

WHY IS IT ESSENTIAL TO AMEND THE ABORTION LAW IN SRI LANKA? :
A MEDICO-LEGAL PERSPECTIVE ON CRIMINAL ABORTIONS AND
VICTIMIZATION.

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Abstract

‘Pregnancy’ is considered a gift to a woman, and simultaneously becomes a risk which influences life. Complications of pregnancy may affect a woman a great deal. ‘Abortion’ is a process where there is premature expulsion of a fetus from the uterus. This may occur naturally or as a result of wilful termination. Wilful termination of a pregnancy or ‘Criminal abortion’ is illegal in Sri Lanka but is performed by abortionists against the law of the country. In Sri Lanka, abortion is legal if it is to save the life of the mother, but it becomes criminal when it is performed for other purposes. The Penal code (Amendment) bill 1995, proposed the legalization of abortions in instances where the victim is a prey of a sex crime such as rape, incest or where the fetus is impaired. However, the proposal was not sanctioned. High rate of criminal abortions occurs, especially in developing countries. It is clear that, with the enforcement of strict abortion laws in a country, the rate of criminal abortions rise and less restrictive abortion laws impede the ‘back door abortionists’. This paper discusses the nature of criminal abortions, the legal conditions pertaining to the jurisdictions in the world, and the concept of victimization.

Key Words: Abortions, Law, Criminal, Victimization, Jurisdictions



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Introduction

Criminal abortion is, if given a definition which is simple in nature, “termination of pregnancy in violation of law”. Abortion can generally be known as the expulsion of the fetus from the uterus before the term of gestation is completed. Criminal abortion is unsafe and sometimes even fatal. It is commonly performed by persons lacking necessary skills and competencies or in an environment without sufficient medical standards. The decision on the part of victims of unwanted pregnancies to, terminate the pregnancy leads them to clandestine providers of the services. These services are unsafe in nature due to the unskilled human resources and unhygienic environment. In Sri Lanka, these service providers of abortions have affected the maternal morbidity and mortality. Victimization is high among young women in Sri Lanka who are sexually active within the relationships. Women within lawful wedlock are compelled to resort to criminal abortions in instances where the youngest child of the family is at the infant stage and the impression existing within them that their families are completed.

As per section 303 of Penal Code in Sri Lanka, Abortions are criminalized except to save the life of the mother. Do restrictions imposed by the law on abortions 100% conducive to women and society? Do legal restrictions violate the right of a woman?

Methodology

The study is normative in approach. It basically studies primary data and secondary data. Primary data was collected and supported by secondary data. As primary data, the study analyses cases in which the principles of law and the medico legal aspects related to criminal abortions are discussed. As secondary data, the paper analyses research papers, internet, publications, and legislations which are applicable internationally and locally. The study analyses the Penal Code of Sri Lanka

and the Medical termination of pregnancy Act 1971 of India.

Results and Discussion

Where the criminal abortions are concerned, 150,000-175,000 abortions take place in Sri Lanka. This condition has created a controversy, whether abortion can be identified as a Women Right. As per the records of the World Health Organization, 6.5% of abortions are either certainly induced or probably induced and 16 % are possibly induced and 7-16% of admissions are due to complications of induced abortions.¹ Abortion trends reveal that unsafe abortions are basically sought by illiterate and poverty stricken women in rural areas. As per the opinions of experts, it has been recognized that it is mainly due to ignorance of reproductive health and contraceptive methods.

It has been urged by the reformations that, the abortion law of the country must undergo a mitigation so as to liberalize the existing strict laws. Thus, attention was predominantly directed on decriminalization of abortions where fetal infirmities are detected and where unwanted pregnancies occur due to rape and incest. It is a general perception that the present law on abortion is anachronistic. Such a perception is basically due to the fact, that it does not address the social needs of the society. An amendment to the law is necessitated by the alarming increase of unlawful abortions.

The reason for women resorting to criminal abortions is partly sociological in nature. There, the question arises as to whether women are entitle to make decisions on her pregnancy. It simply means that a woman has a sole right to decide whether she wants to continue the pregnancy or not. At that point, rights of the woman and fetus are considered. Priority has been given to the right of the woman as the fetus is considered as a life without a mind. The right of women in deciding her private

rights is of prominent consideration. The equal rights of women concerning her private rights include her right to have control over the body and child birth.²

Reformations to the law on abortion are conciliatory in nature. It deals with autonomy of women and a choice between compulsion into motherhood or life threatening illegal procedures. There are opponents to abortions.³ They insist on the 'sanctity of life'. Life is seen as a sacred entity which deserves protection at all cost. Legalization of abortions would lead to violating inalienable rights to the life of the fetus. It is connected with the assumption that the "life begins at conception".⁴ The argument which surfaces at the point is whether a fetus can be identified as having the same moral standing as a human female in society. Can we prioritize the wellbeing of a bundle of cells at the cost of physical wellbeing and aspirations of an individual member of society? The matter is, whether a fetus has capability to outweigh the choice of a woman. A choice at this instance totally influences the quality of life of the individual. As per the general perception, Right to life is inalienable in nature. This is with exceptions, as the sanctity of life is not accepted at every instance. Self-interest supersedes the sanctity. It is evident in cases where the next kin are capable of consenting to terminating the life patients subjected in comas and life support.

