

REVIEW ARTICLE

A review of state of “Abortion in Sri Lanka” in contemporary discussions

Sithmi Attanayake*

Department of Sociology, Faculty of Arts, University of Peradeniya, Peradeniya, Sri Lanka.

Abstract: Safe abortion is a controversial discourse in contemporary society. In many countries, including Sri Lanka, induced abortions are considered criminal acts. Due to these strict laws, individuals often resort to unsafe methods for abortions, posing significant life risks. Various organizations including governmental, non-governmental, international and grassroot entities advocate for the liberalization of these stringent abortion laws to ensure safe access while stressing the importance of women’s bodily autonomy. Despite the critical nature of this issue, there are only a few studies in Sri Lanka focusing on safe abortions and abortion laws. These existing studies primarily examine the community’s perspective and are based on social and cultural determinants. However, they do not sufficiently address the role and the impact made by the abortion-related laws in Sri Lanka, which creates a significant research gap. This study intends to bridge the identified research gap in the context of safe abortion legislation in Sri Lanka. This review synthesizes previously conducted studies on abortion at both global and national levels. The main objective of this review is to explore the role of the law related to safe abortion in Sri Lanka, when accessing safe abortion, employing a feminist legal theory framework.

Keywords: Abortions, safe abortions, safe abortion-related laws, liberalization, Sri Lanka.

INTRODUCTION TO ABORTION, SAFE AND UNSAFE ABORTION

Safe abortion has become a social issue, at national and global levels. Many international, governmental and non-governmental organizations are involved in finding a solution to this. Therefore, abortion has become a global

discourse. The discourse surrounding safe abortion laws in Sri Lanka has gained significant attention from various stakeholders, including international, governmental and non-governmental organizations. While numerous studies have delved into the broader landscape of safe abortion and its legal implications, a notable research gap exists in understanding the role and the impact made by the existing safe abortion-related law in Sri Lanka. This paper aims to explore the role of the law related to safe abortion in Sri Lanka when accessing safe abortion employing a feminist legal theory framework. This study examines the interconnection between the law and the social and cultural determinants, which is very significant when liberalizing and reforming safe abortion-related laws in the country. Feminist legal theory seeks to address how laws perpetuate gender inequalities and restrict women’s rights. This framework is beneficial in analysing abortion laws, as it highlights the intersection of legal restrictions with issues of bodily autonomy, reproductive rights and social justice.

“Abortion” is a social issue discussed worldwide. Access to safe abortion is a global discourse in the present society at the national and global levels. “Abortion is legally defined as the removal of the foetus from the uterus any time before its gestation is completed” (Thilakarathna, 2018: p. 4). Explaining further, “Termination of pregnancy is termed an abortion irrespective of the circumstances, namely spontaneous or induced” (De Silva *et al.*, 2023: p. 24). Generally, there are many ways of which an abortion or a miscarriage could occur during pregnancy.

* Corresponding author (a17049@arts.pdn.ac.lk;  <https://orcid.org/https://orcid.org/0009-0003-5584-397X>)



This article is published under the Creative Commons CC-BY-ND License (<http://creativecommons.org/licenses/by-nd/4.0/>). This license permits use, distribution and reproduction, commercial and non-commercial, provided that the original work is properly cited and is not changed in anyway.

Since legal restrictions are against abortions, there is a high tendency of seeking support to remove the foetus through unsafe methods.

“Unsafe abortion is defined as a procedure performed by personnel lacking the necessary skills, or in an environment not meeting minimum medical standards or both. Often abortions performed legally are thought to be safe and those performed illegally are thought to be unsafe” (Marecek *et al.*, 2017: p.11).

Unsafe abortions do not follow proper medical guidelines or pre- and post-abortion care, which bring more risk to the mother’s life and create the possibility for medical complications. However, it’s essential to critically examine whether poor service quality directly causes unsafe abortions or if other factors contribute to both issues independently such as the restricted access to safe and legal abortion.

On the contrary, safe abortions are done by a qualified medical practitioner, with proper medical guidelines followed up with pre- and post-abortion care. According to the Penal Code of Sri Lanka; “if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment” (Center for Reproductive Rights, 2022) is the only moment that a safe abortion can be performed.

