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Reforming Abortion Laws in Sri Lanka: A Socio-Legal Approach with Special Reference to Rights of Women

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ABSTRACT

Abortion while being a common occurrence has remained a controversial issue as it has been viewed as something inherently evil and vicious both in the cultural as well as religious context. This attitude is further established by the laws and policies of some countries where abortion is seen as a criminal offence including Sri Lanka. Despite having very strict laws and instances upon which an abortion may be legally permitted, where the Sri Lankan law only allows an abortion to be carried out without attracting criminal liability when it is done in good faith to protect the life of the mother, the incidents of illegal abortions have risen dramatically over the years and it has posed serious questions concerning the rights of women inclusive of right to life and healthcare. This has led to the need of reforming the existing laws on abortions. Therefore, using a qualitative methodology with three selected case studies, this research seeks to propose recommendations at reforming the existing laws on abortion by utilizing a socio-legal approach. The results reveal that, while there have been many previous attempts at reforming the laws related to abortion, they have all failed and even such proposals have not really taken a wholistic approach at providing a viable solution to the problem. Case studies have revealed that mere relaxation of the grounds upon which an abortion may be permitted are very much insufficient in addressing the needs of those who seek an abortion. Therefore, it is recommended that issues such as availability of information regarding abortions, pre and post abortion care, support in the decision-making process as well as protecting the service providers and women who obtain abortions services are all vital considerations that needs to be considered in reforming the existing laws on abortion. Therefore, it is concluded that utilizing a socio-legal approach at addressing these issues is the best available mechanism for tackling this issue which would help to both protect and advance the rights of women regarding their bodily integrity and rights to self-determination.

Keywords: *Abortion, Autonomy of Women, Right to Self Determination.*

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I. INTRODUCTION

The discourse on abortion has remained a controversial one for the most part, though it has become common occurrence throughout the world. While Abortions are universally practiced, it does not follow or 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 (Brookes, 2013). There is evidence that abortion has existed throughout history. It has been practiced since ancient times, but its legality and availability have been threatened continuously by forces that would denigrate women's fundamental rights. Currently, while efforts to decrease the need for abortion through contraception and education continue, access to abortion remains crucial for the well-being of millions of women. The manner in which abortion is treated by legal systems in different countries varies. Where the practice is legal, there are reliable statistics on the extent of its practice, while in countries where it is illegal, it comes to the attention of the medical care system when there are complications (Noonan, 1967).

Abortion (and by extension, other forms of contraception) can be seen as a purely technical medical issue: in this case it falls into a class with other medical or surgical procedures and can be treated the same way. It can also be seen as a moral and political question opposing private rights and public morality (Back, 1987). The moral question of abortion is difficult because it is peculiar. It is because the human foetus is so peculiar to other individuals and because the relationship between foetus and pregnant woman is so unlike other relationships. However, when it comes to the legal discourse regarding abortion Collins asserts that, far too often, in the heat of debate, the moral-medical aspects of abortion occupy centre stage, and the law is treated as a mechanistic technicality to be changed into whatever the "winning side" may determine (Collins, 1975). He further claims that, when one is considering about reforming the law relating to abortion law, while liberalizing the law has become a popular slogan, liberalizing of abortion law by itself would not be a solution to the problem, as the problem regarding the legal discourse on abortion is not limited to liberalizing the law but it also includes the social, economic and cultural aspects as well.

Unlike other issues faced by the women, abortion is a peculiar one as much of the debates concerning the issue of abortions have left out the voice of the women in making the final decisions whether it be a moral one or a legal one. Even when it comes to the reforming the existing laws on the issue of abortion, women's voices are seldomly heard as much of the debate concerning law reforms revolves around a political issue connected with obtaining and

governmental power, where the democratic process is more in line with the popular demands than that of the women, who's rights are not properly recognized.

