

Policy Article

Back to Square One: Attempted legal amendments and abortion practices in Sri Lanka

Abstract

Sri Lankan law only permits induced or iatrogenic abortion to save the life of the mother. Despite the restricted law, law enforcement mechanisms, and reported high national contraceptive prevalence rate, a significant proportion of pregnant women terminate their pregnancy outside the law. Despite the existence of restrictions and inertia, numerous stakeholders concerned about women's health have made several attempts to liberalize the abortion law in Sri Lanka. Although a number of amendments were proposed to rationalize the abortion law in Sri Lanka, but nothing was successful- back to square one.

Expansion of legal exceptions for induced abortions and improved safe abortion with the revolutionized medical abortion (MA) were observed in numerous countries globally during the past decade. On the other hand, some countries with broadly liberal laws including the United States have added restrictions. How these global changes have affected the countries like Sri Lanka is worthy to study. This article assesses the response of the Sri Lankan government and the society towards those global changes in terms of the policies and practices on induced abortion.

Key Words: - Unsafe Abortion, Restrictive abortion law, Sexual and Reproductive Health, Sri Lanka, Medical Abortion

Introduction and Background

Termination of pregnancy is termed as an abortion irrespective of the circumstances, namely spontaneous or induced (Kottke & Zieman, 2008). Induced abortion is performed either medically with the use of medicinal drugs or surgically using mechanical means (The American

Heritage Medical Dictionary, 2002). Induced abortion could be considered as an illegal practice, if it is performed against the country's existing law (Mosby's Medical Dictionary, 2009). Some induced abortions are termed as unsafe abortions based on the person who perform and the place of the procedure. If it is performed by an untrained or unqualified person in a place that lack necessary equipment or both, it is termed an "unsafe abortion" according to the World Health Organization (WHO, 2007). Unsafe abortions are one of the important causes of the sexual and reproductive ill-health of women in many countries (WHO, 2008). Assuming that all legal abortions performed in a safe environment by a skilled person are safe abortions, all illegal abortions presumably not done under similar conditions can be considered unsafe (WHO, 2008).

Abortions is a common occurrence globally with an estimated 55.9 million taking place annually. Out of these abortions close to 90% belongs to developing countries (88.2%). Not only number-wise but also the rate of abortion among women aged 15–44 years in the developing world demonstrated a substantial rise (36 per 1000 vs 27 per 1000; developing vs developed respectively). The adverse consequences of unsafe abortions are a global issue that counts for around 10 percent of maternal mortality worldwide. Countries with the most conservative abortion laws reported the highest percentages of unsafe abortions. The regions are concentrated in the developing world and are mostly low and middle-income countries (WHO, 2020).

In Sri Lanka, except in situations where maternal life is at risk, abortion is considered as a criminal offense. Offense of illegal abortion could result in imprisonment of up to 3 years or with a fine or both. In the event of maternal death, the said offense could result in imprisonment up to 20 years (Penal Code, 1883). Despite, Sri Lanka boasts high national contraceptive prevalence rate of 65% out of which 54% use modern methods (Department of Censes and Statistics, 2017), some women are faced with unintended pregnancies. A substantial proportion of these women resort to illegal abortion either medical or surgical (Senanayake, et al., 2008).

Globally, a contrasting shift in socio-cultural and legal outlook for abortion could be observed in the past decade. Some nations with the objective of minimizing unsafe abortions have adopted a more liberalized approach by the inclusion of many exceptions including the maternal wish for

induced abortions. These countries have allowed the use of non-invasive techniques to enhance safe abortion practices and to reduce maternal morbidity and mortality. In contrast, some previously liberal countries which includes United States of America and former Soviet Union representatives have introduced restrictions on induced abortion recently (WHO, 2020). This article assesses the response of the Sri Lankan government and the society towards those global changes in terms of the policies and practices on induced abortion.

