II. The Legal Background: Its Implications

This section presents the legal background for the report. It is based in part on the 1977 Survey, its 1979 update, the Reports prepared for the Barbados and Malawi meetings as well as regional analyses of Commonwealth abortion law. The present Report intends to be readable as a self-contained study. Some references to earlier Surveys will be made where necessary to confirm or refute their observations in light of the subsequent experience, and where necessary to show new perspectives and the direction of new approaches.

The legal background of Commonwealth Abortion law has implications which previously have been undervalued. For example, those countries that maintain their Common or Customary law with respect to this issue prohibit abortion after quickening. Some countries with basic laws, irrespective of how they have developed or advanced them, do not prohibit procedures by one acting on a woman or a woman acting on herself until she can be proven to be "with child". The legal history of Commonwealth criminal law has implications for abortion, prohibiting it only after certain gestational stages have been proven (see Table I) and/or permitting it by specified indications (see Table II). Those Commonwealth countries permitting procedures soon after a missed period are often more accommodating of post conceptive self administered methods than those law permitting abortion by specified indications.

A. Evolution of Commonwealth Abortion Law

1. Generally

Commonwealth abortion laws have been divided into Common/Customary law, basic law, developed law and advanced law. Common law prohibits abortion only after pregnancy reaches the stage of quickening which is normally taken to occur at about 12 or 14 weeks since the last menstrual period. After quickening, the historic English Common law punished abortion as a misdemeanour. Basic law punishes abortion by statute modelled either on the English Offences Against the Person Act, 1861 or on the Indian Penal Code 1860. These two models differ in significant ways. Perhaps the most important of which is that the Indian Penal Code punishes a woman acting on herself or one acting on a woman only after she can be proven to have been 'with child' which is now normally taken to have occurred at about 6 or 8 weeks of pregnancy. The English Offences Against the Person Act, 1861 punishes anyone with intent to abort but punishes the woman acting on herself, only after she can be proven to be 'with child'. Some countries that have adopted this exact model, others have altered it to punish both the person acting on the woman and the woman acting on herself irrespective of whether she is 'with child'.

Developed law recognises either implicit exceptions by case law or explicit exceptions by statute to the basic law prohibitions, in favour of procedures undertaken with the intention of saving the woman's* life or physical or mental health. Advanced laws positively provide for abortions to be done, by presenting terms under which abortion services may be made lawfully available. Although they are not necessarily more accommodating than developed laws, they set the legal scene for conscientious and secure

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* Woman refers throughtout this Report to any female capable of conception, including adolescent women.

performance of medical termination of pregnancy by defining the conditions, locations and, for instance, qualifications for those performing legal abortions.

The evolution has been generally from gestation oriented laws (Common/Customary law) to crime oriented laws (Basic), through laws recognising life and health preserving exceptions to criminal liability (Developed), to health-oriented laws (Advanced) which positively state the circumstances and conditions in which pregnancy may be lawfully terminated. The use of law in health-oriented jurisdictions to direct public resources to family welfare, and to encourage individuals to take their own preventive and protective initiatives in health care, has promoted a vision of law in family health incompatible with crime and punishment. The growth of health and welfare laws has shown signs of refocusing perspectives on abortion. The practice is acquiring a lower profile in the health care setting of several jurisdictions. It is coming to be treated in much the same manner as other comparable medical procedures and as it was at Common law.

ii. Common/Customary Law

Common law punishes abortion as a lesser offence, a misdemeanour, but only after quickening. This misdemeanour was capable of commission by a pregnant woman upon herself, and by other persons on her, but in neither case was there liability if pregnancy was not proven to have proceeded to quickening. Quickening is normally taken to occur about about 12-14 weeks of pregnancy. The Common law position still prevails in Sierra Leone. There is an absence of local legislation on abortion in Sierra Leone. As a result Table II explains that both Common law and the English Offences Against the Person Act, 1861 are applied. It is unclear whether the application of the 1861 Act supercedes the Common law altogether. For example it is unclear whether procedures before quickening which were permissible at Common law are legal in Sierra Leone. It appears that in countries influenced by the historic English Common law standard, procedures performed before quickening are legal unless carried out in violation of other laws on, for instance, the unqualified practice of medicine. Common law offences may be neutralized by Common law defences to liability, notably the defence of necessity recognised in R. v. Bourne (see II A. iv. below).