In the Sri Lankan context, abortion is only allowed to save the mother's life according to the penal code. Section 303 of the penal code states that 'whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine'. As this is the only permissible ground upon which an abortion may be performed legally, Sri Lanka is considered as having very strict laws relating to abortion in comparison with the other countries in the region (Thilakarathna, 2018). Even with these presumably strict laws relating to abortion in the country, the number of illegal abortions carried out is on the rise. While there is a lack of many official documents regarding the number of abortions carried out in a day, some researchers have found that in 1984, the Minister of Health estimated that over 500 abortions are done in Colombo daily (Senanayake, 2004). 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 (Suranga MS, 2016). 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.

While there have been many instances in which where the liberalizing of abortion laws was discussed without bringing any results. One of the main reasons which could be attributed to the failure of those discussions in reforming the law could be attributed to the fact that, all most all the previous efforts failed to capture the perspective of the women who at the end of the day have to go through with the whole process of abortion, and where any discussion is going to leave out their concerns would not become a viable one since reformation of abortion laws can never be done by considering the legal aspect alone. The reformation of abortion laws is also not to be taken as arguing for liberalizing of abortion laws *per se* as well. While reformation can mean either a restriction or expansion of the grounds in which an abortion may be held legal, it should not end there as the law needs to take care of both pre and post abortion care as well. On the other hand, liberalizing of abortion laws have always remained one sided and the arguments have generally limited themselves with expanding the grounds upon which an abortion may be held legal.

In this background it becomes important to inquire in to the debate on reforming of abortion

laws in the country that takes a wholistic look at the issues in hand that is taken from a socio-legal approach. According to a socio-legal approach, analysis of law is directly linked to the analysis of the social situation to which the law applies, and should be put into the perspective of that situation by seeing the part the law plays in the creation, maintenance and/or change of the situation (Schiff, 1976). In most occasions in which the issue of abortion has been discussed in connection with another discipline, especially when it comes to law reforms, the dominant discourse has remained medico-legal which fails to capture the true realities in which an abortion would take place and such can only be successfully studied utilizing a socio-legal approach which would be capable of bringing insights from a women's perspective, specially concerning their right to bodily autonomy. Therefore, it has become high time to investigate the need for law reforms regarding abortion laws through a socio-legal approach which especially considers the rights of the women.

(A) Research Problem

The question of abortion is not a simple one. It is a thorny problem whose study is problematic because it is a source of social and juridical discord, of moral incertitude, of medical and psychiatric confusion, and of personal anguish. The question arises of whether a single perspective can be found which allows comprehension of the entire phenomenon. Therefore, it cannot be confined to questions such as, when is an abortion legal, whether women's bodily autonomy be given more prominence over that of the life of a foetus or whether the law can make good something which is necessarily evil by legalizing it. The latter question while being valid has no place in the legal discourse *per se* as the law is not concerned with what is morally right or wrong, but is only concerned with the enactment of laws according to the procedures provided in a democratic system of governances where the legislature is granted with the power of legislating even in disregard of issues falling under the realm of morality. While the law is able to regulate the incidents of abortion by distinguishing between the legal and illegal abortions, it fails to capture and understand the lived experience of women who had undergone an abortion. Therefore, to discuss about reforming abortion laws from a legal perspective *per se* would become very much unworkable unless it is able to consider about the rights of the women who undergo an abortion, not only about the right to have an abortion and the circumstances in which one may become legally available, but also with the incidents of abortion such as pre and post care for them, social dilemmas that has to be faced and how much of the decision making power is vested with the women who so chooses to have an abortion. Purcell points out that, despite its presence as an event in so many women's reproductive lives, abortion is also politicised and is often framed in public discourse in more abstract terms and

debated as a moral or ethical issue that is removed from women's lived experiences. She also states that, how the incidents of abortion are perceived and disseminated in news media representations overall tend to present abortion in a way that is highly stigmatising, sensationalist and from which the voices of women who have experienced abortion are largely absent (Purcell, 2015). Any reform in the law relating to abortion must necessarily be conscience about women's experiences of seeking, arranging and undergoing abortions. With most of the attention of abortion reform groups focused on how the abortion laws affect individual women, there has been relatively little public discussion of how legalization of abortion might affect society as a whole, which has to be one of the major considerations that should be considered in the discourse on reforming the laws relating to abortion.