Laws governing induced abortion; South Asian Perspective

In South Asia, laws that govern abortion practices vary from being progressive to highly restrictive. All nations in the South Asian Region allow induced abortion in situations where maternal life is at risk. Only Afghanistan, Bangladesh and Sri Lanka have very restrictive laws that permit abortion only to save a woman's life (Made for minds, 2020). Although abortion is illegal in Bangladesh, instead of abortion, they use the term “menstrual regulation”, defined as the “procedure for regulating the menstrual cycle when menstruation is absent for a short duration”. This allows a female to obtain induced abortion services until 12 weeks of gestation (WHO, 2020).

In contrast, Bhutan, India and Nepal have introduced comparatively liberal abortion laws. These countries allow a female the termination of pregnancy for wider circumstances, namely the risk to maternal life, to maintain maternal health, following incest or rape, and in presence of fetal defects. In addition, India allows pregnant women to obtain abortion services on economic and social grounds as well (WHO, 2020).

Sri Lankan South Asian neighbor, Nepal, like India, demonstrates comparatively liberal laws on abortion which includes permission for induced abortion upon the maternal request until 12 weeks of pregnancy. Further, incurable chronic illnesses such as human immunodeficiency virus (HIV) could be used as a justification to request induced abortion in Nepal. . In the Maldives, unlike in Sri Lanka, the law permits induced abortion following a pregnancy as a result of rape, incest, or fetal impairment (WHO, 2020). In Pakistan, abortion is permitted to preserve physical health—laws less restrictive than in Sri Lanka (Kumar, 2013).

Abortion law of Sri Lanka

Sri Lankan abortion law is restrictive. As per the penal code of 1883 section 303, an act of induced abortion is illegal and a criminal offence which could result in imprisonment of 3 years or a significant fine, or both. The only exception for induced abortion within Sri Lankan territorial region is on occasions where the mother's life is at risk. Further, if the abortion procedure results in maternal death, under section 304, 20 years of imprisonment could be handed out to the person who illegally performed the induced abortion (Penal Code, 1883).

According to the Attorney General, Ministry of Justice, an earlier belief among law enforcement authorities, namely the mandatory reporting of a patient admitted following illegal abortion by the treating health personnel to police, is a misnomer and the Sri Lankan law does not have such a clause. Therefore, the treating medical doctor is not under any legal obligation to report the details of a patient under his or her care for complications following illegal abortion and is not a punishable criminal offense. The confidentiality is not restricted to post-abortion care. A health worker is not under any legal obligation to report a customer who requests treatment for an incomplete abortion from the concerned health worker despite the perceived knowledge that the client may have obtained the procedure illegally from someone else. Nevertheless, the legal immunity is not extended to such a health worker if he or she refers the female to another practitioner with the intention of undergoing the illegal procedure. Such health workers could be prosecuted if found guilty of knowingly facilitating the commissioning of illegal abortion. (Senanayake, et al., 2012).

Attempted Amendments

Any discussion related to abortion is considered as a sensitive topic in Sri Lankan society. One study shows that a majority of women who previously opted for induced abortions themselves were against the legalization of abortion. The same study demonstrated that this attitude might be a result of sociocultural and religious beliefs that increased availability of abortion services might promote premarital sexual activity and promiscuity among unmarried youth (Rajapakshe & De Silva, 2000). Despite the existence of restrictions and inertia, numerous stakeholders concerned about women's health, at present, are discussing legislative changes to the abortion law of Sri Lanka (Suranga, et al., 2016).

First time in recorded Sri Lankan history, in the late 1970s, a member of the parliament of Sri Lanka, forwarded a private bill to the parliament with the aim of legalization of the induced abortion. However, it was unsuccessful due to the resistance from religious leaders (Senanayake, et al., 2008). There are no records of significant attempts to change the abortion law for almost 25 years following this initial attempt. During this period, all the actors primarily focused their interventions on prevention of unintended pregnancies mainly through increasing access to contraception. However, in 1995, an amendment to liberalize the abortion law for certain instances like rape, incest or fetal abnormalities was forward to the Cabinet of Ministers in Sri Lanka. This cabinet paper was a popular point of debate then. Despite numerous reservations and objections by various groups in the country, it was tabled in the parliament. However it was withdrawn subsequently due to resistance from religious leaders (Senanayake, et al., 2008). There were no such significant discussions proceeded among policymakers for almost two decades.