The Common law position was changed in England as earlier as 1803 where prequickening care by another person was punishable albeit with a lesser punishment than post quickening abortion. An 1837 act abandoned the distinction between a woman quick and not quick with child and indeed eliminated the requirement that the woman be pregnant at all, punishing anyone who acted with the intention of procurring a miscarriage. This historically important quickening distinction was not, however, totally abandoned. The 1837 Act and its subsequent amendment in 1861 continued to punish a woman acting upon herself only when it could be proved beyond reasonable doubt that she was "with child", thereby leaving those methods a woman could employ on herself before she could be proven "with child" unpunishable. This is the situation in England today and in many Commonwealth jursidictions which adopted the 1861 law. Others, however, have changed it making a woman acting on herself, irrespective of whether she is "with child", criminally liable (see Table I).

As the law evolved during the 19th century the "quickening" stage found at English Common law became a "with child" stage found in subsequent English statutory law or at Scottish Common law. It is hard to know when the quickening standard became the 'with child' or pregnant standard as it is

known at Scottish Common law. The first reported case, H.M. Advocate v. Anderson (1927) held that it must be shown that the woman was pregnant for a charge of abortion or attempted abortion to lie. The Scottish Common law position traditionally enabled greater availability of pre-pregnancy care in Scotland than in England prior to the passage of the British Abortion Act 1967. The British Abortion Act 1967 does not supersede Scottish Common law but rather supplements it. So those acting before a woman is proved pregnant are not liable for abortion at Scottish Common law. Thereafter they must comply with the British Abortion Act 1967. This Scottish Common law position was codified in the Indian Penal Code and exists today in India and countries who have adopted the Indian Penal Code (see II A iii below).

Customary law found in many parts of the Commonwealth is similar in many ways in its evolution to Common law. It is the law that is derived from custom in much the same way Common law is derived from the communal practice and attitude. Information on customary or tribal abortion law is sparse but developing. The sparseness is due in part to the general lack of integration of customary law into the colonial law systems. It is only now that countries are beginning to realize its importance particularly in areas concerning the family. As a result countries are moving through, for example, Native Custom Recognition Acts to accommodate customary practices and beliefs.

Since the Native Customs (Recognition) Act, 1963, came into force in Papua New Guinea in 1964 for instance, custom may be invoked in Common law courts of criminal jurisdiction to ascertain the existence of a state of mind, to decide the reasonableness of behaviour and the reasonableness of an excuse. Custom pertaining to pregnancy, contraception and treatment of an unborn may accordingly be invoked upon a charge of abortion with exonerating effect. Similarly, although areas of immunity from observance of the general law will not be recognised, customary belief held in good faith may be found a justification in an individual case for not proceeding with criminal case.

In 1978 the Law Reform Commission of Papua New Guinea addressed more general issues of accommodating customary law in a general way, but it advanced a perception especially pertinent to Commonwealth States whereby customary law is or has been relevant. The perception has distinctive force regarding legal prohibition of abortion, since this often derives much of its validity from religious sentiment and doctrine, and both are invoked to resist liberal reform of such laws. The Law Reform Commission observed, however, that:

> "To punish one people by applying standards and world views of another people is inherently wrong and is fundamentally unjust. We believe no independent and self-respecting nation can tolerate this. A criminal justice system which punished people for things they do not consider to be wrong cannot be effective, respected, and supported."

