

WHY IT IS ESSENTIAL TO HAVE AN AMENDMENT TO THE ABORTION LAW IN SRILANKA

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Introduction

“I don’t think government has the proper role in forcing a woman to have a child or forcing a woman not to have a child. And we have seen that around the world. This is something that should be privately decided with the family, woman, all the private factors of it, but we should work toward preventing the necessity of abortion”

-Ralph Nader

An American political activist, author, lecturer and attorney

“By abortion, the mother doesn’t learn to love, but kills even her own child to solve problems”

-Mother Teresa

The above stated quotes give two various ideas about abortion. Whenever we take the debate on abortion, it deals with rights and wrongs of ending a pregnancy deliberately. Pregnancy is considered as a gift for women, simultaneously becomes a risk which influences life. Complications of pregnancy may affect a woman in a great deal. Abortion is a very painful topic for both men and women who face a situation in which a difficult choice has to be made between alternatives, especially ones that are equally undesirable and whether to terminate or to continue a pregnancy. Abortion always holds contrasting opinions.

Most people concur with the abortion or disagree, and few people are dubious. One side those who call themselves ‘pro-life’. They say that intentionally causes abortion is always wrong, although it may on very rare occasion. on the other side those who call themselves ‘pro-choice’ or ‘supporters of abortion rights’, and who regard intentional abortion as acceptable in some circumstances.

Abortion is being and always been a hot topic and very controversial issue all around the world. The debate on abortion, whether it is justifiable morally? Or it can be justifiable under legislations. Even in Sri Lanka amendment bills on abortion were submitted to the parliament few times but in all circumstances the bills have been opposed and withdrawn for several reasons. This article aims to analyze the legal consequences and the medical consequences on abortion and also discuss the important facts on why Sri Lanka needs an amendment on abortion law with some certain restrictions.

The history of abortion

Abortion has a history over many centuries in different cultures. There is a rich history of abortion was accepted in both ancient Roman and Greece. Until the late 1800 U.S provided abortions without legal prohibitions. In pre-modern era the Vedic and Smrti laws of India reflected a concern with preserving the male seed of the three upper castes and the religious courts

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imposed various penances for the women or excommunication for a priest who provided abortion. In the epic Ramayana, there is description that the practice of abortion was being done by the surgeon or barbers those days. An ancient medical text known as the Eberspapyrus, written about 1550 BCE, suggests that an abortion can be induced with the use of a plant-fiber tampon coated with a compound that included honey and crushed dates. Later herbal abortifacients used in the process.

In the old testament of Bible several legal passages that refer to abortion, but they deal with the terms of loss of property and not sanctity of life. But the new testaments of Bible don't explicitly deal with abortion.

Abortion became a crime because of some reasons. A trend of humanitarian reform in the mid-19th century broader liberal support to criminalization, because at that time abortion was a dangerous procedure done with crude methods, few antiseptics and high mortality rates.

In the mid-to-late 1800s U.S began passing laws that made abortion illegal. The motivations for anti-abortion laws varied from state to state. One of the reasons included fears that the population would be dominated by the children of newly arriving immigrants, whose birth rates were higher than those of "native" Anglo- Saxon women.

Abortion policies around the world

Legal status of the abortion has different opinions around the world. Almost every country permits abortion under a least circumstance, except six countries. El Salvador, Malta, The Vatican, Chile, The Dominican Republic and Nicaragua are the six countries which ban abortion entirely.

Most industrialized countries allow abortion without any restrictions. About 125 countries have some restrictions, permitting abortion only in limited situations. Some countries are on process to legalize the abortion and some are trying to ban the abortion without any exceptional situations.

By geographical region, abortion policies were most restrictive in Oceania, followed by Africa and Latin America and the Caribbean. Only 6% of governments in Oceania and Africa and only 12% in Latin America and Caribbean allowed abortion upon request. 18 countries in Africa, 12 in Asia, 8 in Latin America and the Caribbean and Oceania allowed abortion only to save a woman's life. Europe and northern America in contrast, had the most liberal abortion policies in 2013. Both governments in Northern America and 73% of governments in Europe allowed abortion on request.

China liberalized its abortion law in the 1950s and promoted the practice under its one-child policy, which was enacted in 1979 in an effort to curb population growth by restricting families to one child. The policy includes fines, compulsory sterilization and abortion. Now china has raised its two child policy.

