staying comparative.

In choosing Pakistan as a country, advantages were mainly found in the country's structure and approach to abortion. Abortion is illegal in Pakistan and has one of the highest abortion rates in the world (Shapiro, 2013; Guttmacher Institute, 2015). This meant that there was a question that had to be answered to explain how that could be. This provided a starting point for the investigation. Pakistan is an Islamic country, which meant that there was the possibility to explore the role of religious ideology in abortion laws (IPAS, 2019; Sharma et al, 2019). Along with these, the abortion law is still enforced from when it was introduced in 1860 (Hussain, 2015). This allows the study of progress and evolution in the country's view of abortion and the institutions (Van Dijk, 2005).

There were disadvantages in choosing Pakistan as well. Pakistan's official language is Urdu, which meant there was a language barrier when researching, reading, and analyzing the law. Although the documents were translated, this meant information may have been lost. Abortion is also illegal in Pakistan, which meant that the studies and perspectives are more limited (Hussain, 2015; Sharma et al, 2013; Azmat et al, 2012). In terms of countries where

abortion is illegal, Pakistan is not the strictest, and due to this choice, other possibilities were excluded which may have taken a different approach to abortion laws.

An advantage to choosing to compare these countries was that the United States and Pakistan are member States of the UN. Both countries were also members of the Human Rights Council and WHO in 2018 when the Human Rights Committee declared abortion to be a human right. While both countries continue their participation in the UN, midway through the year of 2019, the United States withdrew from the Human Rights Council and is not currently a member (OHCHR, 2018). Pakistan continues to be a member State of both organizations in 2020. Both countries' participation in the UN meant that they could be held to the same standards of international human rights laws and obligations.

Laws are official and edited legal documents which means that they are associated with the institution responsible for producing them. Unlike other forms of discourse, laws do not have direct personal statements or social interactions. This meant that the study used interpretation, as well as generalization when analyzing the laws. The method of CDA on legal documents limited the approach to the investigation, excluding any neutral perspectives or studying narratives or effects on women, for example (Bruner, 2004).

## Chapter 6

### Pakistan Analysis

#### Legal Discourse

The outline of Pakistan's law is that it criminalizes two types of miscarriages and provides the conditions, possible punishments, and explanations of these crimes. As a legal document, the contents of the law are realized and legitimized by the judicial system (Fairclough, 1995: 35, 221).

The law represents the institutional voice of the Pakistani Parliament, whose members have changed many times since 1860. Each group of Parliament has had the power and resources to edit the law, as well as had the elite position of holding power in the Pakistani government. The groups have access to a discourse genre of legislative drafting because of the legal discourse. This also indicates that the groups have access to a political discourse, unique to members of governmental institutions (Van Dijk, 1993: 272).

**Lexicon.** The vocabulary in the law shows influence from legal, religious, and medical discourses. Formal legal terms such as 'offender' 'imprisonment' 'liable' and 'punishment' are consistent with the lexicon of a legal text. These terms outline the institutional power of the law, describing consequences and the responsibilities of citizens and the role of the institution. The focus of the law is the act of 'miscarriage'. The law defines two types of miscarriages: 'Isqat-i-haml' and 'isqat-i-janin'. They are described as the act of causing a woman to miscarry (by herself or another person). These terms are not generally legal terms, however when used in the context of the law, contribute to the overall lexicon as part of legal discourse (Fairclough, 1995: 34).

The lexicon shows that some words have not been translated from Urdu/Arabic, such as 'isqat-i-haml', 'isqat-i-janin', 'ta'zir' and 'diyat'- This indicates that the legal discourse in

Pakistan has terms that may have with specific meaning and context, that should not be directly translated to English. The lexicon is interdiscursive, mixing Islamic discourse with legal discourse. One sample of the interdiscursive mix (Fairclough, 1995: 145), is in the conditions of use for the terms ‘ta’zir’ and ‘diyat’. These are formal terms that match the lexicon of Islamic discourse, and that knowledge of the Islamic discourse provides the context and general meaning for the terms, since they are not defined in the text. The definitions for the terms were included in another part of the Penal Code that detailed the punishments for committing crimes in Pakistan (Chapter XVI). The overall meaning is that they are types of punishments or compensations, which Section 338 further supported, associating ta’zir with imprisonment as punishment. The diyat can be understood as monetary compensation by definition, however the law uses vague language that does not provide circumstances or specific scenarios. An example of this is: ‘the offender shall be liable to separate diyat’, which does not include any more detailing language to provide insight into this term.

In the case of isqat-i-haml and isqat-i-janin, the open definition shows that the definition for miscarriage as a spontaneous occurrence, is not what is meant in context (Fairclough, 1995: 221).

‘Whoever causes a woman with child whose organs have not been formed, to miscarry’.

The term ‘causes’ in the context of a miscarriage indicates intention, which does not support a spontaneous miscarriage. Instead the definition highlights the act of induced abortion or forced miscarriage. The terms are not consistent with the formal lexicon in a document in typical legal or medical discourse, where the vocabulary could be more specific, using terms such as ‘induced abortion’, ‘spontaneous miscarriage’ or forced miscarriage’.

The use of vague terms relies on context and implicit propositions for coherence and understanding (Fairclough, 1995: 34, 74).

*Isqat-i-haml and isqat-i-janin.* The differences between *isqat-i-haml* and *isqat-i-janin* are found in the text, detailing the gestational development of the fetus at the time of termination, the reasoning behind causing the termination and the punishment associated with each. For clarification, in the analysis, to differentiate between the terms, the action of deliberate termination of a pregnancy will be referred to using the term ‘abortion’, spontaneous termination as ‘miscarriage’, and induced termination without the woman’s consent as ‘forced miscarriage’.

*Isqat-i-haml* is an abortion that takes place before the fetus's organs are formed. The time frame for this is not explicitly included in the text. The approximate estimation for the time a fetus's organs are formed is around 4 months of gestation (Winchester Hospital, 2017), which would indicate that abortions that take place before this time are considered *isqat-i-haml*. *Isqat-i-haml* is not criminalized in two situations described as: ‘saving the life of the woman or providing necessary treatment to her’.

*Isqat-i-janin* is the other abortion detailed in the law which would take occur if the termination takes place after the fetus's organs and limbs are formed (4 months). Again, there is no language that specifies the time of gestation where the fetus’s organs are formed. This act is stricter in terms of exceptions than *isqat-i-haml*, as the only exception for an abortion after this stage of pregnancy is to save the life of the woman. This shows an absence of representation of any other reasoning that would necessitate an abortion after that time. *Isqat-i-janin* also carries the possibility of harsher punishments than *isqat-i-haml* (Fairclough 1995: 5).

*Lexicalizations.* Understanding of the law is based on the lexicon’s conditions of use (Fairclough 1995: 34). The lexicalizations of key terms provide insight into the meanings



behind the words and the law in general. ‘Isqat-i-haml’, ‘isqat-i-janin’, ‘miscarry’, ‘an act of any offender’, and ‘death’ are all terms that can be associated with the lexicalization of abortion. These can be used to describe miscarriage as well, however the lexical style indicates that the deliberate termination of pregnancy is the focus of the law. However, the association with miscarriage may indicate the lack of knowledge about the differences or an intentional use of vague language by the lawmakers (Van Dijk, 1990: 258). In total, only three terms are used in when referring to the termination of a pregnancy: miscarriage, isqat-i-haml and isqat-i-janin. The understanding of which term is referring to which act relies on implicit propositions on the basis of cues in the text/knowledge of Urdu (Fairclough 1995: 74). The terms ‘punishment’ and ‘death’ are emotive and show the negative tone associated with the lexicalization of abortion.

The lexicalization of abortion highlighted the absence of the term ‘abortion’, as well as other technical or specific language used in medical discourse such as, ‘stillbirth’ or ‘forced miscarriage’ which may be used to differentiate between the situations the law is referring to. This makes the use of ‘miscarriage’ an informal term with implicit meaning. From context, the text is mainly addressing abortion and forced miscarriage, however the use of vague language means that the reader must make the distinction through coherent interpretation (Fairclough, 1995: 74). There is little medical terminology or representation for abortion as a medical procedure, and the law does not include health risks or consequences of abortion, unsafe abortion, and birth.

## **Representation**

**Representation and participant roles.** The main subjects in the law are the woman, child, offender, and unspecified *other*, as well as the institutional voice (Van Dijk, 1993: 263-264). The law is presented in context with the Pakistan Penal Code, which is consistent with

legal discourse and observed through the use of legislative power. The role of the lawmakers also reveals a possible conflict in access to resources and education. The members of Parliament would have access to institutional resources that may be out of the public's reach. Privileged access to resources shows that the groups in government have a degree of social power. If the public is to interpret the law using the basis set up by the lawmakers, the reader would need to have, or be able to access the same knowledge base that the text was based on (Van Dijk, 1998). This can be seen more specifically in cases of local coherence in the text such as the use of the term miscarriage when referring to an array of actions (Fairclough, 1995).

In terms of the subjects of the law, the text revealed that there were three main subjects: The woman, the fetus or 'child', and 'whoever', the neutral subject. The lexicalizations of the subjects are generally vague and the way the subjects are represented shows where representation is absent (Fairclough, 1995: 5, 34). The language refers to the subjects on a varying scale of specificity. The vaguest is the term 'whoever' (neutral and indirect), used when representing the unknown subjects (Fairclough, 1995). This choice of term is fitting in a legal discourse, however, since it is gender neutral and presented in a broad context, which allows for connections to be drawn between the term and possible subjects. The same can be said for the term 'offender'. A woman who has a pregnancy terminated could be considered an offender, a woman who spontaneously miscarries as well. A doctor who administered medication that induced a miscarriage could be an offender. The discourse indirectly makes these connections while relying on the recipient to have access on the necessary information to know if the acts are permitted or illegal.

**Representation of the woman.** The text refers to the woman using the pronouns 'she' and 'her', while no other subjects are directly mentioned or gendered (*whoever*, *offender*). This puts a spotlight onto the role of the woman regarding the crimes named in

Section 338. How the woman is described in this section of the law may reveal more about her standing in the law, rights, and the general view of women. The law states that, ‘a woman who causes herself to miscarry’, may be punished for abortion. Here, the woman is represented as responsible for her action (Fairclough, 1995). The action is the crime as described in the law. The passages from the law “saving the life of the woman” and “a woman with child”, demonstrate two different ways that a woman is represented. One portrays the woman as an individual, while the other describes a woman based on her physical state, in this case pregnancy. The first example uses the word ‘life’, which in context, refers to the existence of an individual. This phrase is only used in reference to actions taken to save her life, indicating that another subject would be involved (Fairclough, 1995: 76-82).