This is an observation of profound philosophical, jurisprudential and political significance. When applied locally it may entitle individuals to manage their fertility, perhaps by recourse among other means to safe termination of pregnancy, in a manner compatible with their culture and ethical standards. In Papua New Guinea, for instance, Heather McRae has noted that abortion is practiced in most societies, and that among the Kuman people, for instance, it is not regarded as wrong. In Sanguina Wauta v. The State (1978), Prentice C.J. considered that exoneration by custom should apply only to nationwide as opposed to local custom. McRae has argued that

the constitution requires respect for local custom and character. Further problems, although not insurmountable, arise with respect to the application of a customary standard. Questions have arisen as to whether it is the doctor's or woman's custom that is relevant custom, but given that it is the woman's well being that is considered it would seem that the woman's custom is only relevant here. Similarly once it is accepted that the abortion is indicated because of the woman's customary belief, it does not matter where the abortion is performed in an urban hospital or a rural clinic. Perhaps the most difficult is the determination of the criteria by which customary belief is established. For example, are the introduced religious beliefs that have modified customary belief separate or inextricably linked? Such respect for individual and group autonomy is related to developments on the international plane of human rights, which include rights to group participation and to adherence to indigenous cultures and values.

In another part of the Commonwealth, Professor Poulter and his colleagues from the National University of Lesotho found from the Report of the Commission on the Laws and Customs of the Basutos that there was no law or punishment with regard to abortion. Professor Poulter explains that abortion however was practiced. He cites an 1936 anthropological study of the Basutos by H. Ashton explaining that they knew of and used abortiacients. H. Ashton concluded in his study of customary law and indigenous courts, that abortion was a matter which was dealt with by the family rather than the courts.

The Basutos approach to abortion although removed in time and place was similar to that of T.B. Macaulay (Lord Macaulay). While Lord Macaulay drafted the Indian Penal Code in 1837, he wrote that abortion is a family matter and as a result should not be left to criminal law prosecutors who did not have the sensitivities needed for such family affairs. He recommended that it go unpunished, (see II A iii below).

Another approach that has been taken in customary law but not incorporated into modern statutes is allowing for abortion along lines thought permissible in traditional customs, a traditional custom indication. Professor K. Ndeti, a sociologist at the University of Nairobi explained from his observations of six East African tribes that:

> "No woman is allowed to have children until proper arrangements have been made with regard to the conditions of marriage, initiation rites, responsibilities, duties and parental obligation."

Women not respecting these rules face severe social sanctions, but abortion was used in these tribes to relieve unnatural circumstances, such as when pregnancy resulted from taboo relationship or could result is a social or psychological crisis for an individual, family or community.

Common/customary law still prevails in Lesotho and Swaziland. It is however unclear what that law permits with regard to abortion. It might go unpunished as it did under the Basutos. It might also be influenced by Roman Dutch common law. It might also be analogous to the historic English common law standard not punishing abortion until quickening.

iii. Basic Law

Section 58 of the English Offences Against The Person Act 1961 states that:

"Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent and whosoever, with intent to procure the miscarriage of any woman whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of a felony."

Section 59 provides that:

"Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanour."

Section 58 establishes criminal liability for a woman procuring her own miscarriage only when it can be proven beyond a reasonable doubt she is "with child". Section 59 establishes criminal liability for supplying or procuring with intent to procure a miscarriage irrespective of whether the woman is 'with child'. These prohibitory provisions provide one of the basic models of Commonwealth abortion law. Many jurisdictions express the language of these sections almost verbatim as their own law. Some jurisdictions, for example, Tonga and Guyana vary from this model by making the woman criminally liable irrespective of pregnancy. These countries however, are in the minority with respect to this issue in the Commonwealth (See Table I). Still other countries for example Papua New Guinea and Cyprus have sections that are entitled 'a woman with child', and then the text continues by saying 'a woman whether or not with child'. These sections have been interpreted in Table I as though the text and not the title is controlling.