In 2012, then Minister of Child Development and Women's Affairs of Sri Lanka, made a special statement at the parliament on relaxing the restrictive abortion laws of the country to accommodate the medical requirements. The Minister urged the parliament to examine this matter in a more objective manner and relax the regulations, especially on incest and fetal abnormalities (Sunday Observer, 2012). Debate on abortion in Sri Lanka resurfaced again following his public speech in the parliament. Following fruitful discussion among the stakeholders, a draft bill legalizing induced abortion following rape, incest, or fetal defects was prepared by the Law Commission in consultation with the Ministry of Child Development and Women's Affairs and the Ministries of Health and Justice. This bill would have granted legal immunity for induced abortions following above mentioned circumstances if a specific committee of medical experts from government sector following evaluation, recommended abortion. (Kumar, 2013; Law Commission of Sri Lanka, 2013). Nevertheless, the said effort was not successful due to the resistance from religious leaders, mainly from the Christian fraternity of Sri Lanka. .

The Catholic Church openly opposed induced abortion in public from 2012 and expressed their willingness to foster such unwanted newborn. Further, November 11 Sunday, 2012, was declared

as “The Sunday of the Unborn Child” by the Catholic Bishop Conference as part of their dissatisfaction with any attempt to amend the clauses of laws that govern abortion. An official at the Ministry of Child Development and Women’s Affairs stated that above objections to amend the existing laws, have created an unfavorable example which could prevent future attempts for progressive amendments (Kumar, 2013).

Almost a decade of hiatus on abortion law, in 2022, Justice Minister of Sri Lanka informed the Parliament that it is critical to amend the existing legal clauses pertaining to induced abortions in Sri Lanka to create conducive environment for pregnancy and to curb the difficulties, stigma and harassment encountered by the pregnant women in Sri Lanka especially the following rape and incest. (The Sunday Morning, 2022). Discussions on the amendments took place during several meetings, but was not proceed due to political and economic instability in the country.

Public perception of the abortion law

The public in Sri Lanka is at crossroads on abortion law. Similar to the situation and most of other countries, abortion attitudes in Sri Lankan society shows a polarization in the duality of pro-choice and pro-life (Suranga, et al., 2022). According to a community based study carried out in the Colombo metropolitan area, majority seems to be happy to allow induced abortion in an event following rape (65%), incest (55%) or lethal fetal defects (53%). However, a minute percentage of participants of the same study agreed on legal immunity for induced abortions for financial hardships (7%), following contraceptive device failures (6%), at the request of the partners (5%) and at request of the female (4%) (Suranga, et al., 2016). A similar pattern towards the perception on abortion law was observed among the female factory workers of the Koggala Export Processing Zone in Southern Sri Lanka. A majority of female factory workers (75%, n=440) agreed to legalize abortion to terminate a pregnancy with fetal abnormalities, if the abnormality is lethal. Approximately half of the respondents agreed to legalize induced abortion as a consequence of rape (50%, n=290) or incest (46%, n=267). However, less than one in five the participants wanted to legalize induced abortion for other situations, namely contraceptive device failure (14%) and economic hardships (9%). Only 5% (n=31) agreed to expand the legalized abortions to include maternal requests (Suranga, et al., 2022).

Compared to the general public, a higher proportion of Sri Lankan medical students agreed to legalize abortion for fetal defects (87%), rape (78%), and incest (77%) (Wickramasinghe, et al., 2009). A study on a group of health fraternity including doctors and medical students revealed that close to one tenth of the doctors (87%) and 80% of medical students positively responded for amendments to the law to decriminalize the induced abortions for grave fetal defects (Simpson, et al., 2003). These results confirm that there is less resistance in the medical community to liberalize the abortion law for rape, incest, and fetal defects even though one in ten doctors were against this progressive inclusion.

