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POINT OF VIEW

LIBERALIZING ABORTION LAWS IN SRI LANKA; PROSPECTS AND CHALLENGES

Thilakarathna K.A.A.N.

Institute of Human Resource Advancement, University of Colombo,
Sri Lanka

Email: nuwanthilakarathna23@gmail.com  <https://orcid.org/0000-0001-5569-3666>

Abortion is legally defined as the removal of the fetus from the uterus any time before its gestation is completed. The law governing abortions in Sri Lanka is contained in the Penal Code Ordinance No 02 of 1883. According to section 303 of the code, abortion is only permitted when carried out to save the mother's life. Sri Lanka is a country with the most restrictive laws on abortions in the south Asian region along with Afghanistan. However, even with these restrictions it is estimated that, Sri Lanka has one of the highest abortion rates in the world. Many attempts have been made to reform the penal laws relating to abortions which were enacted in colonial times. This includes the initiative taken by the law commission of Sri Lanka in 2013 when they proposed rape and foetal impairment as grounds for legal abortion. However, no actions have been taken regarding the liberalization of the provisions pertaining to abortions.

A qualitative approach was used to identify the prospects and challenges that lie ahead in liberalizing the laws of abortions. Initial inquiry revealed that religious and cultural reasons account for the strict opposition towards liberalization which has negatively affected the political will of the rulers in bringing about changes. The greatest fear has been that liberalization would result in a sudden increase in the number of abortions. However, studies have revealed that, liberalization does not increase abortion rates but helps reduce the number of fatalities resulting from unsafe illegal abortions. The liberalization of the abortion laws has become both a contemporary and a necessary change for the protection and enhancement of the rights of women and their autonomy.



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Abortion which is universally practiced by no means has a universally approved procedure. The legitimacy of the act varies according to religious and scientific evaluations of foetal life, sexual mores, state population policies, the circumstances of conception, and the status of the woman involved.¹ The moral question of abortion is difficult because it is unique. It is because the human fetus is so unique to other individuals and because the relationship between fetus and pregnant woman is so unlike other relationships.² In the Sri Lankan context, according to the penal code, abortion is allowed only to save the mother's life.³ According to the Penal Code of Sri Lanka, any person performing an illegal abortion is liable to be punished with imprisonment up to three years and where it results in death of such a woman, the person performing an illegal abortion would be punished with imprisonment for up to 20 years.

In spite of strict laws, illegal abortions are frequently performed in Sri Lanka. Induced abortion in Sri Lanka is a problem that has been conveniently ignored for too long. The laws pertaining to abortions have remained unchanged for nearly one and a half centuries. Over time and throughout cultures, women have responded in different ways to abortion. Self-help practices, alternative medicine or clandestine professional practice are some of the most commonly practiced methods of abortion.⁴ While most countries have relaxed abortion laws, Sri Lanka has not amended its laws from its inception in the late 19th century.

Even as a developing country Sri Lanka has been able to maintain high standards with regard to its health sector. However, the issue of abortions has somewhat undermined this achievement as Sri Lanka is ranked as a country with a high rate of abortions. While the social, cultural and religious background of the country has on many occasions stood in the way of liberalizing the grounds on which abortions can be permitted the number of illegal

abortions and the deaths resulting from those have increased. While some fear that, with the liberalization of abortion laws the number of abortions may increase, research has shown that liberalization has in most part resulted in the decline in the number of deaths associated with abortions. The world is moving towards liberalizing abortion laws. In order for the Sri Lankan woman to enjoy the rights enjoyed by other women worldwide with regard to abortions a reevaluation of the existing laws and policies is a major requirement.

The significant of this research lies in providing an analytical perspective on the respective challenges and prospects Sri Lanka faces in liberalizing its abortion laws. The main objectives of this paper is to discuss the existing law regarding abortions in Sri Lanka, explore the correlation between the existing law and the number of abortions, compare and contrast the accepted grounds for abortions in other countries and critically evaluate the prospects and challenges that Sri Lanka faces in liberalizing its laws.