An alternative model of Basic law exists, however, in the Indian Penal Code 1860. The Indian Penal Code 1860 is the basic criminal law not only in modern Indian jurisdictions, but also in Bangladesh, Brunei, Sri Lanka, Malaysia, Singapore and in non-Commonwealth Pakistan. Outside Asia this provision exists in the Penal Code of Northern Nigeria and variations of it exist in Commonwealth Malta and Mauritius and in non-Commonwealth Egypt, Kuwait and Sudan. This model differs from the English model in a material particular. The 1861 Act is concerned with "intent to procure the miscarriage of any woman whether she be or be not with child." The Indian Penal Code provides, however, that "whoever voluntarily causes a woman with child to miscarry shall ... be punished ..." (emphasis added).

An explanation to this section states that "a woman who causes herself to miscarry is within the meaning of this section". Reading this explanation together with the section would require an interpretation that the woman acting on herself must be "with child" to be criminally liable. Such a reading would be consistent with section 312 of the 1837 draft which reads:

"Every woman who, being with child, voluntarily causes herself to miscarry, and every person who voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished."

The Indian Penal Code 1860 formula, presents prosecutors with the additional burden of proving beyond reasonable doubt pregnancy of the woman acted upon or acting on herself, as an important element of the wrongful act constituting the crime. The distinction is of more significant modern effect, however, in placing post-coital contraception, self administered suppositories and menstrual therapies outside the reach of the abortion prohibition (see IV A and B below).

The 1860 Code was primarily drafted in 1837 by Lord Macaulay the Chairman of the Indian Law Commission. Apart from minor rewording and the addition of an Explanation to the abortion provision, the 1860 Code did not change the substance of the Macaulay abortion law. Lord Macaulay drafted the 1837 Penal Code with a view toward making the administration of Indian criminal law efficient and rational. He saw a limited role for criminal law, being all too aware of early nineteenth century abuses and arbitrary nature of criminal law enforcement. Lord Macaulay did not believe in legislating private virtue. He thought that the control of private morality should be left to other instrumentalities. He thought that coercive sanctions of punishment should be applied not to what people do to themselves but restricted to preventing people from doing positive harm to other people.

In the notes to the 1837 Draft Code, Lord Macaulay points out that the existence of an abortion law could be used by extortionists to make false charges of abortion. He seriously suggests that the Governor General not invoke it without the greatest of care because:

"With respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this, or any other law on that subject may, in this country, be abused to the vilest purposes. The charge of abortion is one which, even where it is not substantiated, often leaves a stain on the honor of families. The power of bringing a false accusation of this description, is therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care be taken, produce few convictions, but much misery and terror to respectable families, and a large harvest of profit to the vilest posts of society. We trust that it may be in our power in the code of procedure to lay down rules which may prevent such an abuse. Should we not be able to do so, we are inclined to think that it would be our duty to advise his Lordship in Council rather to suffer abortion, where the mother is party to the offence, to remain unpunished, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty."

One may conclude, therefore, that the Indian Penal Code abortion provision is designed to apply only in the clearest of cases. It applies to women acting upon themselves only when clearly "with child". It applies to others only when women are demonstrably pregnant and where others terminate pregnancy with express intent to commit the crime of abortion.

Despite the prohibitory tenor of the language used in particularly the 1861 English model of basic law, a feature of its expression is repeated use of the qualification "unlawfully" to describe administration, supply or procurement of poison and use of an instrument or other means of procuring miscarriage. The implication that "lawful" administration and use are possible, received recognition probably initially by Lord Macaulay in his 1837 draft, but not repeated in the 1860 Code, by his exoneration of acts "done in good faith for the purpose of saving the life of the woman." In the 1909 Canadian case of Re McCready, Lamont, J. of the Saskatchewan Supreme Court observed of a woman's abortion that "from the evidence before me I cannot say that the operation ... might not have been necessary to preserve her life, in which case it is not unlawful." Positive expression in law that the necessity to preserve the pregnant woman's life renders her abortion lawful brings the law to a more developed level.

iv. Developed Law

Most significant recognition of the legality of abortion under basic law came in the celebrated 1938 case of R. v. Bourne, that has since been cited and approved in senior courts of the Commonwealth (see Table II). No record appears, indeed, that the decision has ever been disapproved in a verdict. The case shows the legality of abortion to preserve not just the woman's life, but also her health, and in particular her mental health. Dr. Bourne was ruled entitled to acquittal upon terminating the pregnancy of a woman on the ground that if her pregnancy continued, she would become "a mental wreck."