Abortion practice in Sri Lanka

Compared to South Asian neighbours, use of modern family planning methods is high in Sri Lanka (54% vs 52.2% in India). Despite the said increased use of contraception by Sri Lankan sexually active women (Department of Censuses and Statistics, 2017), some are faced with unintended pregnancies. A substantial proportion of these females opt for induced abortion despite the knowledge of associated risks (Senanayake, et al., 2008). Due to the illegality of induced abortions in Sri Lanka, only a few sources are available which provide information on the magnitude of the issue. One such study estimated the annual national figure for induced abortion between 125,000 to 175,000 (De Silva, 1997). This study was conducted in the 1990s and a subsequent study in year 2000 estimated 240,170 annual induced abortions, in other words, daily rate of 658 and induced abortion ratio of 741 per thousand women (Rajapakse & De Silva, 2000). In 2007, a study using Bogart's model predicted induced abortion rate of 0.087 per woman which is a substantial rise from 0.035 per woman in 1993 (Abeykoon, 2012). Following the study in 2007, a substantial gap exists on current prevalence of induced abortions in Sri Lanka, and it is worthwhile to highlight that majority of these estimated induced abortions are illegal. A recent study conducted among the female factory workers attached to the Koggala Export Processing Zone estimated a significantly high (7.4%, 95% CI = 4.7% -11%) life time prevalence of unsafe abortions among the ever-pregnant cohort (Suranga, et al., 2022).

A considerable shift in abortion practice could be observed in Sri Lanka following the emergence of medical abortion pills. Misoprostol; a prostaglandin E1 analogue which is used to reduce the risk of Non-Steroidal Anti-inflammatory Drug -induced gastric ulcers and to medically induced

labour at term gained popularity for medical abortion following registration in Sri Lanka for limited use in hospitals for management of incomplete abortions (SLCOG, 2020). Despite the exclusion of misoprostol from Sri Lankan Essential Medicine List, the Sri Lankan Post-Abortion Care guidelines elaborates regarding the use of misoprostol (SLCOG & FHB, 2015; WHO, 2020). However, a ministerial directive exists which also provides limited details and authorizes the use of misoprostol (WHO, 2020). Following registration of Misoprostol, women who intend to terminate their pregnancies provided with an easy access to Misoprostol aka abortion pills as it could be administered the at home environment. Thereafter, use of Misoprostol for induced abortions was not limited to save the life of the pregnant woman but for a much wider spectrum of reasons (De Silva, 2019; Suranga & De Silva, 2020). However, there are limited scientific evidence and findings on practice of medical abortion in Sri Lanka (Kaluarachchi, et al., 2018).