Existing research on safe abortion in Sri Lanka has predominantly focused on legal frameworks, maternal health outcomes and societal attitudes, providing valuable insights into the multifaceted nature of this complex issue. From the point of view of activists in the field of sexual and reproductive health and rights (SRHR), if citizens are given proper sexual education on contraceptives, the importance of family planning, the negative effects of unsafe sexual relationships, unexpected and teen pregnancies, most of the abortions could have been prevented. At the same time, people are not aware of that access to safe abortion is a right of women for their bodily autonomy. When abortion needs to be done people take illicit paths due to the strictness of the laws and also because of their unawareness of its risks and complications. Further analysing this statement through the lens of Feminist legal theory, it stresses the importance of bodily autonomy, asserting that women should have the right to make informed decisions about their bodies, including the decision to have an abortion and also, lack of awareness about safe abortion as a right, further compounds this issue. Feminist legal

theory advocates for comprehensive sexual education as a means to empower women with knowledge about their reproductive rights and options. This supports the statement that current restrictive laws in Sri Lanka infringe upon this right, forcing women to seek unsafe and illegal abortion methods.

Mainly lack of sexual education and unawareness of people have led to the rising statistics of unsafe abortions in a country. For instance, “A staggering 45 per cent of all abortions are unsafe” (UNFPA, 2022). Moreover, “according to WHO, every year in the world there are around 73 million induced abortions. This corresponds to approximately 200,000 abortions per day” (Worldometer, 2023) proves the increasing number of abortions worldwide and this clearly shows why it has become a global discourse that needs to be addressed.

METHODOLOGY

A qualitative study design is used in this research. A qualitative study design is used to explore and get a deeper understanding of this study which involves collecting rich and in-depth data through interviews, to meet the objectives of this study successfully.

The study area of this research is “to explore the Role of the law related to safe abortion in Sri Lanka, when accessing safe abortion” through the lens of feminist legal theory. Since the research is conducted related to safe abortion access, family planning and sexual and reproductive health and rights (SRHR), the sample was chosen as a purposive sample; meeting professionals (doctors, lawyers, advocates) working in organizations that are working for SRHR, health, family planning and liberalizing safe abortion-related laws in the country.

The data collecting technique is structured interviews following a topic guide. This guide included the following questions covering broader aspects related to the research area. The interviews were conducted online or in person based on the convenience of the participants. The interviews were conducted in English or Sinhala per the participants’ language preferences. Each interview took around 45 minutes to 1 hour of time duration. The interviews were recorded with the verbal consent of the interviewee and the recordings were transcribed and translated as necessary. The gathered data was analysed manually by using thematic analysis and grounded theory. The collected data was confidential and the confidentiality of the information was assured to the interviewee and the organization adhering to research ethics.

LEGAL ASPECTS RELATED TO ABORTION: GLOBAL, REGIONAL AND NATIONAL LEVEL

There are many laws related to abortions in every country. “Abortion was legally restricted in almost every country by the end of the nineteenth century” (Berer, 2017: p.14). “Over the past several decades, monumental gains have been made in securing women’s right to abortion, with nearly 50 countries liberalizing their abortion laws. Some of these reforms has been incremental, enabling women to access legal abortion only when there is a threat to her life or when pregnancy results from rape. But many of these changes have been truly transformative, overturning absolute bans on abortion in favour of women’s reproductive autonomy” (Center for Reproductive Rights, 2023).

Even though access to safe abortions was restricted in many countries, governments have decriminalized and/or liberalized the abortion-related laws in their countries. Also, in some countries complete freedom for safe abortions is allowed by the law, regarding the bodily autonomy of women. “Bhutan, India and Nepal have introduced comparatively liberal abortion laws. These countries allow a female the termination of pregnancy for broader circumstances, namely the risk to maternal life, to maintain maternal health, following incest or rape and in the presence of foetal defects.” (De Silva *et al.*, 2023: p.25). From a feminist legal theory perspective, Sri Lanka’s highly restrictive abortion laws can be seen as a form of systemic gender oppression, limiting women’s control over their reproductive health and reinforcing patriarchal norms. “Although an increasing number of women are seeking medical abortions outside of formal /informal private health systems in Sri Lanka, research agendas have yet to address the topic systematically. Medical abortion is likely expanding access to induced abortion, especially in countries where it is legally restricted like in Sri Lanka” (De Silva, 2019: p. 5). Therefore, access to safe abortion in Sri Lanka is one of the most controversial conversations in contemporary society, especially related to sexual and reproductive health and rights (SRHR).