The use of the term ‘woman’ demonstrates that the lawmakers recognize the role of the woman separately from her pregnancy. The choice to use that term highlights the absence of a term that would affect the role of the woman such as ‘mother’. Using this vocabulary, the woman is viewed as an individual in legal discourse, rather than being given the label and role of a mother which refers to a woman’s relation to the child.

**Representation of the fetus.** The representation of the fetus in the context of the law is fairly limited. The most descriptive language is in the form of representative speech acts that describe the stage of formation of the fetus's organs. The lexicalization of the fetus includes informal items such as: ‘child’, ‘born dead’, and ‘limbs have not been formed’. The term ‘child’ is the only word used to describe a fetus. This must be understood through context, as it relates to phrases such as ‘born dead’, indicating the child was not yet born in this example. The term is not the technical vocabulary for the stage of gestation that would appear in medical discourse. This fits the lexical style of the text, relying on implicit propositions for understanding (Fairclough 1995: 34). The law describes the fetus as being a

‘child’ in the ‘womb of the woman’. The womb is a less technical word for the uterus, but it is accurate when referring to female anatomy and pregnancy. Using this language to define the pregnancy creates some representational separation between the woman and the fetus (Winchester Hospital, 2017; Trosborg, 2015).

The fetus's value and legal protection are represented in the text through the statements describing the diyat for the death of a child. In these statements, a differentiation is made between the compensation of a stillborn/fetus (“born dead”) and a birthed baby (“born alive but dies”). If the diyat is understood as ‘blood money’, for wrongful injury or death (Shapiro, 2013), it shows that a birthed baby has the same value of a woman, whereas a fetus would be one-twentieth of that. This indicates that a woman and a living, birthed baby are represented as full-fledged human beings. The phrase “one-twentieth of the diyat” further indicates that according to Pakistani law, the fetus does not have the same legal protections as a woman.

### **Institutional Voice**

**Conditional statements and voice.** The law is built on a number of conditional statements that lay the foundation for the conditions, actions, and punishments that are included under isqat-i-haml and isqat-i-janin. In conditional sentences where the clause ‘if’ is placed, the following statement decides what the conditions are. For example, the first sentence of Section 338-B, places the ‘if’ in the middle of the sentence, for example, ‘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’. This use of conditional sentences dictates the conditions of abortion as an unacceptable practice, which details how it is criminalized using the law (Fairclough 1995; Van Dijk, 1993).

In Section 338, the conditional sentence is similar to the one in 338-B, however there is a part added to the conditions, ‘or providing necessary treatment to her’. This addition indicates that an abortion done for necessary treatment would not be an *isqat-i-haml*, and therefore could be an acceptable practice. Additionally, the end of both statements contains the phrase ‘is said to cause *isqat-i-haml/janin*’. This uses impersonal passive voice which creates a communicative event. In context, both examples are conditional sentences in passive voice (Fairclough, 1995: 107; Van Dijk 1998: 256). The application of passive voice in legal text avoids drawing attention to the institution. The law takes a position and makes claims regarding which unacceptable practices are conditions for the laws, however, the law does not justify or explain them. The text does not use personalization, instead using generalizations and neutral terminology to remain passive. Rather than directly stating who the text is referring to, the subjects are also referred to using impersonal language for example in the sentence, ‘Whoever, causes *isqat-i-janin* shall be liable to...’ which uses the indefinite pronoun ‘whoever’ to describe the subject.

**Speech acts.** Speech acts are another element in understanding the institutional voice of the law. In the case of punishments, the conditional sentences represent the internal structure of the laws and their consequences. The deciding factor for stating the consequences, is seen through speech acts. Modals like ‘shall’ and ‘may’ are used as directive speech acts (Trosborg, 2015; Van Dijk, 1990: 250-256). The modal ‘shall’ indicates requirement or obligation. This modal is used to state the consequence for an action, in the example, ‘the offender shall also be liable to the punishment’, the subject: ‘offender’ would be required :‘shall be liable’ for the consequence of their offence. When addressing punishment however, the modal ‘may’ is used. The modal ‘may’ indicates politeness and permission, which indicates that the prison sentences are decided on an individual basis, whereas the conditions where the modal ‘shall’ is used are fixed (Fairclough, 1995: 147).

The portion of text marked as the ‘explanation’ for Section 338, is a representative speech act. The sentence, ‘a woman who causes herself to miscarry is within the meaning of this section’ is a statement that tied the contents of the section to the intended meaning. This addition explicitly adds the woman to the institutional discourse in the role of an offender. The text includes ‘explanations’, which serve the purpose to more clearly define the meaning of the law, which shows that the institutional voice is deliberate in making this representation clear (Trosborg, 2015; Van Dijk, 1990: 250-256).

**Protection and criminalization.** Legal protection is a topic mentioned in various ways throughout the law. While the law criminalizes induced abortions and focuses on actions that would terminate a pregnancy, the law also includes provisions that protect the woman as well. The term ‘consent’ addresses that an abortion may be forced on a woman, and shows that there is a punishment for this act may be committed against a woman and in this case, there is a punishment for the action as seen in this example: ‘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’. This indicates to the reader that there is legal protection for a woman if she is attacked, harmed, or forced to miscarry. While the inclusion of this concept reveals some legal protection for a woman, it also supports a divide in the representation of women, and a difference in the degree of legal protection of the public.

The theme of legal protection is also seen by the conditions of the punishments if a woman is harmed or killed as a result of isqat-i-haml or isqat-i-janin, indicating protection for a woman to carry a pregnancy to term without interference or harm. In context of an abortion law, this illustrates a successful birth, and protection from forced miscarriage as acceptable behaviors and expectations, while abortion is shown as unacceptable through threats of imprisonment (Fairclough, 1995: 211).

The understanding of the meaning of the law is based on mainly vague language and implicit propositions in the text. The text draws a direct association between women and the crimes of *isqat-i-haml* and *isqat-i-janin*, which in turn supports the connection between women and crime. Women are directly mentioned in the text, while any other possible offenders are referred to using neutral language. This can be seen in the lawmakers' text illustrating abortion as an act of killing, 'if a child is born alive but dies as the result of an act of the offender' (Fairclough, 1995: 34).

### **Ideology**

**Islamic discourse.** The phrase 'necessary treatment' is used in *isqat-i-haml* and describes a case where the abortion would not be criminalized by law. The phrase, like other examples in the text, is vague and does not provide details or context that specifies the 'necessary treatment'. The absence of descriptive vocabulary contributes to the generally vague understanding of this phrase. The implicit proposition is that the recipient would know/must decide what the conditions of a 'necessary treatment' are. However, this may depend on factors such as personal attitudes, group, or societal norms or even how it is read in different discourses (Fairclough, 1995: 98). In context, the condition of 'good faith' is given, which suggests that the phrases are part of a lexical style that is ideologically based (Van Dijk, 1990: 261). The law reveals that Islamic discourse is tied to Pakistan's institutional discourse. The meaning of the phrase 'in good faith' is derived from interdiscursivity in the text, as it is a concept that exists in both Pakistani and Islamic law. In order to correctly interpret the text, it is implicitly expected that the recipient has knowledge of information from the Islamic discourse, as well as the understanding of ideological-discursive formations in the legal discourse. This shows the importance of the role of Islamic ideological practices, as they are naturalized in political discourse (Fairclough, 1995: 44).

The interdiscursivity and intertextuality with Islamic discourse affirms the importance of Islamic principles using legislation, which relies on the local context and knowledge of Islamic values, norms, and behaviors to understand and uphold this aspect of the law (Fairclough, 1995). In the context of legislation, it is expected that the citizens uphold their end of the law by obeying the laws. The language reveals that the influence of Islamic ideologies in governmental institutions is self-perpetuating through the enactment of laws, which can affect and control the public's behaviors, religious and cultural norms, as well as beliefs and attitudes.

**Gender discourse.** The use of gendered language also indicates asymmetrical power dynamics within a society based on gender (Van Dijk, 1998: 26). There is little representation of men in this law, focusing on the general 'offender' or the woman specifically. This reveals that the restrictions of the law affect women by limiting and criminalizing abortion. The term 'child' in relation to abortion implicitly makes the connection between the woman and the fetus in a mother-child relationship, which reveals gender ideology in the law (Van Dijk, 1998: 62). This reveals both institutional and cultural influences in the way gender is portrayed. While the text describes acceptable scenarios and measures to save a woman's life, there is an absence of acknowledgement of the reasons why a woman might seek an abortion, measures to protect a woman in case of unwanted pregnancy, or content that would indicate representation of women's experiences or voice. This absence of text regarding reasoning and perspective for women to have an abortion, along with legal regulations and criminalization of her physical actions reveals an imbalance in power through representation in the law (Fairclough, 1995: 5). It indicates that women's voices are not represented in the abortion legislation in Pakistan.

## **Summary**



## THE INSTITUTIONAL INTEREST IN CRIMINALIZING ABORTION

The laws regarding abortion are found in Pakistan Penal Code Section 338. The aim of the law is to criminalize abortion.

The law's lexicon is a combination of formal language, consistent with a legal document, and informal language which has a different lexical style and generally relies on implicit or contextual understanding. The language is simple and passive language, seen for example in the key term 'miscarriage', which is used to describe different concepts such as miscarriage, abortion, stillbirth. The vocabulary and terminology are generally vague with select terms repeated throughout the text. The passive voice separates the institution from the statements in the law on a textual level, however, it is implicitly understood that the contents represent the sender's views. The analysis found conditional sentences, representative and declarative speech acts, which build the framework for the conditions and consequences for the law. However, these statements are not specified to one scenario or condition, which implies interpretation must be used to understand the meaning of the text.

The text revealed a strong influence of interdiscursivity with Islamic discourse, which was seen in the terms used for punishments (ta'zir, diyat), as well as references to statements such as 'good faith' which carries implicit propositions of understanding Islamic values and beliefs, which identified ideological-discourse formations in the text. The Islamic ideology is present in the law, which shows an absence of other religious ideologies or groups represented in the legal discourse.

The law portrayed women as both offenders and victims; she is a victim if the miscarriage is forced, and she is the offender if she deliberately has an abortion. The analysis revealed a level of legal protections for a woman if she is the victim of a forced miscarriage, seen through the use of 'consent', as well as included consequences for a perpetrator who harms or kills a woman as a result of the crimes. Furthermore, the law implicitly compares the value of the woman's life to a fetus/child through the mention of the diyat as punishment

to someone who harms or kills her. This revealed that the life of a woman and a birthed child are considered to have the same value, while a fetus has one-twentieth of that value.

The text of the law revealed an imbalance regarding women's representation in the legal discourse. Women are specifically portrayed as subjects of the law. The woman is represented through the context of the law (criminalizing abortion), which restricts her access to abortion, and there is an absence of text regarding personal, mental, and general physical well-being. This revealed that gender discourse, as well as Islamic discourse, are influential factors in abortion discourse in Pakistan's law.