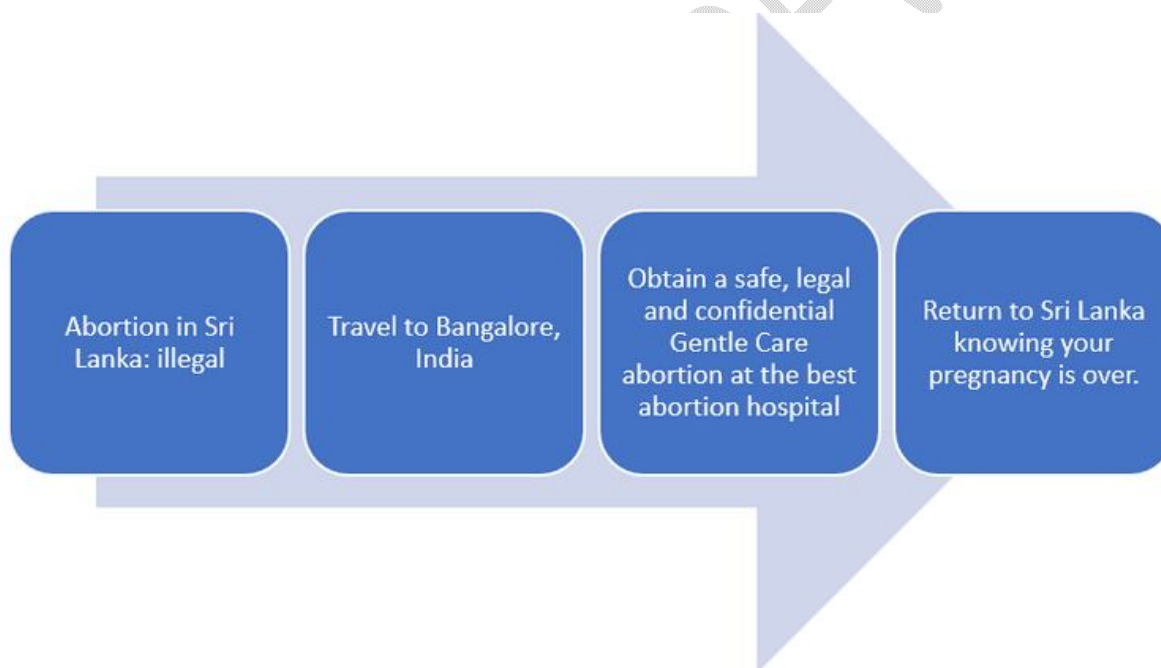


Figure 1:- An advertisement on safe abortion services for Sri Lankan women published in the corporate website of the American Hospital, Bangalore

Source: - <https://americanhospitalbangalore.com/abortion-in-sri-lanka/>

Further to the induced abortion which is taking place outside the legal boundaries of Sri Lanka, a considerable portion of abortion seekers sort to terminate the pregnancy by travelling to neighbor countries including India where abortion is legalized. The advertisement shown in the figure 1

which is published in the corporate website of the American Hospital, Bangalore is only one of many such examples (American Hospital Bangalore, 2020). Apart from access to physical abortion services from neighbor countries, Sri Lankan women accessing virtual services from international platforms. For an example the Women on Web (WoW) is a virtual abortion service provider where women residing in countries with restricted abortion laws can receive virtual consultation and are delivered abortion pills using courier services (WoW, 2020). However, it is noteworthy that all these options and opportunities can be accessible and affordable only to the women who are in the high socio-economic segment. The poor and poorest of poor women may have affected with the impact of induced abortion disproportionately.

Impact of current economic recession on abortion and contraceptive use

At present Sri Lanka is going through its worst financial crisis since the independence in 1948. The magnitude of this crisis has led the Sri Lankan Central Bank to officially default from repaying foreign debts and resulted in long queues for essential commodities like fuel, cooking gas and milk powder. The negative effects of this crisis is numerous and includes both short term and long term impact. Authorities also expecting increase in both acute and chronic malnutrition among children. Not only NCDs and nutritional issues, an increase in communicable diseases is also expected resulting from rising costs of amenities and following resource limitation for preventive public health activities. Not only preventive health activities, but curative sector also facing severe shortage of medicines and surgical equipment.

The impact for family planning following the said disruptions is unknown at present. However, shortage of modern family planning devices is predicted by the experts and lack of surgical commodities could result in reduction in permanent family planning methods such as female sterilization. Therefore, increase in unsafe abortions in Sri Lanka is not a remote possibility in coming years. (Jayasinghe & Matthias, 2022). Also a large number of marriages which were planned to be held during 2020 and 2021 were postponed to 2022 due to lockdown and fear of CORONA virus. However, due to present serious economic recession some of the legally married couples who are waiting for their cultural marriages would decide their pregnancies as unwanted and would decide to terminate.

As per the central bank of Sri Lanka the National Consumer Price Index is progressively inflating monthly from 6.1% in May 2021 to 45.3% in May 2022 (Central Bank of Sri Lanka, 2022). The social marketing of contraceptive contribute for around 20% of the Contraceptive Prevalence Rate of the country (Suranga, et al., 2021). The contraceptive price in the retail shops / pharmacies has increased almost by two to three times making it unaffordable to poor and middle-income groups. On the other hand, the majority of Sri Lankan women access the contraceptives from the government programme, free of cost. The unpublished communication with the Family Health Bureau, Ministry of Health, Sri Lanka highlighted that the government is currently facing difficulties in purchasing contraceptives due to the foreign exchange shortage. These factors may contribute to increase the unmet need of contraception among Sri Lankan women which will in turn may increase unintended pregnancies and unsafe abortions in the future.