More importantly, “Legal statutes and regulations are, of course, not the only factors affecting women’s access to abortion, their agency and autonomy in making decisions about abortion and their abortion experiences” (Marecek *et al.*, 2017: p.7). “Among the countries of SEA region, Bhutan, India, Nepal and Thailand probably have the most liberal abortion laws and permit a woman to terminate a pregnancy on a broad range of grounds including to save a woman’s life, preserve a woman’s physical health or mental health, if pregnancy is a

result of rape or incest and if there is foetal impairment/ abnormality” (WHO, 2021). “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” (De Silva *et al.*, 2023: p.24). “In spite of strict laws, illegal abortions are frequently performed in Sri Lanka.... The laws pertaining to abortions have remained unchanged for nearly one and a half centuries” (Thilakarathna, 2018: p.5). This clearly shows the importance of the legal aspects of a country in general. When constitutions or laws, regulations and/or policies are implemented, the state should consider the rights of citizens and benefits for citizens and also, they should address the realities, or the real areas that have not been addressed for so long. For example, restrictions on safe abortion in Sri Lanka have increased the number of unsafe abortions taking place in the country leaving women’s lives at risk. Further, this strictness lies as a barrier for women’s bodily autonomy according to SRHR and human rights activists. Criminalizing and stigmatizing access for safe abortion, needs to be addressed and many of the organizations are working towards liberalizing and amending the safe abortion-related laws in the Sri Lankan legal system.

Despite the strict legal framework, illegal abortions are frequently performed in Sri Lanka, indicating a significant gap between the law and the lived realities of women. This gap suggests that the law is not serving the needs of women, from the point of view of the feminist legal theory. Similarly, such legal systems are failing to protect women’s reproductive health and rights. Instead of ensuring safe and legal access to abortion, the laws push women towards unsafe practices, highlighting the need for legal reforms that prioritize women’s health and rights.

SOCIALLY CONSTRUCTED DETERMINANTS THAT OBSTRUCT THE LIBERALIZATION OF SAFE ABORTION-RELATED LAWS IN SRI LANKA

There are many determinants which impact the liberalization process of safe abortion laws in Sri Lanka. Most importantly, the level of awareness and knowledge about sexuality and reproductive health act as a determinant which obstructs women’s decision-making process towards their bodily rights. But at the same time this would impact the liberalization process, because even if the organizations were able to achieve the liberalization of safe abortion-related laws in Sri Lanka, women would not get the benefit of it but follow the usual unsafe abortion methods, due to unawareness and lack of education. For

example; “Respondents with high levels of education, a smaller number of living children and lower age (youth) are more likely to accept liberalized laws on abortion. Similarly, never-married respondents are more likely to accept legalizing abortion than married respondents. Respondents with higher levels of exposure generally tend to hold liberal attitudes towards the abortion law” (Suranga *et al.*, 2016: p. 76). The above research findings prove how awareness and level of knowledge about SRHR act as a strong determinant which impacts the decision making even if the liberalization was achieved. Also, “People with higher education and higher accessibility to sources of information such as mass media, printed media and public health system are likely to have more liberal attitudes towards induced abortion” (De Silva *et al.*, 2023: p. 26). Organizational perspectives offer a unique lens through which researchers can gain deeper insights into the intricate dynamics involved in advocating for the liberalization of safe abortion laws in Sri Lanka.

Understanding how organizations navigate these relationships is vital for comprehending the broader context in which safe abortion advocacy takes place. It allows researchers to uncover potential alliances, conflicts of interest and collaborative opportunities that shape the success or challenges faced by advocacy efforts. Researchers have tried to bring knowledge to the general public and how it becomes challenging to liberalize safe abortion-related laws. Which is in a way not very practical and logical. Because it is always the organizations or community groups that work to liberalise safe abortion-related laws. It is very salient to study even the researchers haven’t intended to study this area from the organizational perspective.