Kenya has the root of United Kingdom's penal code, where the abortion is an offence, except when mother's life is on risk. From 2019 Kenya has extended this exception and included the cases of rape. As other former European colonies reevaluate their abortion statutes; many are expanding the grounds for abortion. For instance, Benin, Burkina Faso, Chad, Guinea, Mali, and Niger, nations whose restrictive abortion laws were holdovers

from the 1810 Napoleonic Code imposed by France have made abortion legal in cases of rape, incest, and fetal abnormality.

Zambia is one of the few countries where abortion is permitted for socio economic reasons. But despite having a liberal law, structural and cultural barriers make it difficult to obtain abortions for Zambia women because they have very poor health service in their country.

Recently (March 2020) New Zealand parliament passed a bill decriminalizing abortion and allowing women to choose a termination up to 20 weeks into a pregnancy. New Zealand will be rightly treating the abortion as a health issue.

Alabama law (May 2020) bans abortion except if there is a serious health risk to the mother or fetus, with no exceptions for rape and incest.

Argentina president has submitted a legal abortion bill recently (March 2020), the president of Argentina said, that the state must protect its citizens in general and women in particular, society in the 21st century needs to respect the individual choice of its members to freely decide about their bodies.

Abortion policies of Sri Lanka

Abortion is generally illegal in Sri Lanka. Sri Lanka has one of the strictest abortion law in the world. Which stipulates that abortion is illegal unless the life of the mother is at risk; in this situation also you need 3 doctors' signatures to agree to the abortion, if not, the abortion will not be permitted. Abortion an offence under the penal code of Sri Lanka enacted in 1883? Aborting a pregnancy except to save the life of the mother is a crime under Sri Lankan

penal code. Section 303 of the penal code defines the offence of causing miscarriage. In medical terms abortion and miscarriage have got different definitions. The Sri Lankan courts have accepted that the term "miscarriage", in the context, must be given its normal dictionary meaning-namely, "premature expulsion of the contents of the womb before the term of gestation is complete" (Regina v Waidyasekara 57 NLR)^[6]

According to section 303 of the penal code define the offence of causing miscarriage. This offence is said to be committed when a person voluntarily causes a woman with child to miscarry unless the miscarriage is caused in good faith for the purpose of saving the life of the woman. Section 303 carries out an explanation, that a woman who causes herself to miscarry is within the meaning of this section. So here the miscarriage is done with the consent of the woman and there is an intention to cause the miscarriage. The section 303 prescribes two alternative penalties for the punishment defined in the same section.

- Imprisonment of either description for a term which may extend to three years, or fine, or both in all cases voluntarily causing miscarriage
- Imprisonment of either description which may extend to 7 years in cases where the woman is quick with child.
The lighter sentence may be imposed when some elements are established.

Section 304 of the penal code defines the miscarriages caused without the consent of the woman.

Section 305 of the penal code constitutes the offence of causing death by an act done with intent to cause miscarriage.

Section 306 of the penal code recognizes the offence of doing an act with intent to prevent a child from being born alive or cause it to die after birth.

Section 307 of the penal code defines the offence of causing the death of a quick unborn child by an act amounting to culpable homicide.

Section 308 of the penal code imposes liability for the offence of exposure and abandonment of a child.

Section 309 incorporates the offence of concealment birth of a child by secret disposal of the dead body.

The offence of miscarriage or abortion and the punishments given for them constituted in the penal code of Sri Lanka enacted in 1883.

The Universal Declaration of Human Rights

The universal Declaration of human rights (UDHR) is a milestone of human rights drafted by representatives with different legal and cultural background from all regions of the world. The declaration was proclaimed by the Nations General Assembly in Paris on 10th of December 1948. the first time in the history the fundamental human rights to be universally protected and it has been translated in 500 languages.

Sri Lanka Ratified the UDHR 1955 and fully incorporated the declaration into the first republic constitution in 1972 and some selected rights in the UDHR into the 1978 constitution.