## Chapter 7

### Alabama Analysis

#### Legal Discourse

The text and meaning of the Alabama law conveys the views and positions of the lawmakers responsible for the bill. The lawmakers are a group in the Alabama Legislature who hold an elite position where, as a group, they can enact text and beliefs into law. This indicates a discourse genre of legislative drafting and political discourse that only members of those institutions have access to (Van Dijk, 1990: 272). The text was created and produced in accordance with legislative drafting rules, with sections meant to declare, explain, and dictate the framework within the law. Within the rules of formation of a text in legal discourse, the inclusion of legislative findings built a separate discourse structure than the other sections (Trosborg, 2015). Legislative Findings are provisions that may be written in the text of the law, but the contents are not enacted or included in the articles of law (North Dakota Legislature, 2019). In legal discourse, the phrase ‘legislative findings’ explicitly separates the contents in that portion from the text to be enacted in the law, meaning that they can be understood as communicative acts that represent the institutional voice, rather than as the law directly (Van Dijk, 1993). This was considered and included in the analysis.

**Lexicon.** The lexicon is generally characteristic of a legal document, using formal and technical terms in legal discourse such as ‘held criminally culpable’, ‘increased expenditure’ and ‘felony offenses’. There are also examples of language that refers to the acceptable conditions of documents in legal discourse such as ‘construction’ and ‘null and void’. This language is appropriate in the context of a legally binding document. These examples of language set the framework for the bill and how it should be understood and enacted. The

language is representative of the institutional sphere rather than the voice of a group or individual (Fairclough, 1995: 14).

The text displays interdiscursivity in the lexicon with medical discourse, using medical terminology such as ‘ectopic pregnancy’, ‘in utero’, ‘clinical conditions’, ‘admitting privileges’, ‘medical judgement’ (Fairclough, 1995: 34, 133-135; Van Dijk, 1990).

The language used in the legal and medical lexicons is specific, which leaves little room for interpretation of their meaning, such as ‘the physician's determination shall be confirmed in writing by a second physician licensed in Alabama’. The language acts as a guide for what to do, communicated from the lawmakers to the physicians.

That formal and institutional tone is not consistent throughout however, as there are some examples of vague and strategic language such as the title, *The Alabama Human Life Protection Act*, ‘mother’, ‘unborn child’ (Fairclough, 1995: 79).

The title uses vocabulary that would indicate a lexical style, which conveys the message that the law protects “human” life, rather than the contents of a law criminalizing abortion. *The Alabama Felony Abortion Act* would more likely convey their message as well as represent the lexical style. What this does indicate is that the title may be a representation of the lawmakers' voice, rather than of the institution, using it as a strategic measure to state their position (Van Dijk, 1990: 277).

### **Lexicalizations**

***The child.*** Section 3 of the law shows that the definition of the term ‘unborn child’ has been added to the law, specifically defining that a human being is also “an unborn child in utero at any stage of development”. The terms ‘child’, ‘unborn child’, ‘person’, ‘baby’, and ‘developing human being’, are part of the lexicalization of the fetus, and examples of language with connotations attached (Fairclough, 1995: 34). The term ‘unborn child’ is not a technical term typically used in medical or legal discourse, showing that this was a choice of

vocabulary rather than using terms such as ‘fetus’ or ‘embryo’ which provide information about gestational development and are more formal and technical to the discourse (Winchester, 2017). The text defines the terms ‘child’, ‘person’, and ‘unborn child’ in the same way, as any human being from the time of conception to adulthood. This creates a vague meaning for the terms, as it eliminates any identifying factors of age unless the term ‘unborn’ is used.

Other terms in the lexicalization of the fetus such as ‘deliver the unborn child prematurely’, ‘the unborn child’s mother’, and ‘lethal anomaly’ are centered around outside actions or surroundings. This indicates that the role of the lexicalization is to portray agreement between legal and medical discourse, and convey the message that a fetus has life by presenting it as having familial relationships and legal protection at conception (Fairclough, 1995: 34). The use of the informal term ‘child’, rather than the formal term ‘fetus’, is inconsistent with medical discourse and terminology. This indicates the informal terminology may be representation of the lawmakers' views, rather than because of discursive norms. The lexicalizations of a fetus and a child are based on implicit propositions, which rely on knowledge of the definitions, distinctions, and context of the laws to understand the meaning behind the terms used (Fairclough, 1995: 34; Van Dijk 1990: 261).

*The woman.* The text displays that the lexicalization of the woman is centered on her role in the context of the law, as well as behaviors and practices. Some of the terms that fall under the lexicalization of the woman are dependent on other factors in order to be understood in context, such as the terms ‘mother’ and ‘unborn child’s mother’. When the law refers to the woman as the ‘unborn child’s mother’, the possessive nature of the noun ‘child’, shows that the woman is represented through the familiar relation to the ‘the unborn child’. Linguistically, this shows that the woman is not the focus of the law, and in context, this presents a woman’s legal representation conditionally, based on actions and relationships to

the fetus, rather than addressing her individually and independent of outside factors (Fairclough, 1995: 34; Van Dijk, 1990).

The institution legislates that life starts at conception, which then implies that parenthood begins at conception, rather than birth. The law defines an unborn child as a life ‘regardless of viability’, which implicitly dictates the role of motherhood to a pregnant woman. The textual representation of parenthood is one-sided, showing that only the term ‘mother’ is used. This reveals an absence of vocabulary surrounding parenthood, such as ‘father’, ‘parent’, or ‘family’. This further indicates the absence of references to the role of a man in the abortion discourse (Fairclough, 1995: 5).

***Medical terminology.*** Some of the vocabulary and language is borrowed from medical discourse. These elements are generally more technical and formal, including ‘ectopic pregnancy’, ‘lethal anomaly’, ‘termination of pregnancy’, ‘cornu of the uterus’, and ‘stillborn’. As lexicalizations of pregnancy, these terms would be consistent with the lexical style in medical discourse (Van Dijk 1990: 261; Fairclough, 1995: 34).

The term ‘physician’ is defined as ‘a person licensed to practice medicine and surgery or osteopathic medicine and surgery in Alabama’. This shows a disconnect between the use of language in legal discourse and medical discourse. Osteopathic medicine is explicitly included with no context indicating the reason behind this. Additionally, in the technical terminology in the medical discourse, it is the surgeon and not the physician who performs surgery (What is Osteopathic Medicine, 2019). The representation of physicians as subjects portrayed through terms in their lexicalization such as: ‘clinical conditions’, ‘admitting privileges’, ‘medical judgement’. These build the conditions of use for the lexicon, describing behaviors, expectations and conventions associated with physicians (Fairclough, 1995: 34).

**Specificity.** The level of specificity of the language varied depending on the discourse the vocabulary represented. When comparing terms from legal discourse such as, ‘November 6, 2018’, ‘homicide purposes’ and ‘civil litigation’ with terms surrounding medical discourse, such as ‘recent’ and ‘medical advances’, ‘medical science’, it reveals a difference in the level of specificity between them. The lexicon from the legal discourse is more detailed with exact dates, modifiers such as ‘civil’ (law) and ‘homicide’(crime) to provide context to the nouns. In the other set of items, ‘medical science’ and ‘medical advances’ are not elaborated, using ‘medical’ as the modifier instead of a more specific word in medical discourse such as biology or embryology. The reference to time is the adjective ‘recent’, rather than a noun as used in legal discourse, which is more explicit (Van Dijk, 1993: 273).

The text does reference more specific medical discourse such as ‘risk of substantial physical impairment of a major bodily function’, indicating that the lawmakers have access to the appropriate and technical lexicon associated with medical discourse (Fairclough, 1995: 119). Despite this, the entire text uses the terms ‘unborn child’, ‘person’, ‘baby’, or ‘child’ when referring to a fetus. This indicates vocabulary choice is a strategy in discourse and shows that language is less specific when the message differs from the typical conditions of the discourse. This also shows that the assertion that a fetus is a human life from conception is not naturalized in medical discourse. This highlights that the lexicon and discourse representation surrounding the fetus may be a purposeful attempt at naturalizing the beliefs through the law (Fairclough, 1995: 37).

### **Abortion as Homicide**

The concept of abortion as homicide is only stated directly in the law in Section 2, however the term ‘homicide’ carries weight in the context of the law. The text refers to the state law that defines “a person for homicide purposes to include an unborn child in utero at

any stage of development, regardless of viability”. This implies there is a victim and a perpetrator associated with abortion. In ‘homicide’ caused by abortion, the victim is indicated to be the unborn child, and there is no direct mention of the role of perpetrator. This leaves the role open for interpretation in the context of the law (Fairclough, 1995: 60).

In referring to the subjects to criminal consequence in the bill, a passage from Section 4, reads: ‘it shall be unlawful for any person to intentionally perform or attempt to perform an abortion except as provided for by subsection (b)’

The general determiner ‘any’ indicates no specific group or gender. Section 5, then clarifies that women would not be held criminally liable, which changes the understanding of the phrase ‘any person’ to more specifically be ‘any’ physician ‘No woman upon whom an abortion is performed or attempted to be performed shall be criminally or civilly liable’. Leaving the language vague shows inconsistency with the text’s lexical style (Van Dijk, 1990: 261), which as a result gives the overall law a less specific and clear meaning. If the text were to be consistent with the level of specificity expected from a legal document, the text that states physicians are the target of punishment and the women would not be charged with a crime would be more explicit and represented throughout the law. Instead, it is minimally included, which opens the possibility for women to be interpreted as criminals in the law (Fairclough, 1995: 60).

### **Legal Rights and Representation**

The text illuminates a divide between the participants and the Others in the law. For example, the term ‘abortion advocates’ makes a separation between those with the correct views about abortion (that abortion is morally wrong) from those who would advocate for the right to abortion. The advocates are the Others in the legal discourse, and it creates personalization in the text (Van Dijk, 1990: 263-265). In this example, the term ‘abortion advocates’ is used as a label for a group of people, rather than personalizing them by



addressing them as women, human right's advocates, women's rights advocates, people, etc. The text continues, stating that 'abortion advocates speak to women's rights, but they ignore the unborn child'. The choice of the emotive verb 'ignore' indicates that it is meant to elicit an emotional response from the recipient. This lexicon ties the subject (the abortion advocates) to an action (abortion) claiming that it is done with deliberate disregard for the unborn child.

In the previous example, as well as 'legislative attempts to reign in so called abortion rights', the lawmakers' use of the phrases 'so called abortion rights' and 'women's rights' in a way that demonstrates a demeaning tone. This presents women in an antipathetic light through accusations of character and intent, with emphasis on negative qualities (Van Dijk, 1990: 261). This may indicate the lawmakers' position on abortion rights being naturalized into legal discourse, as the terms address 'rights' of abortion and women's rights, while simultaneously dismissing their legitimacy in the legal discourse. The use of 'women's rights' rather than 'human rights', further makes the distinction that the two are not equal within the legal discourse. The language reveals an indirect admission that abortion is a woman's right as if it were not connected to the abortion discourse, there would be no purpose to include it in this lexicon (Fairclough, 1995: 44).