Furthermore, “Unsafe abortion is also a leading cause of maternal morbidity. While medical procedures for inducing safe abortion are straightforward, whether or not an abortion is available or safe or unsafe is influenced by a complex mix of politics, access, social attitudes and individual experiences” (Coast *et al.*, 2018: p.199). Religion, gender equity and equality, education & awareness, human rights, policy and law, societal attitude, political conditions, economic status and capacity are some major determinants that create an immense effect which is needed to be considered in the process of liberalizing safe abortion-related strict laws. These researchers try to understand this issue, staying outside of the organizations, in the point of view of the general public towards organizations. But to have a proper understanding and knowledge they need to have an insidious perspective.

Moreover, a detailed analysis of organizational interventions shows how these entities engage with the

communities they serve. Research should explore how organizations build trust, foster community participation and disseminate accurate information about safe abortion. This community-level perspective is crucial for tailoring interventions that are culturally sensitive and responsive to the specific needs of diverse populations in Sri Lanka. This also provides insights into how they navigate public discourse, counter misinformation and work towards destigmatizing safe abortion, while influencing societal attitudes, rather than an outside perspective on organizations’ work or just studying the social attitudes and determinants, which always limits the knowledge area and focus.

Many challenges and barriers lie ahead of the journey of liberalizing the safe abortion laws in the country. This is not only related to Sri Lanka but also to many other nations, especially developing countries.

“The law labels the destruction of an embryo and/or foetus an ethically or morally significant act, which gives reason to regulate abortion as something more than a personal decision or a medical procedure, but as a social act” (Erdman, 2017: p.31).

This shows the awareness of people and decision making when they need an abortion is weak, as they are bound with the cultures and stigmas in the society. Therefore, in other words, even if the person who needs an abortion or the person who makes the decision is an individual issue, still it creates an impact on society because many socio-cultural determinants impact the decision-making and undergoing the abortion.

Many socially constructed determinants including social inequalities challenge the organizations in the process of liberalizing safe abortion-related laws in the country. For instance,

“Socio-cultural context includes a broad range of factors influencing abortion trajectories and is tightly linked to other components such as the influence of institutions or healthcare practitioners’ willingness to provide abortion services. Norms about abortion acceptability, including stigma and shame, are shaped by (in)equalities (e.g., gender, race, ethnicity)” (Coast *et al.*, 2018: p. 207).

Moreover, the cultural practices in a country and religious and superstitious beliefs of people in society affect abortion-related discourses.

“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” (Thilakarathna, 2018: p. 4).

Further analysing this statement about fear of a sudden increase in the number of abortions if the law is reformed is that if permission for safe abortion is granted, people will rapidly start using the service, instead of using contraceptives, which would escalate the abortion rates in Sri Lanka. On the contrary, Sri Lankans are still guided by their religious norms, superstitious beliefs, traditions and cultures, which control their behaviour in society, therefore, even if access to safe abortion is granted, there will be some kind of a limitation in getting its benefits, because of fear to go beyond cultures beliefs. From the point of view of most of the activists in the field of SRHR, before granting access to safe abortions and liberalizing safe abortion-related laws in the country, the best practice is to raise awareness and educate the community about family planning and SRHR.

There is a belief in religions that removing the foetus is considered as destroying a life. Further explaining this, “Buddhist attitudes to abortion are influenced by its belief in rebirth and the idea that life is a never-ending continuum. Many Buddhists, accordingly, feel that abortion is prohibited by the First Precept against taking life” (Keown, 2020). These beliefs must have influenced the formation of law in the country. Especially because the dominant culture of the country is shaped by Buddhism. That’s the reason for the strictness of the laws related to safe abortions in Sri Lanka. “Religious institutions’ messages on abortion can have multiple influences including how a woman perceives the morality of abortion and how women who have abortions are treated by society” (Coast *et al.*, 2018: p. 205). Discussing further about the religious ideologies in Sri Lanka obstructing the liberalizing efforts;

“First time in the recorded Sri Lankan history, in the late 1970s, a member of the parliament of Sri Lanka, forwarded a private bill to the parliament to legalize induced abortion. However, it was unsuccessful due to the resistance from religious leaders” (De Silva *et al.*, 2023: p.25).