Annually, 42 million women with unwanted pregnancies resort to abortions and 20 million of such abortions are unsafe. The maternal mortality rate worldwide has significantly increased due to unsafe abortions. One way of preventing deaths due to unsafe abortions are less restrictive abortion laws and greater contraceptive use. The former issue on less restrictive abortion laws is specifically a task for the legislatures of countries. The contraceptive use is extended to an area of community basis. There must be education on the use of contraceptives, availability of legal and safe abortions with access to such services

and post abortion services. As per the records of the World Health Organization, every 8 minutes, a woman in a developing country is confronted by death, due to severe complications of unsafe abortions. As far as the history of the world is concerned, the time period from 1995 -2003 is reported as a period where the overall numbers of abortions reduced. However, the number of unsafe abortions remained steady. In western countries, it has been recorded that 3% are unsafe abortions in contrast to developing countries where it is 55%. Highest percentage of unsafe abortions is taken place in South America, Africa and Latin America. In America, Sharon Diana Hoag death case (1963) is of prominent concern. The girl aged 20, died after an illegal abortion service named "Lee Blue" despite efforts to save her. The abortionist who performed the illegal abortion was convicted. In America, another death was reported in 1960, Claudette Sayles death case, which caused the death of her due to a criminal abortion performed at her residence.

Abortion related complications have been identified worldwide as hemorrhage, sepsis and maternal mortality including 220,000 maternal deaths. The deaths are caused due to hemorrhage, infections, sepsis, genital trauma and necrotic bowel. The complications include poor wound healing, infertility, injury to the internal organs, bowel resections, loss of productivity and psychological issues.^{5, 6} Women who have been subjected to complications of abortions require blood products, antibiotics, oxytocic, anesthesia, and the services of surgical specialists.⁶

The impact of restrictive and less restrictive abortion laws on victimization.

The rate of unsafe abortions in countries where restrictive abortion laws exist is 23 of 1000 women. It has reduced to 2 of 1000 women in countries where abortion laws are less restrictive. The mortality rate in

countries with restrictive abortion laws is higher when compared to countries which have less restrictive abortion laws. It has been recorded as 34 deaths per 1000 childbirths in instances of restrictive abortion laws and 1 death per 1000 childbirths in the instances of less restrictive abortion laws.⁷ Victimization due to unsafe, criminal abortions are less in countries within the European region. This differs from the developing regions where victimization rate is high. The social, and economic conditions which compel women to resort to “back door abortionists” are the basis for the higher rate of deaths and complications. The best example for this phenomenon is India, where women have been compelled to resort to unskilled, local providers of abortion services, despite strict rules imposed by the Medical Termination of Pregnancy Act 1971. The act has removed legal impediments to terminate pregnancies. In Cambodia, abortions are legally allowed on request.

As far as the context of developing countries is concerned, unwanted pregnancies occur due to the lack of knowledge among women about issue on contraception. Free access to contraceptives has the possibility to reduce unintended and unwanted pregnancies. The invention of contraceptive technologies has facilitated the decline of the abortion rates. Religious objections existing in the societies, unavailability of contraceptive methods, concerns on the possible health and side effects have become impediments for the successful use of contraceptives.^{5, 6, 7}

Back door abortionists/ unskilled abortionists

Involvement of a medical practitioner in an abortion which is criminal and illegal is considered as outlawing the ethics of medical profession. There are instances of woman procuring her own abortions, the outsiders assisting and supporting the performance of abortions, and providing drugs and instruments. Unwanted pregnancies may occur due to rape, incest,

adultery, promiscuity and illicit sexual intercourse. The sexual acts without protection ultimately ended with illegal abortions. In Patricia Parrish case, the death of a 26 year old mother of two children died due to a criminal abortion. At autopsy, it was revealed that Patricia spent 2 hours in a bathtub filled with steaming hot water with ingestion of “medicinal capsules” at thirty minute intervals. In the case of the 24 year old Razia Trytiak (1967), whose body was found in a garbage dump was a girl of Russian origin, bought up in America working as a punch operator. Autopsy revealed that death was due to air embolism as a consequence of attempted abortion. She was six months pregnant, when she died.

It is generally known that a criminal abortion can be performed by the individual herself. Beatrice Fern death case (1945) is of predominant consideration. Beatrice was a 35 year old woman and a mother of three children. As the family underwent a financial crisis, she decided to terminate her pregnancy. After performing the said abortion, the woman died due to complications. The medical practitioner who was arrested argued that the woman performed an abortion on herself and that as an expert, he assisted her in her own act.⁸ This contention was the same in Indian context. In the Indian Medical termination of pregnancy bill 1971, it was proposed to mitigate the existing abortion law in India. The feminists movements in United States of America, battled for the decriminalization of abortion restrictions, where it asserted the right to privacy freedom and choice of women. Thus, in the American sense, the woman is seen as an entity who is strengthened to make her own medical decisions. Roe v. Wade (1973), accepted that there is a constitutional right for women to be free and make personal decisions on biological and reproductive matters. Reproductive justice is of predominant consideration.

Women become the victims of criminal abortions basically due to their economic, social and financial status. In developed countries, the rate of criminal abortions is less in comparison with the developing countries. The “back alley” abortionists or back door abortionists are the last resort of the poverty stricken women, when they are burdened with an unwanted pregnancy.

In the medico-legal sphere, criminal abortions have been identified as the premature expulsion of the fetus from the uterus. Women die due to the complications of the criminal abortions such as vaginal inhibition, air embolism, hemorrhage, pneumonia, and meningitis. The abortionists use different methods such as Higginson’s injection, the use of chemicals (such as Potassium permanganate) and other instruments.⁹

Conclusion

It is believed that, criminal abortions exist due to criminalization of abortions in society by introduction of restrictive laws. Sri Lankan abortion law is mitigated only to the extent where the specific pregnancy is a threat to the life of the mother. The penal code (Amendment) Act 1995, proposed liberalization of the strict abortion law in Sri Lanka. Thus, it proposed that the abortions in Sri Lanka to be permitted in the instances where the woman is a victim of rape, incest or where the fetus is detected with an impairment.

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