A large number of marriages which were planned to be held during 2020 and 2021 were postponed to 2022 due to lockdown and fear of COVID-19. However, due to present serious economic recession some of the legally married couples who are waiting for their cultural marriages would decide their pregnancies as unwanted and would decide to terminate. Although there is no significant increase in the number of contraceptive users reported in the country (Suranga, et al., 2021), number of live births has reduced remarkably during the past few years (Figure 2). These factors may contribute to increase the unmet need of contraception among Sri Lankan women which will in turn may increase unintended pregnancies and unsafe abortions in the future.

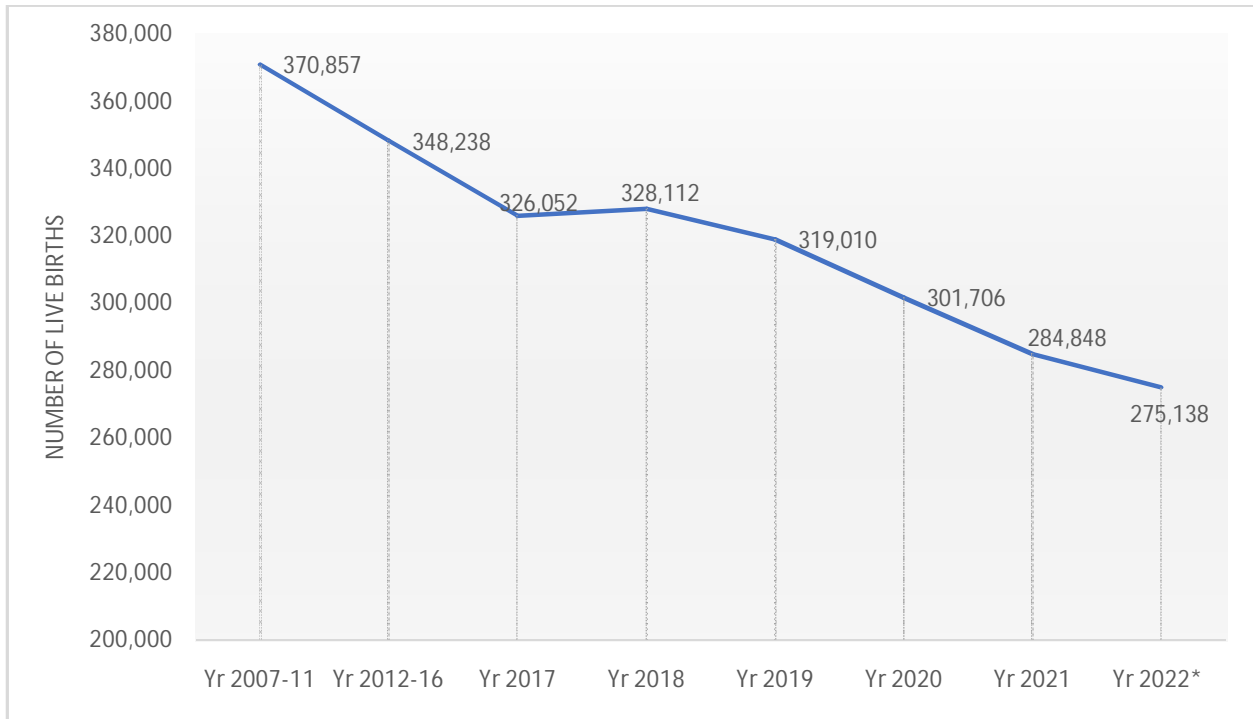


Figure 2: Average number of live births reported in the country (2007-2022). Source: Birth and death registrar. *Extrapolated figure based on the first six months data.