This intersection of religion and law has profound implications for women’s rights, autonomy and gender equality. Analysing this through the lens of feminist legal theory reveals several critical insights, including the moral judgments embedded in religious teachings about abortion, which influence societal attitudes

and the treatment of women who seek abortions. This stigmatization further restricts women’s access to safe abortion services, impacting their sexual and reproductive health and rights. The intertwining of religious ideologies with legal standards undermines women’s bodily autonomy and perpetuates societal stigma through the lens of feminist legal theory. To achieve gender equality and protect women’s reproductive rights, legal reforms must prioritize women’s health and autonomy, separating religious beliefs from the legal framework.

INFLUENCING THE LEGAL SYSTEM BY ORGANIZATIONS

Access to safe abortion is a human right of the women who don’t want to continue their pregnancy. “In order for the Sri Lankan woman to enjoy the rights enjoyed by other women worldwide with regard to abortions a re-evaluation of the existing laws and policies is a major requirement” (Thilakarathna, 2018: p. 5). Since it is the bodily autonomy of women and unsafe abortion leads to many health risks, granting access to safe abortion is necessary. “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” (Thilakarathna, 2018: p. 4). But when granting access to safe abortions it is necessary to raise awareness and educate the society about family planning and SRHR.

The Sri Lankan government has attempted to make amendments to the prevailing abortion-related laws. But “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 the prevention of unintended pregnancies, mainly through increasing access to contraception.” (De Silva *et al.*, 2023: p.25). This section in the Penal Code was published in 1883, which was during the colonial era and has not yet been subjected to any amendment. This is not addressing the needs and realities of the people at present, which is a timely need to be addressed.

Organizations can immensely impact the liberalizing process of safe abortion laws in a country. “Institutions (e.g., political, governmental, faith-based, private, civil society) operate and interact at global, regional, multilateral, national and sub-national levels to shape the availability of abortion care in local contexts. The influence of institutions on each other and each institution’s position on abortion, is interwoven. International institutions can shape the availability of abortion in other national and sub-national contexts,

both ideologically and financially” (Coast *et al.*, 2018: p. 205). These actions taken by different organizations are significantly important, but the attempts, barriers, hardships and ultimate goals are yet to be studied.

CONCLUSION

Abortion is an important discourse in the world. Many countries including Sri Lanka have limited access to safe abortion. Therefore, this has become a major issue that needs to be addressed soon. Due to this strictness of the laws in the country, there is an increase of people seeking unsafe and illegal abortions, risking their lives and health. Many Organizations, including government, non-governmental, international organizations and grassroots-level organizations are working to liberalize these safe abortion laws in the country. That means reducing the strictness of these laws and providing women with access to safe abortion.

Current laws were introduced in the colonial era and were not amended to meet contemporary trends and needs. While the law currently allows for abortion in limited circumstances, illegal abortions are still common in Sri Lanka. This is a result of restrictions on access to safe and legal services. Therefore, there was a common suggestion from the activists and professionals that the prevailing legal system in the country needs to be liberalized and should provide women with access to safe abortions. They showed the importance of liberalizing and the achievements so far in the country when working towards the liberalization of safe abortion-related laws in the country. They also showed how this strictness could negatively impact women and girls who are especially in need of abortion for incidents such as sexual assault, rape, being underaged, etc. As per the feminist legal theory, by criminalizing and stigmatizing abortion, Sri Lankan laws undermine women’s agency and autonomy and also women will have to bear the brunt of unintended pregnancies and the consequences of unsafe abortions, which can have long-term health and socio-economic impacts.

Many organizations and activists play a vital and admirable role in advocacy, policy designing and implementation, awareness raising, educating, ground-level initiatives, research and much more work to achieve liberalization. But, some of these efforts have been met with strong opposition, especially due to religious beliefs and the dominant role played by religions such as Buddhism in shaping up the culture of Sri Lanka. This acts as a significant challenge and a barrier for organizations and activists working for liberalization.