Article 01 of the Universal Declaration Human Rights opens with the fundamental statement of inalienability,” All human beings are born free and equal in dignity and rights”. Significantly the word “born” was used intentionally to exclude the fetus or any antenatal application of human rights. An amendment was proposed and rejected that would have deleted the word “born”, it was argued that to protect the right to life from the moment of conception. The representatives from France explained that the statement on article one of the Universal Declaration of human rights meant that the right to freedom and equality was inherent from the moment of birth. They couldn’t amend the article with fewer votes. Thus, the fetus has no right under the universal declaration of human rights. The deliberately gender-neutral term “everyone”, utilized thereafter in the declaration to define the holders of human rights, refers to born persons only. According to UDHR if a fetus has no rights, then abortion is not a crime.

Criticism of Amnesty International (AI)

Amnesty international is an organization founded to defend those imprisoned for political crimes and to fight for human rights abuses. According to amnesty international an abortion is a basic health care need for millions of women, girls and others who can become pregnant, it’s not only gender women and girls (women who were assigned female at birth) who may need access to abortion service, but also intersex people, transgender men and boys, and people with other gender identities who have the reproductive capacity to become pregnant. AI explains that worldwide 01 in 04 pregnancies end in abortion every year.

Amnesty international gives some valid reason for why they want abortion to be legalized. According AI criminalizing the abortion is not reducing the abortion; it makes the abortion less safe. Strict laws are not controlling the abortion; people have abortion whenever they need. Amnesty International requests the countries to legalize the abortion and prevent the deaths and injuries from unsafe abortion.

Steps Taken for the Amendment of Abortion Policies in Sri Lanka

The abortion debate was taken to the parliament around three times.^[8]

- In 1995 the Ministry of Justice presented penal code amendment bills for rape fetal impairments in parliament which was withdrawn by the minister following a vigorous debate.
- In 2011 the national action plan for human rights 2011-2016 included the goal to decriminalize abortion for rape and major congenital abnormalities.
- In 2013 the law commission proposals called for legalization in the case of rape and fetal impairment.

The abortion conversation sparked again in 2017. public debate began over proposals to amend the law on abortion but it was opposed by the Roman Catholic Church and other religious centers. For this current debate revolves around the recommendations made following findings of the Justice Aluvihare special committee which are:

- To decriminalize the abortion and allow for medical termination of pregnancies in the specific

circumstances like rape, incest, the pregnancy occurring in a girl below 16 years (statutory rape) and serious fetal impairment.

- To provide for a procedure for medical termination or pregnancies on one of the above grounds that will be rigorously regulated to prevent the abuse of the process.
- To enact/ amend legislation as appropriate to facilitate the inclusion of the above provisions.

This large conversation was largely driven into the public attention by Medias. The report from the media clearly said that Roman Catholic Church opposed all proposed reforms on abortion law. Bishop Winston Fernando said that the Roman Catholic Church opposes any form of abortion of whatsoever. Not only from the Roman Catholic but also all the religious leaders of the country opposed this reform.

The attempt to reform the law in 2017 was met with initial success, then the Minister of Justice Dr. Wijeyadasa Rajapakshe said that he doesn't think there will be much challenges. However, the drafting of the Bill was put on hold because President Maithripala Sirisena wanted to consult with religious leaders, who showed strong opposition to the reform. It was later reported that the proposals had not been put forward to the Health Ministry or the Government and it was only a discussion that took place. When the proposal was received, it would be debated by the Cabinet. However, Minister of Christian Affairs, John Amaratunga, was reported to have said that the Prime Minister Ranil Wickremesinghe, assured him that abortion would not be legalized.

Proposals have also been made to legalize Mifepristone and Misoprostol, two drugs that are commonly used for illegal abortions in Sri Lanka.^[9] Although they are currently banned, stocks are smuggled into the country in the bags of people returning from India, where they are readily available. Misoprostol is sold covertly in most pharmacies at a cost of 150 rupees per pill. Medical abortions do have benefits relative to surgical abortions because they are less intrusive procedures, there is no risk from general anesthesia, and there is less risk of secondary infertility due to scarring and intrauterine adhesions (scar tissue that forms between the inner walls of the uterus.) However, due to the inability to regulate the sale of these drugs, patients don't have complete information on correct doses; some women potentially face health risks from taking incorrect dosages. An attempt to legalize Misoprostol in 2010 failed when the responsible body was unable to reach a decision on registration.