This research was carried out primarily by using qualitative methods. Primary sources of existing legislations, International treaties and declarations, committee reports and decided case law was perused. Furthermore, secondary data was gathered by governmental and non-governmental organizations on the issue of abortions. A quantitative approach was used in a supplementary manner in analyzing the secondary data gathered by various parties.

Schur observes that, 'perhaps since the very beginnings of civilization women have engaged in the practice of abortion; the destruction or expulsion from the womb of the unborn child/fetus, before it attains viability, to free themselves from unwanted childbearing.'⁵ According to Russell 'abortion is legally defined as the expulsion of the fetus from the uterus (womb) at any time before its term of gestation is complete.'⁶ For medico-legal purposes,

abortions may be grouped into three classes as spontaneous, therapeutic, and criminal.⁶ Spontaneous abortions are due to abnormal development or death of the ovum or its membranes; while the remainder are caused by maternal disease, either systemic or involving the womb or its accessories. It is the natural death of an embryo or fetus before it is able to survive independently. A therapeutic abortion is an interruption of pregnancy performed to safeguard the health or save the life of the mother. If one were to perform such an abortion, it has to be performed by a qualified physician, acting in the honest belief that the life of the pregnant woman will be endangered by the continued presence of the pregnancy. On the other hand, criminal abortions are unlawful abortions which are illegally induced (which are not justified by circumstances).

In the Sri Lankan context abortions are allowed only to save the life of the mother if it is threatened from furthering the pregnancy. Section 303 of the Penal Code stipulates that, an abortion is only permissible 'if such miscarriage be caused in good faith for the purpose of saving the life of the woman'.³ In all other instances an abortion would fall under the category of criminal abortions and the former would fall under therapeutic, that is to say an abortion carried out in order to safeguard the health or save the life of the mother. Therefore, reasons such as rape, incest and foetal impairment, will not per se be a reason for carrying a legal abortion unless such is done in good faith for the purpose of saving the life of the woman.

Even with these strict laws on illegal abortions, Sri Lanka has seen dramatic increase in the number of abortions. In 1984, the Minister of Health estimated that over 500 abortions are done in Colombo daily.⁷ It has been estimated that around 125,000-175,000 abortions per year have taken place in the 1990s and the figure has escalated to

650 abortions per day by the year 2016.⁸ The significance of illegal abortion in the health context is evident from the fact that it contributes to 12.5% of all maternal deaths and is the third most common cause of maternal death. It has been found that abortion has become a means of fertility regulation.⁸

The existing law, a legacy of colonial rule, permits abortion only to save a woman's life. This archaic piece of legislation has not been revised since 1883.⁹ Opinions of Sri Lankans became evident during attempts made in 1970s' and 1990s' to change the law to include rape, incest and fetal abnormalities as indications for legal abortion through a private member's bill and a cabinet paper respectively. An amendment to the law sponsored by interested groups to liberalize abortion in cases of lethal congenital anomalies, incest, rape and contraceptive failure was presented to the National State Assembly in 1995. It was abandoned after the debate that followed its very first reading.¹⁰ The most recent effort in liberalizing the abortion laws came in 2013 with law commission's proposal on medical termination of pregnancy.¹⁰ However, the proposal has not been seriously considered still and even after five years the report remains a forgotten piece of documentation.

The 2013 the law commissions proposal on medical termination of pregnancy has suggested that the law relating to abortions be liberalized. It has identified rape and foetal abnormality as two grounds on which legal abortions could be allowed provided that, the necessary criteria of establishing rape and foetal abnormality are met. However, the proposal has rejected inclusion of incest as a separate ground for allowing an abortion, and has pointed out that incest be allowed if it was a rape or there is a foetal abnormality that justifies an abortion.