A puzzle: law vs practice

Despite proposal of numerous amendments to liberalize the law governing abortion in Sri Lanka, none were progressed to enactment. Therefore, Sri Lankan abortion law which was originally introduced in the Penal Code of 1883 prevails today, unchanged. Despite Sri Lanka remains at square one, numerous countries in the world including South Asian nations, were able to liberalize the abortion law significantly (Senanayake, et al., 2008).

Despite the involvement of Law Commission, Ministry of Health, College of Obstetricians and Gynecologists of Sri Lanka, numerous non-governmental organizations and individuals, the latest proposal to amend the abortion law was unsuccessful. Why all such attempts failed in Sri Lanka? Presumably there was no commitment from the respective political authority who were in the power. They include “the Head of State”, “The Cabinet of Ministers” and “The Parliament” which failed to proceed with the proposed amendments to safeguard women’s SRH rights. In contrast, obtaining safe abortion locally or abroad was not a challenge for affluent class (Ban, Kim & De Silva, 2002). With the forceful closure of abortion providing centers in 2006, the

women belonging to lower socio-economic left with no alternative other than continuation of unwanted pregnancies. However, emergence of medical abortion facilities in many parts of the world, including Sri Lanka, proved to be a turning point where women regained the autonomy of discontinuation of unwanted pregnancies. Although, emergence of medical abortion has alleviated the burden of unwanted pregnancies for some extent, it is not the perfect solution in Sri Lanka. Because any method of induced abortion is illegal except in situations where pregnant women's life is at risk (Suranga & De Silva, 2020).

Now the puzzle – in the present context is: Should we bring upon amendments again to the Penal Code of Sri Lanka? Perhaps in near future, due to serious socio-economic challenges in the country coupled with the youth bulge, the numbers for liberalization of the abortion law in Sri Lanka may increase. However, such progress might not be realistic with the recent Supreme Court decision in USA on induced abortion. It may discourage Sri Lankan authorities and interested parties to push any significant amendments to the present abortion law (Gerstein & Ward, 2022).

Way forward

Following a decade of discourse, we are at ground zero, with no improvement from the discussion which was held at the Law Commission of Sri Lanka on 2012. As per the consideration in 2012 and developments thereafter, the strict criminalization of abortion as presently contained in section 306 has an adverse impact on the mental health of the woman. Lack of an alternative would result in women victims seeking illegal abortions or carrying the unwanted pregnancy to term both of which are emotionally disturbing and have long term adverse health adversities. General consensus among academia, experts and general public is that a woman who is a victim of abuse should possess the right to terminate a pregnancy which is the result of a crime committed against her and hence it is necessary to provide access to safe methods of terminating a pregnancy. Similarly, a woman carrying a fetus which is seriously impaired should have access to safe termination of the pregnancy. Introduction of provision to terminate a pregnancy does not be considered as a compulsion to have the pregnancy terminated and should not be viewed as such. Majority of both medical and legal fraternity in Sri Lanka believe that relaxation of the strict prohibition will merely recognize the right of a woman to

terminate her pregnancy at her complete discretion leaving her with the freedom to carry the child if she so desires (Law Commission of Sri Lanka, 2013).

Considering the above facts, high amount of medical abortion incidences (De Silva, 2019) in the country outside the law and the public acceptance (Suranga, et al., 2016) which we discussed earlier, we cannot understand why the government of Sri Lanka do not take actions to liberalize the law of abortions for rape, incest and fetal abnormality situations. However, liberalizing the law on abortion to include cases of rape, incest and foetal abnormality probably would not significantly reduce the current rate of illegal abortions. As previous studies have clearly shown, the number of induced abortions following rape, incest and foetal abnormality are comparatively small (Senanayake, et al., 2008). Therefore, it must be acknowledged that liberalizing abortion law for rape incest and fetal abnormalities will not be a response to the issue of preventing illegal abortions but seeks to provide a remedy to a deserving category of women who are victims of abuse resulting in a pregnancy and/or carrying a fetus with serious congenital deformities.

Clinical Trial Registration

Not applicable. No involvement of clinical trial

Ethical Approval

There is no primary data collection involved. The paper is based on already published data and facts.

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