The text reveals a dissonant abortion discourse through the language. Abortion has been represented as an unacceptable practice thus far, however, the text demonstrates implicitly presented scenario where abortion can be an acceptable practice, referring to a Supreme Court decision that is in effect nationally. The verb 'attempt' indicates making an effort at something, which represents the sentence as something that has not yet been successful (Oyez, 2020). This is in reference to the finding of *Roe v. Wade*. In other words, the information given, portrays that there is an alternate abortion discourse to the one in the text. The text shows the institutional view of abortion by redefining the definition of

homicide in legal discourse to include the ‘unborn child’. This suggests that the bill is an accomplishment for the lawmakers, revealing a tone of defiance in the text against the national law protecting the right to abortion, while also revealing. While the text presents the message of the law as the dominant discourse, the alternate narrative shows that there is dissonance in political discourse between state and national institutions (Fairclough, 1995).

### **Ideology**

**Christian discourse.** Items such as ‘sanctity of unborn life’, ‘the self-evident truth found in natural law’, and ‘all men are created equal’, portray an influence of religious ideology in terms of beliefs and attitudes. The phrase ‘natural law’ refers to the rules or ‘laws’ that are decided by nature or a higher power, different from the laws practiced by judicial institutions. Natural laws are considered unalterable because they are out of human control, differing from conventional laws that are discursive practices of juridical power. The lawmakers present natural law in the text to be of equal importance to man-made laws because the equivalence is made in a document in legal discourse.

This reveals a discursive structure between Christian, and political ideologies in legal discourse (Foucault, 1982; Fairclough, 1995; Van Dijk, 1993). The phrase ‘self-evident truth’ is an intertextual reference to Christianity as well as a previous legal discourse in the United States. Both the phrases ‘self-evident truth’ and ‘natural law’ were originally written in the Declaration of Independence along with another example referenced in the law ‘all men are created equal’. The bill uses these references to support the evidentiary claim that unborn life is human life (Milestones, 2020).

This is important because the text uses the argument of the ‘sanctity of unborn life’ as the main justification for the abortion law, which follows the same set of beliefs as the other references to Christianity. This naturalizes the validity of ideology-based formations in the law and presents them as acceptable practices in legal discourse (Fairclough, 1995: 30, 80).

This ties Christian ideology to the institutional perspective that a developing fetus is legally protected as a human life of equal value to a birthed baby or adult.

**Gender discourse.** The values and attitudes expressed in the law about women are grounded in the concept of ‘traditional’ (Christian/conservative) gender roles, where a woman is defined by her role in a family and by her ability to bear children (Dicke, 2019). The law refers to a woman as a ‘mother’ 8 times in the text and as a ‘woman’ 10 times. The focus on the term ‘mother’ shows that her representation is based on the relationship to the fetus, likely stemming from conservative beliefs about gender roles (Van Dijk, 1993: 26, 33). The text uses stereotyping of groups of women, such as the ‘abortion advocates’, and uses comparisons that are likely to elicit emotional and cultural responses such as comparing abortion to genocide. These examples of gender ideology in the text, show a degree of sexist ideology (Van Dijk, 1993: 35). In this portrayal of gender discourse, women are portrayed according to the institutional view of a woman's role as a mother, which carries the expectations to practice acceptable behaviors that are attached to that.

## Summary

The Alabama law, *The Human Life Protection Act*, is a legal document that sets the framework for criminalizing abortion in the state.

The overall lexicon of the text was consistent with legal discourse, using technical and specific language. Section 2 displayed a less formal lexicon and displayed tone using emotive language which was uncharacteristic of a legal document and inconsistent with the other sections. This showed a disconnect in the law as a whole, since there were distinct differences in voice, lexicon, lexicalizations, and the goals in Section 2 and the overall text.

The legal framework of the law used specific and clearly defined language, which addresses which practices are acceptable and unacceptable in terms of abortion. The specificity leaves little room for interpretation, as the text is detailed about the framework.

## THE INSTITUTIONAL INTEREST IN CRIMINALIZING ABORTION

There were examples of evidentiary statements and declarative speech acts that revealed some positions in the law were presented as the truth, despite lack of evidence or argumentation. This shows the law as a form of institutional naturalization of views and practices through discourse.

The institutional voice is presented through passive voice, which distances the institution from the statement; however, the production of the law clarifies that the sender is the governmental institution. Examples of the institutional voice were also found in the use of terminology when discussing the 'unborn child' interdiscursivity with medical discourse, indicating a disconnect between the message and existing discourse.

Christian and gender discourse was found in the law, mainly through interdiscursivity and implicit propositions. The influence of religious ideology was found to be a justification for the law, which focuses on the discourse representation and legal protections of a fetus. This revealed an absence of representation for the woman. The woman is represented mainly through the presented gender role or implicitly as a perpetrator, despite the law only seeking to criminalize physicians for the crime.

## Chapter 8

### Discussion

This chapter compares and discusses the findings based on the principles of CDA and human rights theory. The discussion addresses the criminalization of abortion as the main social problem found in both laws and further explain the factors and reasonings behind these legislations to uncover causes of these problems.

On the basis of CDA, it is agreed that discourse constitutes society and culture. The laws are not a reflection of the institutions, but of the society and culture in Alabama, the US, and Pakistan. Just as society and culture reflect the discourse of the laws. The governmental institutions mediate the link between the text and society because they control the discourse. Approaching the laws' abortion discourse as a form of social action, it illuminates that discourse does the ideological work for the institutes, leading to criminalizing the human right to abortion. The study works within the discourse, history, and existing knowledge to build a more complete image of the institutions and abortion laws. In this chapter, findings from the analysis are interpreted and explained in order to reveal the institutional interests and reasoning behind criminalizing abortion (Van Dijk, 2005).

The comparative discussion highlights similarities and differences between the laws that contribute to the institutional reasoning and interests of the laws, as well as enhance understanding of the abortion laws in a broader context (Esser & Vliegthart, 2017). Human rights theory is the underlying theoretical approach and the discussion will identify and explain factors that contribute to the countries' criminalization of abortion and violations of human rights.

## **Reproductive Governance**

The abortion laws in Alabama and Pakistan control women's access to reproductive choice and bodily autonomy by criminalizing abortion. In essence, because the laws are passed by governmental institutions, the role of governance is an essential part of abortion politics. The laws are both examples of governance of gender and reproductive governance based on the definition of reproductive governance that refers to the mechanisms, such as legislative controls, coercion, and moral injunctions, that state institutions and social movements use to control women's reproductive behaviors (Roberts & Morgan, 2012:243).

Social power and dominance are intertwined with the institutional perspective and reproductive governance. Dominance in this study is understood as the exercise of power by elite institutions or groups that results in social inequality (Van Dijk, 1998: 11). From the perspective of dominance, the elite institutions are led by male-dominated groups in government in the United States and Pakistan are responsible for the laws. When comparing Pakistan's Parliament, the Alabama Legislature, and the United States Congress, the common factors are that the members are predominantly men and the majority of members are affiliated with one of two major religions, Christianity in the United States, and Islam in Pakistan (Manning, 2020). This introduces the discursive power relations that are addressed throughout the discussion:

***Institution /public.*** These are the governmental institutions, the Alabama Legislature and Pakistan's Parliament, and their citizens.

***Dominant/ oppressed.*** The dominant group has power and control over the oppressed group.

***Political /non-political.*** From the perspective of international human rights law, the political groups are the countries, governments, and other authorities associated with political affiliations. The UN and human rights groups are non-political and intergovernmental groups.

The restrictive abortion laws demonstrate power relations between institutional power over the public. Reproductive governance is a means for the institutional power, which is the case in both laws, to legislate inequality by controlling a woman's sexual and reproductive behavior (Van Dijk, 1998, 2005; Foucault, 1982).

The following sections elaborate on the two abortion laws as reproductive governance, as well as explore the institutionalized ideologies that perpetuate inequality (Roberts & Morgan, 2012:243). The combination of religious, sexist, and political ideologies present in the texts can be described using the meta-ideology "conservatism" (Van Dijk, 1993: 145).

### **Legal Discourse**

The two laws have surface level differences in language, lexicalizations, and specificity. Moving past the textual level shows that the discourses are more similar when viewed on a macro scale (Fairclough, 1995). The following section will discuss some key findings from the CDA.

**Specificity of the language.** The laws criminalize abortion using two different approaches to the restrictions. Both were found to allow abortion to save a woman's life but restrict abortions in other circumstances. In the language of the laws, there is a notable difference in the specificity of discourse. Alabama's law has overall detailed and specific language that make the ramifications for the abortion law very clear (Fairclough, 1995; Van Dijk, 1990). As a result, differences in language and specificity become clearer when there are elements that are not consistent with the overall lexical style. Through the language, it is possible to differentiate between established knowledge and the beliefs, motivations, and intentions of the institution behind the law.

An important aspect of the Alabama law is the inclusion of the *legislative findings*, which display detailed legal vocabulary but also demonstrate non-technical, misleading medical terminology. This shift in language is found when the text appears to justify the restrictions by focusing on the protection of the ‘unborn life’. Not only does the language change, but the law redefines the meaning of a person to include the ‘unborn child’. This exemplifies the institutional mediation of the link between the text and the public because it shows an institutional effort to naturalize the belief that a fetus is a life using legal discourse (Van Dijk, 2005, 1990: 254). The lawmakers present ideologically-based beliefs as the truth through the laws (Goldberg & Moore, 2012), which reveals the institutional perspective of abortion does not follow a humanist approach, based on science and evidence-based logic.

The language in Pakistan’s law was generally vague and does not dictate a clear framework for the law. Unlike the Alabama law, the Pakistani law does not include an implicit or explicit justification for criminalizing abortion. The law shows that abortion is an inappropriate practice but does not explain why. There are no inclusions of studies, sources, technical medical terminology, or evidence to support the law. In studying the discourse for word choice, definitions, explanations, and overall law, the lack of specificity shows the law’s reliance on interpretation to be understood and enforced. However, the room for interpretation in the law means that the conditions and expectations of the acts, crimes, and punishments can be interpreted more liberally. ‘Necessary treatment’ may be interpreted as mental or physical health, for example. Studies show that Islamic scholars have varied interpretations of when abortion should be permitted. This may explain the use of vague language in the law, as it would leave room for argumentation and interpretation based on religious beliefs, or personal, or medical judgement (Shapiro, 2013).