Stating the meaning of the law in the Bourne case, Macnaghten, J. referred to the Infant Life (Preservation) Act 1929. Unlawfully killing a fetus in utero may be criminal abortion, and unlawfully killing a born person may be homicide, but during the process of birth itself a child is neither a fetus nor a born person, and the 1929 Act filled this legal gap by creating the crime of child destruction. Section 1(1) of the Act renders killing a child during its birth criminal,

> "provided that no person shall be found guilty ... unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother."

The Bourne case ruled this explicit 1929 proviso always to have been implicit in section 58 of the 1861 Act, on the reasoning that if preservation of the mother's life justifies sacrificing the child's life at the moment of birth, it also justifies such sacrifice at any earlier stage in pregnancy. The case went further, however, in ruling that earlier on a pregnancy termination is lawful to preserve not only the fact of the mother's life but also the quality of her life. The quality of life is described as health, and includes both physical and mental aspects.

Expression of the law in a combination of statutes and judicial decisions causes lawyers no difficulty, but the law must be understandable to more than lawyers. For ease of understanding by physicians and others, the law is best expressed in adequate statutes, and a developed abortion law is therefore most usefully contained within the limits of a single enactment. Relatively few Commonwealth abortion laws in fact offer this clarity.

An approach to developing a basic law by legislation appears in Ghana, whose basic law is expressed in sections 58 and 59 of the Criminal Code. This is subject, however, to section 67(2), which provides that:

> "Any act which is done, in good faith and without negligence, for the purpose of medical or surgical treatment of a pregnant woman is justifiable, although it causes or is intended to cause abortion or miscarriage or premature delivery, or the death of the child."

A comparable developed provision appears in the Penal Code of Kenya, section 240 of which explains that:

> "A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case."

These provisions may be regarded as making explicit a necessity justification for abortion such as the Bourne decision read into basic law. Its expression elevates a basic abortion law to the level of developed law.

v. Advanced Law

Developed law prohibits abortion in general but gives express recognition to the necessity to preserve the woman's life or health. Advanced law positively provides that abortion is lawful when sought by the woman and when specified indications are satisfied. Such justifications for abortion are not identically contained in advanced laws, but different Commonwealth countries have selected their particular details from various indications. (See II B iii below). Advanced laws often specify how abortion services may be delivered to women seeking them who satisfy statutory indications. The predominate provisions for legal implementation are presented at Table III.

B. Requisite Conditions

i. Generally

Some Commonwealth abortion laws punish abortion only after certain gestational developmental stages (see Table I). Others establish indications for legal abortion (see Table II). The gestation approach, which finds its roots in the English Common law which, as was seen in II A ii above, prohibits abortion after quickening. The Common law position was codified thus enabling acts until the woman could be proven to be 'with child'.

The other approach to evolved by force of statute within the English criminal law and countries with that criminal law system. That approach, now represented in the English Offences Against the Person Act, 1861 as developed by the 1938 R. v. Bourne case permits abortion irrespective of gestational limits only for certain specified indications, namely risk to life or to physical or mental health. Pre-quickening procedures were first prohibited by an English 1837 statute most probably because of the difficulties the prosecution faced in proving pregnancy. Since criminal statutues have superseded the gestational approach, the indication approach has come to prevail in

English criminal law and of those countries following its legislation. An indication approach need not completely eliminate the significance of gestational stages. Abortions in some countries with an indication approach are legally more easily obtainable earlier than later in pregnancy. For example, the Indian Medical Termination of Pregnancy Act, 1971 requires the approval of two registered medical practitioners, where the procedure is to be carried out between the 12th and 20th week of pregnancy, whereas only the opinion of the physician who is to perform the procedure is required during the first 12 weeks.