Religious leaders have always been one of the main sources of opposition to proposed reform of Sri Lanka's abortion laws. Despite the Pope's pronouncement that absolution can be given by a priest, as shown by Prof. Wilfred Perera, Catholic leaders in Sri Lanka have maintained a strong view against legalising abortion. President of the Bishops's Conference, Bishop Winston Fernando, said "no one has a right to take a life. Natural birth to natural death, life is sacred. And we believe life begins at the moment of conception". Cardinal Malcom Ranjith reportedly said that children born as a result of rape or incest would be institutionalized by the church in their orphanages and care homes. "I invite you all to spread the message to all you meet that abortion is murder", he said.

Other religious leaders, from Christian, Buddhist and Muslim communities have also voiced opposition to reform.^[9]

Law and religion are two dissimilar concepts. Sri Lankan citizen can follow any religion which they like or refrain themselves from following any religion. But law is applicable equally to all native of Sri Lanka. We have to understand that when drafting a law in a country or reconstructing law religious leaders should not interfere. Legislations directly affect the people of the state. So alternation of a country should go through a referendum. Referendum will give a transparent conclusion on the reform. But our law doesn't permit a referendum to amend a penal section.

Why we Need a reform for Abortion?

People have abortion constantly, regardless of what the law says. Preventing women and girls from accessing abortion does not mean they stop needing it. Attempt to ban or restrict abortion do nothing to reduce the number of abortion, it only forces people to seek out unsafe abortions. Unsafe abortions are defined as "a procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that doesn't confirm to minimal medical standard or both" by the world health organization. Unsafe abortions can have fetal consequences.

Even though abortion is considered as a crime in Sri Lanka, the Sri Lanka journal of medicine has estimated that nearly 700 abortions take place in country daily and the ministry of health stated in 2016 that 658 abortions are performed daily and also unsafe abortion remains a major cause of

maternal death. Contrary to common belief, most women seeking abortion in Sri Lanka are married. In a 1997 study the reason given by married women for needing an abortion, were that their pregnancy was too soon after the last delivery, poverty and foreign employment.

Sri Lankan domestic workers in the foreign countries are disregarded by their agents and by Sri Lankan authorities as well. There have been numerous cases of runaway maids who have been repeatedly raped by the employers. Later they have been accused of theft. Migrants are at high risk of being victims of spurious charges. Victims of rape are being accused of adultery and fornication in Middle East countries, and also they can't abort the baby which is a result of that rape. Some domestic workers return to Sri Lanka and seek for unsafe abortion.

Another tragic but a common form of asexual abuse in Sri Lankan families is incest. According to a study by voice of women, a radical woman's publication and advocacy group, the commonest incidence of incest are by fathers and step fathers and in the families where mother have migrated for a job and left the kid with the father or family members.

When law doesn't allow to abortion in these kind of situation people go for illegal and unsafe abortion. Developing countries have strictest laws on ending the pregnancy and also have the highest unsafe abortion rates. The impact of rape, statutory rape and incest will remain for lifelong if the victim is not allowed for an abortion.

Fetal disease refers to disorders originating in utero. Examples include hydrops fetalis and chorioamnionitis. When a mother gives birth to a baby who has fetal disease that

birth defect can negatively impact the physical and mental health of parents and care takers. Many parents experience significant depression, fear and anxiety which may have a divesting effect on the whole family. Ultra sound can detect some types of physical birth defects. When a fetus is detected with defects government can allow them to go for abortion.

Dr. Halappanavar, a dentist, and her husband, an engineer, were living in Galway in 2012 and preparing for the birth of their first child. That all changed when, 17 weeks pregnant, Dr. Halappanavar went the hospital with back pain. Doctors said that she was having a miscarriage and her fetus would not survive but that she could not be given an abortion. Ireland, "a Catholic country," and it would be illegal to terminate the pregnancy while the fetus still had a heartbeat. After being repeatedly refused an abortion; she waited days until the heartbeat stopped. The contents of her womb were removed. By then she had an infection, and she died of septicemia the following day. The woman on the mural was Savita Halappanavar, and her story came to be synonymous with calls for repeal of Ireland's Eighth Amendment, which effectively banned abortion in Ireland. Her story galvanized the campaigners calling for an end to the ban and was cited again and again when the country overwhelmingly voted to repeal the amendment.