In conclusion, there are only very few studies in the country related to safe abortions and liberalizing

abortions. The organizational perspective for liberalizing and reforming the law provides an avenue to explore the impact of legal and policy advocacy on the ground. Researchers can delve into how organizations monitor and evaluate the outcomes of their interventions, measuring success not only in terms of policy changes but also in improvements to women’s health outcomes and access to safe abortion services. It will bring a better understanding and an insidious perspective to this discourse. Understanding the ripple effects of the interconnection between law and the socio-cultural determinants is crucial for refining strategies and ensuring that advocacy initiatives have tangible and positive impacts at both the policy and community levels.

REFERENCES

- Berer, M. (2017) Abortion Law and Policy Around the World: In Search of Decriminalization, *International Family Planning Perspectives*, 19(1), pp. 13-27.
- Center for Reproductive Rights (2023) *The World’s Abortion Laws* [Online] Available from: <https://reproductiverights.org/maps/worlds-abortion-laws/> [Accessed: 20th January 2023]
- Center for Reproductive Rights. (2022, January 18). *Sri Lanka’s Abortion Provisions - Center for Reproductive Rights*. [Online] Available from: <https://reproductiverights.org/maps/provision/sri-lankas-abortion-provisions/> [Accessed: 20th Jan 2023].
- Coast, E., Norris, A. H., Moore, A. M. & Freeman, E. (2018) Trajectories of Women’s Abortion-Related Care: A Conceptual Framework, *Social Science & Medicine*, 200, pp. 199- 210.
- De Silva, I., Suranga, S. & Kumarasinghe, M. (2023) Back to Square One: Attempted Legal Amendments and Abortion Practices in Sri Lanka, *Asian Journal of Education and Social Studies*, 46, pp. 23-33.
DOI: <https://doi.org/10.9734/ajess/2023/v46i1994>
- Erdman, J. N. (2017) Theorizing Time in Abortion Law and Human Rights. *Health and Human Rights*, 19(1), pp. 29–40.
- Family Planning Association Sri Lanka (FPA) (n.d) *About FPA Sri Lanka*. [Online] Available from: <https://www.fpasrilanka.org/about> [Accessed: 15th January 2023].
- Keown, D. (2020) ‘Abortion’, In *Buddhist Ethics: A Very Short Introduction*. 2nd Ed., Oxford.
DOI: <https://doi.org/10.1093/actrade/9780198850052.003.0006>
- Marecek, J., Macleod, C. & Hoggart, L. (2017) Abortion in Legal, Social, and Healthcare Contexts, *Feminism & Psychology*, 27(1), pp. 4–14.
DOI: <https://doi.org/10.1177/0959353516689521>
- Suranga, S., Silva, T. & Senanayake, L. (2017) Gender Differences in Knowledge and Attitudes Concerning Induced

Abortion in Sri Lanka: A Community-Based Study in Colombo City, *Sri Lanka Journal of Social Sciences*, 40(2), pp. 93-102. DOI: <https://dx.doi.org/10.4038/sljss.v40i2.7540>

Thilakarathna, K. A. A. N. (2018) Liberalizing Abortion Laws in Sri Lanka; Prospects and Challenges, *Sri Lanka Journal of Forensic Medicine, Science & Law*, 9(2), pp. 4-9. DOI: <https://doi.org/10.4038/sljfmsl.v9i2.7804>

United Nations Population Fund (2022) *The Impacts of Unintended Pregnancy* [Online] Available from: <https://www.unfpa.org/swp2022/impacts> [Accessed: 07th April 2023].

United Nations Populations Fund (UNFPA) (2023) *About Us* [Online] Available from: <https://www.unfpa.org/about-us> [Accessed: 25th May 2023].

World Health Organization (WHO) (2021) 'Abortion-related Laws', In *Policies, Programme and Services for Comprehensive Abortion Care in South-East Asia Region*. New Delhi: WHO, Regional Office for South-East Asia, pp. 6–11.

Worldometer (2023) *Abortion Statistics* [Online] Available from: <https://www.worldometers.info/abortions/> [Accessed: 28th June 2023].