**Discourse control.** Along with the main element of discipline in social power, the other factor is the use of discourse control to manipulate the public (Van Dijk, 1990: 258;



Van Dijk, 1998). Discourse control is apparent in the way the laws present information as ‘truth’ (Foucault, 1972). When seen from a Foucauldian perspective, the governmental institutions use their access to legal discourse to control the public by influencing the practices and beliefs that form the abortion discourse (Foucault 1978: 49). These institutions have privileged access to resources with factual, evidence-based information regarding abortion. There are studies, recommendations, and suggestions from organizations such as the UN, WHO and NGOs, that are based in the interests of protecting the right to life and promoting human rights (OHCHR, 2020). However, the laws present beliefs as the truth, despite providing no proof or evidence. In the Alabama law, the text mentions that ‘medical science’ has advanced and recognizes the humanity of the fetus as a way to justify abortion restrictions. The source of this claim is not cited, which indicates it is presented as the ‘truth’. Comparing this statement to the discourse of the rest of the law, it highlights the fact that the law criminalizes physicians who perform abortions rather than women. Doctors in the United States have taken the Hippocratic oath to heal and do no harm (North, 2002). This statement in the law unintentionally reveals an alternative discourse. Since abortion is legal on a national level and physicians perform them, it shows that the medical perspective on abortion is not as murder or harm. Instead, the statement shows dissonance between the lawmaker’s claims and medical discourse. This is further supported by an example of the use of discourse control in the ‘Legislative Findings’ section. Here, abortion is compared to concepts such as genocide, murder, and killing of children, which is an attempt at naturalizing the institutional stance on abortion. The section also demonstrates demeaning tone when referring to ‘women’s rights’ and ‘so called abortion rights’, which displays a legislative strategy to mislead the public on the justifications of abortion restrictions in favor of their argument that abortion is murder. By belittling women’s rights and the right to abortion, it shows the laws as ways to manipulate the public into agreeing or complying with these institutional views on

the morality and blame of abortion. The law does not criminalize women directly, but still women are portrayed in an antipathetic light and associated with murder in the discourse.

Discourse constitutes society and culture, and the institutional attitudes and views of the morality of abortion like the ones found in this law, may be naturalized into public discourse using the laws (Van Dijk, 1998). This demonstrates the male dominant lawmaker's use of discourse control to affect society and culture by integrating the beliefs into the public through the law (Van Dijk, 2005). This also shows that the institutional reasoning behind the laws is not based in protecting human rights as it does not protect human rights or use science-based evidence when presenting claims as the 'truth' (Patel, 2020).

### **Institutionalized Ideologies**

The laws exemplify that discourse does ideological work. With the abortion restrictions, the analysis found that the discourses reproduce religious and sexist ideologies and beliefs that contribute to social inequality (Van Dijk, 1998).

**Institutionalized religion.** The dominance of religious ideologies in the laws and institutions display institutionalized religion to be a key factor in the reasoning behind criminalizing abortion.

The laws represent the ideological work of two main religions, Christianity, and Islam.

It can be argued that these are minor or unimportant aspects to the abortion laws since neither text explicitly states religious reasons as justification for the restrictions. The counter to this argument is that the basis of the legislations' foundation on religious ideology, the public's right to religious freedom is not supported. This reveals another discursive power relation between the dominant group and the oppressed group in connection with the institutional and public discourse relation. The juridical power of the laws means that the public is compelled to behave within the acceptable practices of the dominant religion or face

punishment (Foucault, 1982; Shapiro, 2013; Sharma et al, 2019). The laws' representations show that there is oppression of religious minorities and citizens who do not have religious affiliations in institutions by the dominant religious groups (Van Dijk, 2005; Patel, 2020).

Pakistan's law implicitly refers to key factors of the Islamic abortion discourse such as the reference to fetal organ formation, also known as the 'quickening' or 'ensoulment'. Some Islamic scholars believe that 'ensoulment' occurs anywhere from 40, 90, to 120 days into the pregnancy (Hessini, 2008: 23). Alluding to the concepts of 'ensoulment', 'good faith', and other interdiscursive items, indicates that citizens should be aware of- and comply with Islamic standards and behaviors. The ties to Islamic discourse in the law is representative of the dominance of Muslim members in Pakistan's Parliament. Discourse representation of other religions is absent entirely from the law. What this shows, is that in terms of social structure and institution, there is an imbalance of representation of religious affiliations, favoring Muslim citizens, ideologies, and practices (Van Dijk, 1990).

In Alabama, the contents of the laws and the beliefs expressed were based in Christian ideology, drawing attention to the connection between the institutionalized conservative ideology and the pro-life/anti-abortion social movement in the United States. The Alabama state government is dominated by Protestant Christian members responsible for passing the highly restrictive law. This is shown in the discourse by the justification of the necessity to ban abortion for the sake of the 'unborn life'. This reasoning is not grounded in common law and directly violates the human rights of the woman. However, the lawmakers use discourse to spread institutionalized religious ideologies and act based on their interests.

The ideological perspective of the abortion discourse portrayed in Alabama's law is not unique to Alabama. Studies show that communities with a higher presence of conservative Protestants in the United States have become more engaged and influential in abortion politics in an effort to ban abortions (Adamczyk & Valdimarsdóttir, 2017:130). This

approach to abortion is consistent with the general attitudes and beliefs held by the pro-life social movement (Munson, 2018). This exemplifies that discourse constitutes society and culture. This reveals a tie to institutionalized religion in the state law and the governmental institutions in the United States. The sentiment to protect human life, however, does not extend past the ‘unborn life’, since it does not give the same rights to women. While institutionalized religion in this law is based on Christian ideology, this does not represent all Christian ideologies (Van Dijk, 2005, 1998: 224).

**Institutionalized sexism.** The discourse, societal intentions, and findings of both laws reveal institutionalized male dominance, indicative of patriarchal societies. The institutionalized sexism is shown through the use of stereotypes and conservative gender roles in the discourse. (Van Dijk, 1998; Donaldson, 1993). The conservative gender discourse is derived from the concept of traditional gender roles, where the role of a woman is as a mother and caretaker and the role of a man is as the head of the house and the breadwinner (Dicke, 2019). The conservative view of a women’s role in society presents them as subordinate to men on an institutional and societal level because she is not afforded the same human rights as a man (Donaldson, 1993). The laws legislate a woman’s sexual and reproductive behavior through discourse, which is based on the moral beliefs and social expectations decided by the institutions. This illuminates the foundation of institutionalized sexism, which is naturalized through the legal discourse (Van Dijk, 1998: 62).

According to international human rights law, humans have the right to abortion, as well as the right to have the autonomy to make decisions over their bodies (OHCHR, 2020). The laws both show that by criminalizing abortion, neither institution is protecting the right to life. Abortion restrictions deny a woman the right to her bodily autonomy, controlling what she may or may not do with her body through legislation. Studies agree that access to sexual and reproductive health care, family planning methods, and abortion are crucial to protect

these rights (Latt et al, 2019; Kamran et al, 2013). When access is restricted or prohibited, a woman has to make a choice whether to continue the pregnancy or seek an unsafe abortion. This implicitly legislates the woman to endure the mental, physical, and financial consequences of being potentially forced to carry an unwanted or unsafe pregnancy to term (WHO, 2020; Fairclough, 1995). This restricts the woman's access to reproductive healthcare and eliminates her options in regard to terminating a pregnancy. This demonstrates that it is not an institutional interest to ensure a woman's right to bodily autonomy.

In the discourse of both laws, men are mainly represented through the institutional voice (Fairclough, 1995:145), conveying that the laws do not legislate the same expectations, consequences, roles, or punishments onto men in the public, as they do to women. This demonstrates that a man's right to bodily autonomy is not violated, highlighting gender discrimination in the laws. Systematically discriminating against women's rights using legislation demonstrates social inequality and features the laws as discourse reproduction of institutionalized sexism (Van Dijk, 1998; Donaldson, 1993).

The discourse demonstrates that ideological and gender representation in the laws are indicative of institutionalized sexism and religion, and that the institutional voice is representative of male dominance. The beliefs and ideologies in the laws are indicative of a patriarchal mindset, which can further be observed through the discourse representation of the woman. The way the laws portray the fetus and legislature motherhood to show that reproductive control not only affects a woman's body, but works with, and strengthens the institutions' positions based in sexist and religious ideologies.

*The representation of the fetus.* The representation of the fetus in discourse of the laws is an essential factor in understanding the different approaches to abortion legislation. This illuminates that there is discourse control, which shows a perspective of the institutions' reasoning for the abortion restrictions, and highlights factors of institutional interests (Van

Dijk, 1998). International human rights law supports that the right to life starts at birth (CCPR, 2018). From this perspective, both laws display a degree of legal protection of a fetus in-utero, which represents the fetus's right to life before birth according to the institution.

The meaning of the dissonance between the human rights law and the abortion laws is seen by highlighting an interesting finding in Alabama's law. The title of the bill, *The Human Life Protection Act*, conveys the message that the law protects all human life, however the institutional focus is explicitly on the rights of the unborn. The institutional reasoning shown in the discourse is that abortion restrictions are necessary because a life starts in the womb and abortion would be killing a child. The law also declares that natural rights and legal protection start at conception rather than birth, drawing on Christian ideology to justify the claim (CCPR, 2018). These elements, along with the mention of the 'sanctity' of life, are affirmed in the law- but only in terms of the fetus. This demonstrates that the protection of human life is not the institutional reasoning for the law, despite describing 'human life' and the protection of the fetus as the justification for the law.

While declaring that the law is protecting human life, on the basis of religious beliefs, the discourse does the ideological work to justify the institutional standpoint that the rights of a fetus are prioritized over the rights of the woman. This contradicts the concept of human rights protection, as it is directly violating a woman's human right to access abortion and the woman's right to life (Van Dijk, 1998, 2005). The institution has access to information regarding known risks and consequences to a woman's health and safety by restricting and criminalizing abortion (Van Dijk, 2015). Any other mention of the legal protections of a woman are absent from the text.

This representation depicts a woman as a threat to unborn life, correlating her right to choose to abort as an act of homicide. This demonstrates discourse control by the Alabama government who have the power to affect the abortion discourse (Van Dijk, 1998).

This also shows the legislation is imposing conditions that might harm a woman (Rukanuddin et al, 2007). In summary, by focusing on the rights of the fetus, the institution is deliberately violating the rights of the woman. This indicates institutional devaluation of women in the law, in favor of the fetus, expressed through the legal discourse.

The Pakistani law shows another perspective to the representation of fetal rights. Pakistan's legal discourse is less explicit in the role of the woman and the rights of the fetus than the Alabama law, however, the woman is presented to have a higher 'value' than a fetus in-utero. This is particularly interesting because it shows that women have some legal protection based on the law. The Pakistani law includes provisions that protect a woman's right to life in the case of harm or death, by including harsher punishments for *isqat-i-haml* and *isqat-i-janin*, if a woman did not consent.