One principal motivating force behind the drive for reform of the abortion laws has been concern for the welfare and rights of women. Proponents of the reform of abortion laws have cogently pointed out that the existing laws threaten the health of many thousands of women who have become accidentally and unintentionally pregnant, by forcing them either to bear unwanted children or to seek illegal abortions. For the woman who is mentally or physically ill, poor, or already overburdened with more children than she can adequately care for, the birth of an unwanted child can be disastrous (Schwartz, 1972). However, when it comes to the actual discussion about the reformation of abortion laws, the rights of the women and their lived experience is overlooked and the debate revolves around either upon a medico-legal discourse or on an ethical-legal debate which fails to capture the lived experiences of the women and their rights, especially their rights over their bodily autonomy and the decision-making power concerning an incident of their life. Many women's rights groups claim that the decision to undergo abortion should be the woman's prerogative, not that of the State, and have insisted that the law should allow a woman to terminate an unwanted pregnancy upon request, regardless of what her reasons might be for wanting the abortion (Schwartz, 1972). While this kind of an argument may not work in a Sri Lankan context, still the gist of the argument that seek to give the power of making the decision vested upon the women can not be ignored.

In the above backdrop, this main problem which is sought to be answered in this research is as to how a socio-legal approach can be taken at reforming the abortion laws in Sri Lanka, where the laws relating to abortion laws being very restrictive in their nature that does not allow a women who should be at the focal point of the discussion process on the incidents of abortion where all incidents which has lead the women to seek an abortion, whether legal or illegal has come into being are not recognized in the current set of existing laws and on the discussions on liberalizing abortion laws in the country which merely focuses on expanding the number of

grounds upon which a legal abortion may be permitted. Therefore, the research problem is formulated as to *how a socio-legal approach could be utilized at suggesting reforms to the existing laws governing abortion in Sri Lanka that is capable of capturing both the lived experiences of the women who have gone through an abortion and both the protection and advancement of their rights concerning bodily autonomy in such a proposed law reform.*

(B) Research Questions

The discourse regarding the reforming of abortion laws have failed for the most part as they have only concerned about the legality of the abortion, by trying to answer the simple question of whether the abortion is legal or not. Once that question is answered either way, much of the discussion on legal reforms have stopped there. The question whether an abortion is legal or illegal is totally different from the question as to why a women would seek to obtain an abortion, as it would not depend on the legality of the abortion *per se*. Many factors influence the choice of a women in seeking an abortion, which includes the options available at obtaining a valid opinion about going ahead with an abortion, the clinical and medical support available, the cost of having an abortion, the distress and the stigma attached in carrying out an abortion and even the effect of bearing children on a latter time just to mention few of the concerns a women may have in carrying out with an abortion, which makes it clear that the legality of the abortion is only a single question in a chain of question which a women seeking an abortion must find answers to.

In answering the issue regarding the reforming of abortion laws in Sri Lanka, the reforms should not be limited to the identification of incidents of abortions which may be labelled as legal or by extending the number of incidents which may fall under the category of grounds upon which an abortion may become legal, but such reforms should also be capable of answering the broader notion of the rights of women and their lived experiences regarding an abortion, so that all the women would have an informed decision that they could make which respects their right to self-dignity and bodily autonomy. Therefore, in order to answer the broader problem of how a socio-legal approach may be taken at suggesting law reforms concerning abortion that recognizes the rights of the women, the following questions are sought to be answered:

1. What is the existing legal discourse concerning the reformation of abortion laws in Sri Lanka?
2. How could a socio-legal approach be utilized in explaining the incidents of abortion?
3. How could the law be reformed regarding abortions that is developed from the perspective of the lived experiences and rights of the women concerning their bodily

autonomy?