ii. Gestational Stages

As was seen in II A ii above, Common law punishes abortion as a lesser offence after quickening, normally coinciding with the end of the first trimester of pregnancy. At English Common law post quickening abortion could be justified by the application of the defence of necessity. This defence permits lawful post quickening abortion where it is necessary to save the life or physical or mental health of the woman. This unamended Common law may still prevail in Sierra Leone, Lesotho and Swaziland. The Common law position prevails in Scotland today, although after a woman is shown to be 'with child', abortion in Scotland is governed by the British Abortion Act 1967.

The Common law position to a large extent was codified in the Indian Penal Code, the criminal codes of Northern Nigeria and a variation of it, for instance in the Penal Code of Malta (see II A ii above). The Indian Penal Code differs from the Common law, however, in that it punishes abortion after quickening as a greater crime with a greater punishment. Accordingly, those countries that set gestational stages tend to be those with a Common law position or a codification of that position (see Table I). Those countries that take a gestational approach permit procedures before quickening or before a woman can be proven "with child". The "with child" standard now differs from the quickening standard although initially they were about the same. Formerly, a woman could only be proven to be "with child" at quickening. As techniques to prove pregnancy progressed, pregnancy could be proved earlier on in gestation. Now pregnancy can be proven by reasonably available methods at about 6 to 8 weeks since the last menstrual period. The merits of the gestational approach are that it encourages the health care system to provide services as soon as possible after missed menstural periods, and that it encourages women to seek care as soon as possible after a missed menstrual period.

iii. Indications for Legal Abortion

Common/customary law, basic law, developed law and advanced law all permit abortion for atleast one of the following indications:

(a) Risk to life and grave and immediate risk to the health of the woman (the strict necessity indication).

(b) Risk to the woman's physical or mental health from continuation of pregnancy meaning risk beyond that normally associated with pregnancy (the physical and mental health indications or sometimes known as the therapeutic indication).

(c) Some degree of likely serious physical or mental impairment of a child if born (the foetal indication).

(d) Pregnancy by rape, incest or other criminal intercourse (the juridical indication).

(e) The effect of child birth upon the health and welfare of the woman's existing children and family (the social, socio-medical or socio-economic indication).

(f) Jeopardy to the social position of the woman or her family (the family indication).

(g) Failure of routinely employed contraceptive means (the contraceptive indication).

(h) Pregnancy of an adolescent girl or a legal minor (the adolescent indication).

(i) On request.

Table II contains information on legal indications for abortion as given in the responses to the Commonwealth Secretariat questionnaire. Some of the indications vary with respect to gestational stages. The family indication found in the law of Cyprus, the contraceptive indication found in the law of India and the adolescent indication found in the law of Hong Kong are not tabulated in Table II. Suggestions for other indications include the traditional or customary indication discussed at II A ii above.

Laws expressed in basic form such as those that prevail in Malawi, Sri Lanka and Antigua recognize the strict necessity indication. It is unclear whether such countries with basic law would apply the defence of necessity as interpreted in R. v. Bourne (1938) to allow abortion to save the life or physical or mental health of the woman as their responses to the Commonwealth Secretariat's questionnaire did not mention Bourne. Developed laws such as those that prevail in Kenya, Northern Ireland and Jamaica apply Bourne to recognize the therapeutic indication as well as the strict necessity indication. Advanced laws such as those in Zimbabwe, Singapore and Seychelles recognize most or all of the indications (see Table IV).

iv. Provisions for the Performance of Abortion (In Law and Practice)

In former reports, Table III was called Provisions for Implementation (In Law and Practice). It has now been renamed Provisions for the Performance of Abortion (In Law and Practice) for a specific purpose which is to underscore that it only deals with abortion procedures. It does not deal with any procedures done before the law considers the procedure to be an abortion. So for example in India, the provisions for the performance of abortion would not apply to post conceptive procedures done before the woman is proven to be 'with child'. The same reasoning applies to Scotland where the Common law still applies. As a result the British Abortion Act 1967 would not apply until a woman is proven to be 'with child', the time at which the Scottish common law considers a post conceptive procedure to be a legally prohibited abortion. As a result, those procedures done before a woman is is proven pregnant are contraception and are regulated by general medical practice statutes and not the abortion statute. This fact however is not reflected in Table III because it only deals with those procedures that are considered by law to be abortion. Where it deals with procedures not considered in law to be abortion, it so states, for example Bangladesh.