The term 'abortion' was not found in the Pakistani law, instead only the term 'miscarriage' was used. However, it is a norm in Islamic discourse to use the term 'miscarriage', because neither the Quran nor Sunnah directly address abortion. This corresponds with the vocabulary in the law only using the term 'miscarriage'. The meaning of the term may be derived through intertextuality with a passage in the Sunnah that mentions forced miscarriage (Fairclough 1995; Katz, 2003: 28). In the passage, a pregnant woman is killed and the Prophet Muhammed rules that the punishment would be a fine (known as the *diyat*) for the murder of the woman and a *diyat* of 1/20th that amount for the unborn child (Katz, 2003: 28; Shapiro, 2013: 485). This story details the same punishments that are stated in the law, which indicates that the legal protection and representation of a fetus are based on Islamic discourse, supporting the importance of Islamic ideology in legal discourse (Van Dijk, 1998).

***Legislated motherhood.*** Abortion means more than the choice to terminate a pregnancy. It is also the choice whether or not to give birth, or to be a parent. In the context

of criminalizing abortion, the discourses implicitly acknowledge that a woman may not wish to be a mother, hence the need to terminate the pregnancy. Despite this, any mention of a woman's choice or wishes are excluded in the discourse in lieu of legislation for reproductive governance. The legislation compels women to conform to the conservative gender role of a mother by restricting their choices and eliminating the option to opt-out of motherhood (Van Dijk, 2015; Foucault, 1982). This decision is regardless of the individual's personal, mental, physical, and/or financial means and wishes. There was an absence of male representation in the text of both laws regarding responsibility, actions, or accountability, despite men having a biological role in causing pregnancy. This shows that men are not punished by the law for sexual activity like women. As a result of eliminating the right to choose as dictated in the laws, the institutions legislate that the responsibilities and consequences related to sexual activity, pregnancy, and birth, to women and girls.

In the case of both laws, motherhood is presented as an integral part of the institutional view of society. The laws also demonstrate that abortion as a type of killing and legislate that birth is a woman's punishment for sexual intercourse.

The discourse representation of the woman in Alabama is mainly framed around the protection of the 'unborn life' and the woman's relationship to it. By referring to a woman as a 'mother' in legal discourse, the institutions dismiss and disregard a woman's individuality and human rights by portraying her only in relation to the fetus. Pakistan's law does not address a woman as a mother; however, it approaches the fetus as a 'child'. This is associated with the right to life, because it is in the context of criminalizing abortion, similarly to the Alabama law. Where the Pakistani law is notably different is the legal value of the woman's and fetus's life. The law presents the woman's life to have more value than the fetus by declaring the compensation for abortion before birth to be one-twentieth of the compensation in the case of a woman's death.



Neither law permits abortion in the case of rape or incest, meaning pregnancies caused by those acts are legislated to be carried to term, regardless of the implications or consequences for the woman. The discourse makes no distinction between girls and women when addressing pregnancy and abortion, which further indicates a lack of institutional interest in the representation of women in both laws. The institutionalized sexism is reproduced through the discourse and demonstrates the naturalized institutional power to control and oppress women and girls through the laws (Van Dijk, 1998).

### **Hegemony**

The power of the institutionalized male dominance and institutionalized ideologies takes the form of hegemony (Van Dijk, 1998: 260). The views by these governmental institutions show that they are integrated in society and carry power and authority through legal discourse and position. The laws represent the institutions and demonstrate the power of the institutions by juridical power and by imposing beliefs on people. The institutions use the laws to govern the public, by controlling not only the actions of the public, but by influencing the minds of their citizens. Control of the abortion discourse may influence or manipulate the public debate in the favor of the institutions, which naturalizes oppressive views, norms, and attitudes which are adopted into the private sphere (Fairclough, 1992).

The Alabama and Pakistani laws reveal that the governmental institutions continue to criminalize abortion in the interest of hegemonic masculinity and ideological hegemony. The power relations revealed in the laws' discourse between different groups (institutions / public, dominant/ oppressed, political/ non-political). The power of dominant religious groups forms one hegemony while the power of male dominant and sexist ideology form another. These groups use legal discourse to enforce their interests to establish and maintain dominance over women. The sexist ideologies and beliefs that devalue and villainize women in the abortion discourse conceal these interests in social inequality by discourse control and naturalizing

gender discrimination. This acts as a tool to limit women's representation and power, and maintain hegemony (Van Dijk, 1998; Mula, 2015). In other words, the institutions' use of discourse, discourse control, and power are strategies to maintain hegemony (Foucault, 1982; Van Dijk, 1998). Ideological hegemony is displayed in the institutionalized ideologies in the laws. The lack of representation for religious minorities in law demonstrates ideological hegemony. Religious hegemony also limits the human rights perspective of abortion, as it is not based on the interests and positions of the dominant powers.

The laws' portrayal of institutionalized sexism and male dominance in government is representative of hegemonic masculinity (Donaldson, 1993). To further support this argument, women's rights, when compared with men's rights, or the rights of the fetus, are directly targeted by the pieces of legislation. The associations that the lawmakers draw between women, immorality, and criminality through the text of the laws contribute to cultural, as well as political, barriers that impede women's access to abortion (Patel, 2020; Furedi, 2013).

The governments use reproductive governance to perpetuate ideologies that support, enforce, and division of power and representation to maintain hegemony. This displays the unchallenged dominance of their institutionalized religious and sexist ideologies as the main reasoning for violating women's human right to abortion. The laws do not claim to be against women, or explicitly state that the aim is to oppress women or religious minorities to keep dominance. Despite this, the implicit discourse and context of the laws clarify the institutional goals (Fairclough, 1995). This supports the finding that the institutions make use of discourse control, which is necessary to maintain social power and hegemony in society (Van Dijk, 1998).

**Hegemonic masculinity.** In terms of the role of sexist ideology and institutionalized sexism in the laws, the main points can be summarized as:

1. Abortion restrictions are a punishment/Abortions are punishable
2. Abortion laws control women
3. Reproductive governance oppresses women

***Abortion restrictions are a punishment/Abortions are punishable***

Abortions are portrayed as punishments for women because they are criminalized and have legal consequences that restrict access to them, and men are not restricted in the same way. The laws show that sexual activity is punishable by eliminating the woman's choice to terminate a pregnancy (Mula, 2015). This means a punishment for sexual activity could be giving birth or motherhood. In the case that a woman has or attempts to have an abortion, the laws make that a punishable offence as well, either by directly punishing the woman, or by charging a physician or other party involved. The discourse shows that this is discrimination that the institutions have targeted at women.

***Abortion laws control women***

Abortion laws are forms of reproductive governance that control a woman's access to reproductive care which denies her bodily autonomy and perpetuates social inequality between men and women (Van Dijk, 1995; Donaldson, 1993). Studies show that the reality of lack of abortion access and care result in physical, emotional, and economical suffering, or deaths of women who are forced to either continue pregnancy or seek unsafe abortions (Shapiro, 2013: 484). These restrictions compel women to either continue a pregnancy or seek an unsafe option, therefore controlling a woman's body and her actions. What this also shows is that the laws are not based on the realities of abortion politics because it excludes all representations of reality that do not match the institutions image. In this way, the governmental institutions create their own reality by presenting it as the truth through discourse control. In the interest of hegemony, this displays that the laws are intended to

impact society, and it highlights that these ideals are in society as well (Van Dijk, 1995; Foucault, 1982).

***Reproductive governance oppresses women***

Reproductive governance shows systematic oppression of women, which hinders female representation in institutions, and results in furthering the power and interests of hegemonic masculinity.

The institutional power is reliant on hegemony to pass legislation that prioritizes ideologies and institutional interests over protecting the lives and human rights of their citizens. The institutional hegemonic masculinity clear because the oppressed group is not a small portion of society- abortion laws show discrimination against any woman within reproductive age in those locations (Mula, 2015: 209). This is true for religious minorities as well, who are affected by ideological hegemony that favors institutionalized religious beliefs. The discourse shows that for these laws to have become naturalized into the legal discourse, the ideologies have social dominance as well. This indicates that systematic and oppressive behavior is normalized, to the degree that institutions violate the human rights of their citizens in order to maintain power.

**The role of religious ideology.** There were two approaches to religious ideology in the laws in terms of the institutions' interest in hegemony. The first is that the religious ideologies that were more explicit in the texts, are mainly used in the discourse for maintaining social power and control. This is the case with the Alabama law because it showed attempts at naturalizing religious beliefs through defining terms and many interdiscursive references, rather than displaying naturalized beliefs. The second suggests that in Pakistan's law, religious hegemony is so well integrated into legal discourse and societal norms, that there is no need to define terms or offer explanations of the ideology.

### **International Perspective**

While the study was limited to the two laws, a hypothesis is that similar degrees of ideological hegemony apply to the other institutions and authorities in the United States and Pakistan (Van Dijk, 1998). Based on the reports of overall human rights protections, studies show that the United States, which once had strong protections for human rights, has regressed. The findings from the discourse match this backwards movement (Vásquez & Porčnik, 2020). The state of Alabama exemplifies this regression, showing that states are acting independently of the national law to criminalize abortion. Since the start of the most recent administration in the United States, President Trump has made statements of the government's plans to restrict abortion, indicating that the United States government, as well as some of the states, are contributing to, and perpetuating, the violation of human rights (BBC, 2019; HRW, 2020). While Alabama's law is not currently in effect as of 2020, the discourse is part of American culture and society which reflects on the state and the country. The discourse is a form of social action, which is meant to oppress women by attacking and limiting their rights (Van Dijk, 2005).

Pakistan's law was passed in 1860 and is currently still enforced. The law has a long history, and has not been challenged, repealed, or modified since 1997 (Hussain, 2015). Since then, there have been no active political movement to reform the abortion law. This means that the law has passed through many groups of Parliament through the years. However, because it is legal discourse, the law is a representation of the general governmental institution, including each group in Parliament in Pakistan since 1997 (Hussain, 2015). The country does not have a history of strong protections of human rights and the abortion discourse demonstrates that the country has stagnated in any progress in protecting the human right of abortion. The discourse demonstrates that sexist beliefs and actions have a place in

Pakistani culture and society, along with Islamic dominance in institutions and the public (Van Dijk, 2005).

However, in contrast to this, recent studies have found that some non-political organizations have expressed hope for positive change in the future (IPAS, 2019). Based on the comparison, Pakistan's discourse revealed a more liberal approach to abortion legislation. Some reports have found that Pakistan's abortion law is less strictly enforced (Sharma et al, 2019), which fits the finding. In all, Pakistan's high abortion rates, despite abortion being illegal, shows that there is a divide between the legal discourse, the power of the law, and the behaviors of the public. The findings of the discourse analysis do not match the understanding of regarding Islamic countries and the high level of human rights violations with abortion laws (Shapiro, 2013). The discourse shows that the Islamic influence is not a direct reasoning or justification for the abortion laws but can be interpreted as the cause for more liberal abortion politics than Alabama. These factors indicate that while stagnated progressively now, there may be movement towards positive social change in the future.