(C) Research Objectives

Legal reform in any given area is a difficult task as it needs to address a particular issue not only in the current context but also in contexts which may not have been foreseeable at the time of implementation. This may be exaggerated in controversial topics such as euthanasia, prostitution and abortion. While the legal context may be separated from the moral dilemmas that are involved in such issues, any law reform which is made in isolation with the social context in which these issues arise would not be so viable. The present laws related to abortion were formulated in the latter parts of the 19th century by the British who ruled the country back then, where the morality of the abortion debate was at its pinnacle. The law makers at the time did not take conscience look into the incidents of abortion from the perspective of the lived experiences of the women or their rights to bodily autonomy, which is however is not surprising since the abortion discourse did not consider the issue from a women's perspective and only looked at the matter through the lens of morality, which was the prominent discourse at the time which was both backed by an rooted in the religious beliefs of the church (Elizabeth Adell Cook, 1993). There have been several attempts which endeavoured to liberalize the abortion laws, where the discussion was limited to identification of instances in which an abortion may be deemed legitimate, thus not invoking any criminal liability upon who commits or conducts an abortion. Initial attempts on liberalizing of abortion laws started in the 1950's and even as of 2013, several other unsuccessful attempts have been made at liberalizing the laws relating to abortion (Thilakarathna, 2018). It can both be seen and argued that these attempts failed because it failed to capture the lived experiences of women and their right to self determination concerning their bodily autonomy which was not considered sufficiently during the formulation of laws that sought to liberalize the existing laws pertaining to proceeding with a legal abortion. Therefore, in answering the problem of as to how a socio-legal approach could be utilized in making suggestions at reforming the existing laws on abortion in Sri Lanka, the following research objectives are formulated to be achieved after conducting the current research:

1. To explain the existing legal discourse concerning the reformation of abortion laws in Sri Lanka?
2. To critically analyze the utilization of a socio-legal approach in explaining the incidents of abortion?
3. To propose law reforms regarding abortions that is developed from the perspective of the lived experiences and rights of the women concerning their bodily autonomy.

(D) Significant of the Research

While there is much literature that is available in the discourse concerning abortion as a topic of interest, much of what is available is mostly concerned with a particular discipline, making their conclusions based on the selected discipline. For example, in the medical discourse concerning the issue of abortion, the focus is centred around the methods that could be adopted in conducting an abortion, what methods are considered safe or more advanced and the period in which an abortion may be allowed to be conducted safely. On the other hand, the religious discourse concerning the issue of abortion is centred around the issue with moral aspects of carrying out an abortion, and that whether it would be possible to legitimize and abortion irrespective of the circumstances in which such is sought by a woman. A pure legal discourse on abortion would also be centred around the incidents of abortion which could be labelled as being permitted under law and whereas the others would be deemed illegal. A feminist approach on the issue of abortion would also be more likely one sided as it would have more emphasis on the autonomy of the women disregarding the other aspects which would have to be considered in making provisions for allowing a woman to have an abortion. In the realm of law reforms, the available literature is much concerned with the legality of the abortion, instead of considering the social circumstances that makes a woman to decide on having an abortion. Therefore, to look at the issue of reforming the laws concerning abortions through a socio-legal perspective is significant as it allows the different considerations to be considered in suggesting law reforms which are not confined to the issue of legality, but also extends to the lived experience of the women and their respective rights concerning their bodily autonomy. This research is also significant as it looks at proposing legal reforms concerning the existing laws on abortion with a broader perspective by utilizing a socio-legal approach which is not confined to researching about the legality of a particular incident concerning an abortion.