Table 1: Regulations governing abortion worldwide

Country	Grounds on which abortion is permitted						
	Save life of the woman	Preserve physical health	Preserve mental health	Rape/incest	Foetal impairment	Economic/social reasons	On request
Sri Lanka	√	x	x	x	x	x	x
India	√	√	√	√	√	√	x
Pakistan	√	√	√	x	x	x	x
South Africa	√	√	√	√	√	√	√
United Kingdom	√	√	√	x	√	√	x
United States	√	√	√	√	√	√	√
Qatar	√	√	√	x	√	x	x
Austria	√	√	√	√	√	√	√
Afghanistan	√	x	x	x	x	x	x
Bangladesh	√	x	x	x	x	x	x
Total (Yes)	10	7	7	4	6	5	3

Source: UN country profile on abortions

These recommendations were made by the commission by looking into several jurisdictions of the world which has liberalized their abortion laws.¹⁰ Table 1 shows the grounds on which some countries allow abortions. It is evident that many countries, including Qatar and Pakistan have liberalized their abortion laws. Out of the above only 3 countries allow abortions on request while 5 countries allow abortions on socio-economical ground. Sri Lanka, Afghanistan and Bangladesh have the most restrictive abortion laws which only permits abortion on the sole ground of health and safety of the mother.

The socio-legal reasons for the reluctance in amending the existing laws on abortion are mainly based in religious, cultural and social factors that strictly rejects the liberalizing of abortion laws. Sri Lanka being a country where the majority of people are Buddhist reject killing of beings based on the five basic precepts of Buddhism. According to the American Theravadin Buddhist, '[a]bortion is the intentional taking of human life, an extremely bad and unwholesome act which is not to be done. For the devout, traditional Buddhist, that is the end of the matter.¹¹ Other religions such as Catholicism and Islamism also prohibits

abortions. Both the religions opine that, sexual intercourse is for procreation and that such procreations should not be interfered with.

The most significant issue faced by Sri Lanka is the increase in the number of unsafe and illegal abortions that are performed by unskilled persons which has a high tendency of resulting in deaths. It is estimated that nearly 15-40 deaths occur as a result of these abortions.¹² Women who seek illegal abortions are mostly those who have unwanted pregnancies. This group includes both married and unmarried women. Even among married women abortions may be carried out due to low level of income with inability to provide for a child. On the other-hand when unmarried women seek abortions due to economic and social reasons. The stigma attached to single motherhood with many social issues such as isolation and condemnation is a significant reason for unmarried women to seek abortion. It is observed that women from high economic backgrounds find it easy to get an abortion with the help of private practitioners on the recommendation that the pregnancy is a threat to the life of the mother.¹²

The problem relating to abortions in Sri Lanka lies in the voluntary abortions that are carried out without any justifiable reason such as danger to the life of the mother, rape and foetal impairment. Even if the law is liberalized to include rape and foetal impairment as grounds for abortions, it will not result in reducing the number of illegal abortions as they are on request. Rosana Peiro,⁴ who has done a study in Spain on the correlation of liberalizing abortion laws and the number of abortions finds that, liberalizing abortions have not resulted in an increase in the number of abortions. However, it has resulted in reduction of the number of deaths resulting from backdoor abortions. Furthermore it has also resulted in women being able to access safer and good quality services regarding abortions.

The abortion laws in Sri Lanka, should be liberalized to include rape and foetal impairment with the additional requirement of medical certification as grounds for abortion. This could result in a decrease in the number of deaths that occur due to backdoor abortions.

The current laws relating to abortion which were enacted in the colonial era has long become outdated. With the recognition of the autonomy and the independence of women, they have been granted with the power of decision making when it comes to their body and general well-being. Even when less liberalized countries such as Pakistan and Qatar have been able to

liberalize or allow for such grounds as mental and physical condition of the women being considered in allowing for abortions has gone beyond the permissible grounds in Sri Lanka, which only recognizes the threat of life to the women as the only ground for an abortion. While some have raised concerns on the possibility of number of abortions being increased with the liberalization of abortion laws, research has proven that, liberalization does not necessarily mean an increase on the rate of abortions but a decrease in the number of deaths from the abortions.

In the global health indexes even as a developing country, Sri Lanka has performed well and has been appreciated for its health standards. However, figures relating to illegal abortions and the deaths which have resulted from such have put a negative impact on the overall health standards in the country. Liberalizing the existing abortion laws therefore, could have a positive impact on the number of deaths resulting from abortions. However, as illegal abortions are mostly done to get rid of unwanted pregnancies, liberalizing of the abortion laws will not help to reduce the number of these kind of abortions. Instead, in order to combat these issues awareness among people with regard to family planning and contraceptive methods should be increased and awareness programmes at the grass-root level should be conducted.

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