Discourse is historical and examining the history and overall approach to abortion laws is an aspect of the investigation (Van Dijk, 2005). The international debate and controversy are relatively recent standpoints to abortion. Historically, abortion has been a woman's choice and objections to abortion were based on protecting the health and life of the woman (Munson, 2018; Fox, 2019). This shows that there was a shift in perspective, away from a more humanistic approach and to something else. In the analyses, the discourse revealed that like in the past, religious, and sexist ideology were main contributors to the anti-abortion attitudes (Munson, 2018).

Today, cultural, and religious norms are thought to be among the main justifications for abortion restrictions by law (Patel, 2020). This perspective is mainly societal and does not directly address institutional reasoning or interests that might be behind the laws. Along with

the international efforts to promote human rights, comprehensive political commitments to improve education, access, and care are necessary to improve conditions (Faúndes, 2012: 570). Based on the anti-abortion laws, the United States and Pakistan are not honoring the political commitment to prevent unsafe abortions. The different regions and dominant religious ideologies in the discourse shows that criminalizing abortion to maintain power is not unique to one institution, country, or ideology but shared amongst them.

**Accountability.** There is a disconnect between the reality of abortion and abortion restrictions, and what the discourse presents as the truth. That highlights a lack of institutional accountability for human suffering caused or intended by these laws. Alabama is one out of 45 states with laws that have varying degrees of hostility towards abortion. Recent studies and current events show that the United States government does not take responsibility or accountability for states such as Alabama violating human rights (Blinder & Rojas, 2019). In fact, national legislation and political statements has actively restricted protections on human rights and aims to continue in the future, as seen by the presidential promise to increase restrictions on abortion (ACLU, 2019; HRW, 2020). The UN's international and intergovernmental work to encourage reform, improve education, and decriminalize abortion are not expressed or respected in either law (CCPR, 2018; Vásquez & Porčnik, 2020). What this shows, is that the UN does not exercise sanctions or direct repercussions if member countries such as the United States and Pakistan violate human rights (HRW, 2020; United Nations, 2014). Further, this indicates that the international human rights laws and treaties are not influential in the legislative decision-making processes of the United States and Pakistan when it comes to the human right to life and to abortion.

As recently as 2020, countries continue to use legislative measures to restrict or prohibit access to abortion despite the UN's affirmation of abortion as a human right in 2018. This demonstrates that lack of local and international accountability plays a role in

perpetuating hegemonic masculinity in institutions of government in the United States and Pakistan.

### **Limitations**

Some limitations and weaknesses of the study were caused by the choice in subject and methodology. This study compared the findings from two abortion in order to investigate institutional interests and reasoning. Because of this choice, areas such as abortion experiences, perceptions, and any direct implications could not be included, as the findings are interpreted from the discourse. Conclusions and interpretations about the consequences, such as inequality and oppression, were therefore mainly based on the institutional discourse.

Due to the comparative approach, the breadth of the investigation was a weakness as well as an advantage. In focusing on the comparison, some aspects of the analyses were not further explored or discussed, which may have impacted the findings.

CDA is based on interpretation and explanation, which was a limitation of the study. The validity of the results may be impacted by new information, other interpretations, different methodological approach, or theoretical perspective. The aim was to offer theoretical and evidence-based explanations for the findings in order to reduce possible inconsistencies. This was found to be consistent with some of the known challenges of using CDA as methodology.



## Chapter 9

### Conclusion, Significance, Recommendations

This chapter will answer the main question of the study, as well as summarize the key points and process of the investigation. Following this, the chapter will address the significance of the investigation and conclude with recommendations for future research.

#### Conclusion

This thesis addressed the social problem of injustice and inequality caused by legislated abortion restrictions. On the basis of human rights theory and international human rights law, this study critically analyzed the discourse of abortion laws from the American state Alabama and Pakistan. The aim of the thesis was to answer the main question: What institutional interest does Alabama and Pakistan have in criminalizing abortion, and what is the institutional reasoning behind the restrictive and oppressive laws?

The findings from the critical discourse analysis, show that the reasoning and justification detailed by the laws was not an accurate representation of the institutions' views or beliefs. The governments were found to use abortion legislation as reproductive governance to control and oppress women (Morgan, 2019), which demonstrated institutionalized sexist and religious ideologies are at the core of the hidden reasonings behind the laws. The investigation highlighted that the institutions do not have an interest in protecting all members of the public, by intentionally and systematically violating human rights through legislation. The discourse demonstrated that abortion restrictions are exercises of reproductive governance, which are institutional tools to maintain ideological hegemony and hegemonic masculinity. This showed that the governmental institutions have an interest

in perpetuating social inequality and injustice by criminalizing abortion, in order to maintain hegemony.

The paper dealt with analyzing laws from countries in different regions of the world to find if the abortion laws would reveal about the institutional level of abortion politics and explore what that means in a comparison. The comparative approach to the analysis showed that the reasoning and interests revealed in the laws were not unique to one country or ideology but spanned across areas of the world and religious beliefs.

The framework of CDA and human rights theory in this thesis highlighted that the institutions' ideological approach to the laws was in contrast with a humanist perspective that focuses on protecting human rights. The abortion laws were analyzed using CDA, which was built on a framework of theories from van Dijk and Fairclough. This found that the text of the laws is the product of the governmental power and was shown to do ideological work.

Through textual and linguistics analysis in the CDA, Pakistan's law depicted abortion through vague language and implicit propositions. The term 'abortion' was not used in the law, and other key terms were not defined, which revealed the naturalization of Islamic discourse. The law is built on conditional statements, which revealed looser guidelines for the law.

Alabama's law used legal discourse to separate beliefs from official law. This was revealed to be discourse control, as legislative drafting is privileged knowledge. To the public, the law appeared as one cohesive document, although one was meant to be enacted into law, and the other that was a direct display of the institutional voice. Alabama's law used specific and emotive language, which made the intentions and framework for the law strict. Both laws used generally passive voice, apart from the Legislative Findings section in Alabama's law, and had differences in the general lexicon, tone of voice, structure, and

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specificity of the language. When compared from a macro perspective, these differences were revealed to be less significant because there were more similarities found.

The CDA revealed Christian and Islamic ideologies in the laws, which proved to be essential to the abortion discourse and in revealing the institutional reasoning and interests. Christian and Islamic ideologies were identified as the dominant institutional ideologies, which coincided with the dominant religious beliefs of the lawmakers and countries. The laws were means to spread these religious ideologies using discourse. The Alabama law was more specific and interdiscursive with religious discourse, using the ‘sanctity’ of life and protection of the fetus as the main justification for criminalizing abortion. These references depicted women’s rights as less valuable, and women as a threat to religious Christian. The discourse found that the institution prioritizes the rights of the fetus, which directly and intentionally violates women’s rights.

The discourse of Pakistan’s law had intertextuality with Islamic beliefs and values, although much less explicitly than Alabama’s law. The analysis found that the Islamic ideology and influence was the basis for women having some legal protection and value in the law. This finding was surprising when compared to the norm of abortion laws in Islamic countries and the Alabama law. Pakistan’s abortion law was found to be less strict on abortion, allow for more liberal interpretation, and provide more protection for a woman than the Alabama law.

The analysis illuminated sexist ideologies to be essential parts of the institutional reasoning and interests along with religious ideologies. The discourse revealed that both laws have a general absence of representation for women’s choices, voice, and well-being. When found, the discourse representations of women were based on traditional gender roles for women, demeaning or discriminatory, and legislated acceptable and unacceptable behaviors for women. This highlighted that the laws were based on sexist ideology, which displayed

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that the institutions were maintaining an imbalance of power in textual and legal representation based on gender. The institutionalized sexism in the laws expressed the legislative power of male dominance in Alabama's and Pakistan's governments by controlling women's actions and rights.

Furthermore, the study found that the institutions do not reject or fight inequality. Instead they were shown to promote inequality through discourse and by actively denying a woman bodily autonomy by restricting and criminalizing the choice of whether or not to continue a pregnancy. As reproductive governance, the restrictive and discursive function of the abortion laws is to marginalize, devalue, and oppress women. This is done as a tool for the governmental institutions to maintain power, by suppressing women's representation and limiting the options to challenge the dominance. The study revealed that the institutionalized ideologies and ideological dominance in Alabama and Pakistan's laws revealed an interest in maintaining ideological hegemony and hegemonic masculinity.

The investigation found that although the laws' discourse implicitly presented some religious or cultural justifications for criminalizing abortion, these were shown to be institutional discourse control, rather than a reflection of the institutional perspective. Alabama's law showed less naturalized religious ideology, indicating an attempt at hegemony but implying it was not yet in place. Pakistan's law demonstrated Islamic ideology to be naturalized in the discourse and government. This illuminated the interest in maintaining religious hegemony by passing laws based on dominant religious values. Both laws were found to reveal institutional interest in maintaining hegemonic masculinity based on institutionalized sexism, reproductive governance, and male dominance in state and federal governments. Abortion was represented as either a punishment, or something punishable, which supported the overall divide between men and women in the law. Women were punished, while men were absent from the laws. The study found that hegemonic masculinity

in the institutions was behind the laws because of the use of discourse control and reproductive governance to limit women's power and violate their rights.

The United States and Pakistan are countries with differences in culture, language, traditions, beliefs, and approach to the protection of human rights. The findings of this thesis highlighted that both countries are violating human rights, which was not indicative of two countries with such different levels of human rights protection. These restrictions highlight that the United States and Pakistan do not comply with international human rights laws. Finally, the comparative perspective revealed that the lack of local or global accountability for institutions violating human rights was a factor that legitimizes institutional hegemony and perpetuates social inequality.

### **Significance/ Implications for Future**

Until this study, there had not been a comparative investigation of abortion laws in the United States and Pakistan. Abortion studies that included both Pakistan and the United States were global in scope and not in direct comparison or from a human rights perspective. The results of this study are significant because they show that criminalizing abortion is a way for institutions to maintain hegemonic masculinity. The study challenges the previous abortion discourse and questions the social power of governments in finding that abortion legislation is a form of institutional control.

This is significant because it highlights that critical approaches to institutional discourse questions what is presented as truth and explores the causes for human rights violations, rather than just the effects.

The thesis demonstrates that a humanist perspective on abortion as a human right, illuminates that there is a disconnect between the presented truth of institutional abortion legislation and reality. In comparing the laws from Pakistan and Alabama, the study found that hegemonic masculinity and reproductive governance span across borders and ideologies,

which supported the value of a comparative human rights approach as a way to research abortion politics and enhance understanding of politics, culture, power, and other elements of abortion discourse. This approach branches across regions of the world and differences such as language and traditions, and allows for a study of power, dominance, and ideology in abortion laws.