Table III deals largely with the predominant provisions contained in advanced laws. Some advanced laws do have additional provisions for performance of abortion and they are outlined below. Neither the predominant or additional provisions are discussed at length here because they have been dealt with extensively in former Reports.

Table III deals largely with the predominant provisions contained in advanced laws. Some countries' responses to the Commonwealth Secretariat questionnaire have suggested what the practice is in their country but this is not required by their abortion law. Those countries that are not listed in Table III are those countries whose laws do not have provisions for the performance of abortion and as a result they have chosen not to explain what the practice might suggest.

1. Specified Professionals

Laws may relate the required qualifications of professionals to the demands of the tasks to be undertaken to ensure the safety of the procedures undertaken and, for example, to ensure access (see Table III). Some laws, for example, Singapore require specified qualifications in obstetrics and gynaecology to do abortions up to the 16th week and further specified qualifications between 16 and 24 weeks. Other laws require abortions to be done by a registered medical practitioner and some, for example, the United Kingdom allow nurses to assist in the procedure under delegation of the doctor (see IV C iv below). Still other countries by, for example, Ministerial regulation allow allied health personnel to do very early procedures. For example, Bangladesh allows appropriately trained allied health personnel such as family welfare visitors to do early procedures.

2. Specified Institutions

Some laws do not state where abortions should be done but rather leave it to the discretion of the Ministries of Health. Other laws require a hospital or a liscensed institutions and allow for detailed regulations to establish liscensing requirements. Other laws such as Seychelles require a specified hospital. The purpose may be to ensure the availability of appropriate services for the stage of the pregnancy to be terminated, so that earlier procedures could be conducted in local clinics, and later procedures in more fully equipped central hospitals. This means of regulation also may ensure public availability without prohibitive cost and with public accountability for services rendered.

3. Stage of Pregnancy

Commonwealth jursidictions vary with respect to specifying the stage of pregnancy after which abortions may generally not be performed. Most are silent on this issue and hence allow abortions to be done until viability the point at which common law prohibits any further procedures. Others state a time beyond which abortion can't be performed except in the case of emergency. For example, India says 20 weeks unless immediately necessary to save the life of the pregnant woman. Medical procedures for safe termination become more complex and may require higher levels of available equipment and skill with longer gestation. Accordingly, different provisions may apply to medical terminations of pregnancy at different periods of gestation. For instance, early termination achievable by chemical means may not require institutional care, early medical means may be applied upon an out-patient basis, and later terminations may be permitted only in adequately equipped facilities and/or with attendance of specially qualified personnel.

4. Approval Procedures

Approval procedures vary from the simplest of requiring the approval of the health or allied health personnel performing the proceudre to requiring the approval of an additional practitioner or even 2 to requiring the approval of a committee. The propose of approval requirements found only in advanced laws is principally to supply evidence of a practitioner's observance of legal indications, rather than to serve the woman's health needs.

5. Additional Provisions

Infrequently, advanced laws contain provisions upon matters related to items appearing in 1 and 2 below. These may concern costs of abortion services, aiming to prevent exploitation of desperate women and to assist the equitable availability of services. A tabulation of such provisions includes:

1. Cost provisions.

2. Conscientious objection provisions (in non-emergencies) for health professionals.

3. Reporting requirements.

4. Spousal and parental consent provisions (although these are often governed by general as opposed to specific laws).

5. Citizenship or residency qualifications for non-emergency services.