If an upper-middle class Sri Lankan is in need of abortion, that person can go to certain private hospital and pay for the service. But when the person is poor, unable to access the service due to lack of officially regulated information, it is often in the cases we have heard about places or procedures by word -of- mouth. These

places are unhygienic and the service providers are unskilled, the woman may not be given pain relief. The woman may have a horrible experience. Sri Lanka's maternal mortality rate is low, unsafe abortions and their consequences account for a high proportion of the deaths that do occur, and the morality rate for abortion stands at about 15%.

Some restrictions must be included in the Abortion law amendment

Sri Lanka needs a reform in the abortion law, but with some certain restriction. Sri Lanka is a multi-cultural country enriched with cultural essence. Religious leaders' opinion is not fully acceptable, but according to some cultural aspects abortions cannot be acceptable in all the situations. About 1% or less seeks abortions for incest, rape and fetal deformities. Then what about others? They seek abortion for several reasons and most of them are married people, who already have kids or sudden pregnancy soon after the delivery. Another reason is socio- economic reason. Other than these cases, abortions take place due to the illegal relationships (adultery or bigamy) and sexual relationships before marriage or living together.

The laws must not allow abortion for the people who seek abortion for their bad behaviors. These kinds of abortions must be banned forever. Otherwise this will lead to a cultural degradation. If the law admits these kinds of people to access abortion service, the future generation will get spoilt. Married woman can go for family planning soon after the delivery of the baby. Contraceptive use is the key to reduce the abortion.

If the Sri Lankan law legalizes the abortion with above mentioned restrictions, people can access a safe abortion for a valuable reason in the hospitals. The law must give permission only to the government hospitals to undertake the abortions. When a woman reaches the government hospital to access the service on abortion in such situations like rape, incest and fetal disease, she must submit proper evidence to the hospital; otherwise the hospital must not allow her to abort. As well as she must bring her parent, guardian or spouse along with her. That person also must have proper legal document to prove themselves as parent/guardian or spouse. In the cases of rape or incest doctors will sign it off when there is an absolute proof. Yet it can take many years to prove the rape/incest in a court. Before the court gives the final verdict the baby in the womb want wait. So these cases should be heard in a proper way and verdicts should be given as soon as possible.

Conclusion

Religious beliefs should not be a platform while making laws in a country. Religious influences in law making can have some negative impacts. All religion leaders and institutes should maintain a neutral attitude towards the abortion law as well as other laws. They must let the law makers to do their jobs. If each and every religious leader tries to justify their reasons no any modifications can be made for our ancient laws.

Rape and incest are similar in the sense that both are criminal acts. In our system of justice, we punish the criminal. We do not punish the victim, nor do we punish the criminal's children. We are told, however, that if pregnancy occurs as a result of rape

or incest, offering the victim an abortion is the compassionate thing to do. No woman should be “forced to carry that monster’s child

When rape/ incest victims give birth to that rapist’s baby their whole life is ruined. Some charities may offer shelter for those young mothers but they don’t get a chance to continue their education or career. The worst situation is incest, where the baby born with many mental and physical disabilities and they need a life time care.. In case of incest and statutory rape the victim are minors. She is not physically eligible to give birth to another baby and also she is not mentally matured to be a mother. Teenage mothers can’t support their babies because they are not ready for the motherhood mentally, physically and financially. The people from our country rarely adopt babies, so adoption cannot be a solution for this. Mentally that mother cannot accept that baby. That baby will always remind her about that horrible pain of rape Sri Lankan law makers must consider the amendment on abortion on rape, incest, statutory rape and fetal disease with some restriction. Other than these situations abortion should not be legalized. Married woman have so many options on family planning. So, their carelessness is not a reason for the abortion. Woman must follow a proper family planning to avoid unplanned pregnancy. Family planning methods are very much accessible in Sri Lanka without any cost.

Criminalizing the abortion doesn’t stop the abortion completely; it just makes the abortion less safe. Deaths due to unsafe abortions can be preventable by law. Many countries are starting to change their abortion policies, Sri Lanka also can go for an adaption with needful restrictions. In Sri

Lanka this topic has been kept in the hands of parliament and religious leaders, there is no way to change this law. This matter should be kept in the hands of public. Each and every legislation is going to rule the public. Legislations have a direct influence on people of the country.

“LAW MUST PROTECT THE PEOPLE, NOT BELIEFS”

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