Another valuable attribute to the study is that it demonstrated that the abortion debate is not limited to women's bodies or public opinion. This investigation showed that the dominant groups benefit from the abortion debate because it shifts focus away from their actions and interests. This shows that studies can focus on abortion politics in a way that does not center around the morality of abortion and the women who seek them, but by approaching abortion as a human right and identifying causes of social injustice. This study shows that we can study why governments are restricting access to abortions, and what they gain by violating human rights, which can contribute to future strategies to protect and promote human rights. Furthermore, hegemony in institutions suggests that there may be connections between abortion laws and areas of social injustice and inequality where legislation is used as control. The results of the investigation indicate that governmental institutions may have a hand in the current gap in research within abortion studies. Which could be caused by lack of support for research, lack of free press, or other factors that may result from institutional interference in research.

### **Recommendations**

There is a hegemonic interest in criminalizing abortion. Because of this, it is a recommendation that future studies to approach abortion and abortion politics from a critical perspective of power and institutions. While this study was on a small scale, it would be informative to explore abortion as a human right in legislation on a global scale. This could expand upon these findings and study the connections between abortion restrictions,

hegemonic masculinity, and international politics. Restrictive abortion laws are institutional forms of inequality and injustice, and research should reflect that.

Human rights theory was shown to highlight human rights violations in this study. It is recommended to use this approach in future studies to use the perspective of humanism in human rights and abortion politics. The study finds that along with studies, the focus of abortion politics should be based in humanism, which focuses on the life, well-being, and protection of the woman. This focus on human rights is supported by the UN's principles and efforts to protect and promote human rights. Encouraging legislative reform and utilizing a non-political and humanist approach to the abortion discourse that prioritizes the women's rights, rather than the rights of the fetus, could potentially effect positive change in Alabama, the United States, and Pakistan.

Based on the findings from this study, a recommendation is for there to be a joint effort to approach inequality and the criminalization of abortion. The help and guidance of the UN, WHO, and other human rights groups internationally is important to ensure better education, reproductive health care services, and raise awareness of unsafe abortion as a public health crisis. However, to impact the laws and the institutions, it is a recommendation that moving forward, the conversation about abortion should include the groups in power and the reasons why institutions are using legislation to control and regulate access to abortion. The text of the law appears to focus on the rights or protection of the fetus, and the moral and legal implications of abortion, which does not address that reproductive governance is a tool to oppress women.

The institutions responsible for passing and enforcing legislation that violates human rights must be held accountable on state, national, or international levels. To promote and protect human rights and see progress in decriminalizing abortion, the focus of the abortion debate must shift from individual actions and consequences, to governmental and national

responsibility and accountability. Intergovernmental organizations and countries must work together to hold governments accountable when their institutions do not honor international treaties and violate human rights.

### **Future Research**

This study raised questions that could be explored and expanded upon in future research. In finding the similarities in institutional interests between the laws in the United States and Pakistan, a study of other laws and institutions to find if the correlation between hegemonic masculinity and the oppression of women through laws appears in other forms would be an interesting future project. These countries should have seemingly different views, like in this investigation, such as China and Spain, or Brazil and Russia. As an expansion of this study, the future study could explore if results are duplicated or varied.

Studies of reproductive governance, such as exploring the effects of reproductive regulations on women, a review of types of reproductive governance, investigating the role of legislation in the cycle of oppression, or a study of overall women's rights and reproductive governance in the United States and Pakistan, could be a possible extension to the findings of this project.

The role of religious ideology in hegemony and human rights is another possibility for future research. This study found that despite foundational religious ideology in the laws, and the imbalance of religious representation in the institutions, it was not directly expressed in the institutional interest of maintaining hegemony. Another possibility for future research could be more in-depth comparative study of different ideologies in terms of their influence on power and human rights. While this investigation is isolated to two countries, using a human rights perspective on other abortion and reproductive legislation may contribute to the



research, conversation, and debate that approaches the role of power as a key motivation for regulating reproductive behaviors.

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**Appendix 1****Alabama Law (2019) *The Human Life Protection Act***

## A BILL TO BE ENTITLED AN ACT

Relating to abortion; to make abortion and attempted abortion felony offenses except in cases where abortion is necessary in order to prevent a serious health risk to the unborn child's mother; to provide that a woman who receives an abortion will not be held criminally culpable or civilly liable for receiving the abortion; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

## BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as The Alabama Human Life Protection Act.

Section 2. Legislative Findings.

(a) This state's statute criminalizing abortion, Section 13A-13-7, Code of Alabama 1975, has never been repealed. It has remained unenforceable as a result of the U.S. Supreme Court decision in *Roe v. Wade*, 410 U.S. 113 (1973) and its progeny, which struck down as unconstitutional a Texas statute criminalizing abortion and which effectively repealed by implication and made unenforceable all other state statutes criminalizing abortion.

(b) On November 6, 2018, electors in this state approved by a majority vote a constitutional amendment to the Constitution of Alabama of 1901 declaring and affirming the public policy of the state to recognize and support the sanctity of unborn life and the rights of unborn children. The amendment made it clear that the Constitution of Alabama of 1901 does not include a right to an abortion or require the funding of abortions using public funds.

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(c) In present state law, Section 13A-6-1, Code of Alabama 1975, defines a person for homicide purposes to include an unborn child in utero at any stage of development, regardless of viability.

(d) In the United States Declaration of Independence, the principle of natural law that "all men are created equal" was articulated. The self-evident truth found in natural law, that all human beings are equal from creation, was at least one of the bases for the anti-slavery movement, the women's suffrage movement, the Nuremberg war crimes trials, and the American civil rights movement. If those movements had not been able to appeal to the truth of universal human equality, they could not have been successful.

(e) Abortion advocates speak to women's rights, but they ignore the unborn child, while medical science has increasingly recognized the humanity of the unborn child.

(f) Recent medical advances prove a baby's heart starts to beat at around six weeks. At about eight weeks, the heartbeat can be heard through an ultrasound examination. A fetal Doppler can detect a fetal heartbeat as early as 10 weeks.

(g) Ultrasound imaging shows the developing child in utero.

(h) As early as six weeks after fertilization, fetal photography shows the clear development of a human being. The Alabama Department of Public Health publication "Did You Know . . ." demonstrates through actual pictures at two-week intervals throughout the entire pregnancy the clear images of a developing human being.

(i) It is estimated that 6,000,000 Jewish people were murdered in German concentration camps during World War II; 3,000,000 people were executed by Joseph Stalin's regime in Soviet gulags; 2,500,000 people were murdered during the Chinese "Great Leap Forward" in 1958; 1,500,000 to 3,000,000 people were murdered by the Khmer Rouge in Cambodia during the 1970s; and approximately 1,000,000 people were murdered during the Rwandan genocide in 1994. All of these are widely acknowledged to have been crimes against

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humanity. By comparison, more than 50 million babies have been aborted in the United States since the Roe decision in 1973, more than three times the number who were killed in German death camps, Chinese purges, Stalin's gulags, Cambodian killing fields, and the Rwandan genocide combined.

(j) The cases of Roe v. Wade and its progeny have engendered much civil litigation and legislative attempts to reign in so called abortion rights. Roe v. Wade attempted to define when abortion of an unborn child would be legal. Judges and legal scholars have disagreed and dissented with its finding.

Section 3. As used in this act, the following terms shall have the following meanings:

(1) **ABORTION.** The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include these activities if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the unborn child prematurely to avoid a serious health risk to the unborn child's mother, or to preserve the health of her unborn child. The term does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

(2) **ECTOPIC PREGNANCY.** Any pregnancy resulting from either a fertilized egg that has implanted or attached outside the uterus or a fertilized egg implanted inside the cornu of the uterus.

(3) **LETHAL ANOMALY.** A condition from which an unborn child would die after birth or shortly thereafter or be stillborn.

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(4) **MEDICAL EMERGENCY.** A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that her pregnancy must be terminated to avoid a serious health risk as defined in this act.

(5) **PHYSICIAN.** A person licensed to practice medicine and surgery or osteopathic medicine and surgery in Alabama.

(6) **SERIOUS HEALTH RISK TO THE UNBORN CHILD'S MOTHER.** In reasonable medical judgment, the child's mother has a condition that so complicates her medical condition that it necessitates the termination of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function. This term does not include a condition based on a claim that the woman is suffering from an emotional condition or a mental illness which will cause her to engage in conduct that intends to result in her death or the death of her unborn child. However, the condition may exist if a second physician who is licensed in Alabama as a psychiatrist, with a minimum of three years of clinical experience, examines the woman and documents that the woman has a diagnosed serious mental illness and because of it, there is reasonable medical judgment that she will engage in conduct that could result in her death or the death of her unborn child. If the mental health diagnosis and likelihood of conduct is confirmed as provided in this act, and it is determined that a termination of her pregnancy is medically necessary to avoid the conduct, the termination may be performed and shall be only performed by a physician licensed in Alabama in a hospital as defined in the Alabama Administrative Code and to which he or she has admitting privileges.

(7) **UNBORN CHILD, CHILD or PERSON.** A human being, specifically including an unborn child in utero at any stage of development, regardless of viability.

(8) **WOMAN.** A female human being, whether or not she has reached the age of majority.

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Section 4. (a) It shall be unlawful for any person to intentionally perform or attempt to perform an abortion except as provided for by subsection (b).

(b) An abortion shall be permitted if an attending physician licensed in Alabama determines that an abortion is necessary in order to prevent a serious health risk to the unborn child's mother. Except in the case of a medical emergency as defined herein, the physician's determination shall be confirmed in writing by a second physician licensed in Alabama. The confirmation shall occur within 180 days after the abortion is completed and shall be prima facie evidence for a permitted abortion.

Section 5. No woman upon whom an abortion is performed or attempted to be performed shall be criminally or civilly liable. Furthermore, no physician confirming the serious health risk to the child's mother shall be criminally or civilly liable for those actions.

Section 6. (a) An abortion performed in violation of this act is a Class A felony.

(b) An attempted abortion performed in violation of this act is a Class C felony.

Section 7. This act shall not apply to a physician licensed in Alabama performing a termination of a pregnancy or assisting in performing a termination of a pregnancy due to a medical emergency as defined by this act.

Section 8. The construction of existing statutes and regulations that regulate or recognize abortion in Alabama that are in conflict with or antagonistic to this act shall be repealed as null and void and shall recognize the prohibition of abortion as provided in this act. If this act is challenged and enjoined pending a final judicial decision, the existing statutes and regulations that regulate or recognize abortion shall remain in effect during that time.

Section 9. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official

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Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 10. This act shall become effective six months following its passage and approval by the Governor, or its otherwise becoming law.



## Appendix 2

### Pakistan Penal Code (1860)

**338. Isqat-i-Hamal** : Whoever causes woman with child 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 to her, is said to cause isqat-i-haml.

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

**338-A. Punishment for Isqat-i-haml** : Whoever cause 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 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-ianin 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-fanin, 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.