(E) Limitations of the Research

As the discourse concerning the issue of abortion is rather controversial, this research had to be carried out with several limitations. Firstly, as the research utilized the case study method where three women were interviewed using a semi structured questionnaire where the subjects were contacted through the telephone, the researcher was unable to grasp their emotional expressions in conducting the interviews. Secondly, as ethical considerations were of paramount important, whenever a subject declined or did not want to clarify an answer, it has to be proceeded with and it could sometimes affect the true reflection of the views expressed by the participants. Thirdly, as the case study was limited to three individuals, it might not be very easy to say with exact precession that what was disclosed by the subjects could be considered as the only

incidents of abortion that a women may have to go through in deciding to carry out an abortion. Lastly, as this research was carried out amidst the Covid-19 pandemic, the researcher was unable to access further information than what was made available in the internet.

(F) Literature Review

a. Introduction

The literature review of this research is carried out to explore and critically reflect on the existing literature on how a socio-legal approach could be utilized in making suggestions at reforming the existing laws related to abortion in Sri Lanka. The literature review specifically looks at the sub themes used for carrying out this research. It includes the definition and nature of an abortion, different discourses on abortion, comparative laws on the permitted ground for abortions, lived experiences of women who had undergone an abortion, and the importance of socio-legal approach concerning abortion law reforms. It is expected that by carrying out this literature review that the relevant themes and discourses could be better analysed in the preceding chapter, where it can be compared and contrasted with the case studies that are utilized in the research.

b. Definition and Nature of Abortion

In defining as to what is an abortion, much of the discussion revolves around medical definition provided for the term and when one considers the issue of abortion, it is often divided as legal and illegal abortion, while failing to interpret what is meant by an abortion. For example, even under the Sri Lankan Penal Code while the abortion is recognized as a criminal offence, except when it is carried out to protect the life of the mother, what amount to an abortion is not well defined.

Schur observes that, ‘perhaps since the very beginnings of civilization women have used abortion the destruction or expulsion from the womb of the unborn child, the foetus, before it attains viability to free themselves from unwanted childbearing (Schur, 1955). According to Russell ‘[a]bortion is legally defined as the expulsion of the foetus from the uterus (womb) at any time before its term of gestation is complete’ (Fisher, 1951). For medico-legal purposes, abortions may be grouped into three classes as spontaneous, therapeutic, and criminal. 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 foetus 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 and the law states that, a criminal abortion is one in which it is illegally induced, that is to say, one which is not justified by the circumstances (Fisher, 1951).

While the medico-legal definitions pertaining to abortion dominate the discourse on the laws relating to abortion, it has to be reiterated that, a women's efforts to exercise agency with regard to bodily integrity in the context of pregnancy are shaped most obviously by the legal regulations in the jurisdictions where they live, but they are also shaped by social and cultural issues, biotechnological advances, and healthcare systems (Marecek, Macleod, & Hoggart, 2017). Therefore, if one is to think about reforming the existing law that would help to both protect the rights of the women concerning their right to bodily integrity, one would have to seriously look at the social context in which a woman seeks for an abortion, instead of just labelling a particular kind of abortion as being legal or illegal. This approach in labelling a particular abortion as legal or illegal has created an impression of abortion as intrinsically risky for women and has provided a very limited account of the relationship between the social context in which women experience abortion and their responses to it.

The existing law on abortion in Sri Lanka while being of ancient origin is very much inept in the modern context to deal with the social context of abortion. The simple fact that, abortion is treated as a criminal offence in the first place itself is rather disgraceful for any women who would seek for an abortion. While the law does allow an abortion to be carried out when there is a serious risk of life regarding the mother, that merely acts as an exception to the rule that abortions are prohibited and that they are considered as something which is necessarily criminal. In the Sri Lankan context, the abortion debate has been something in which women have had almost little or no say at all in the formulation of its governance through the law. In the context of human rights and particularly concerning the rights of women concerning their bodily integrity, the existing law in the country is very much inept to cope with the situation concerning an abortion, where the current law which allows an abortion only in a instance in which there is a serious that to the life of the mother, which is a decision beyond her and would be taken on behalf of her by a doctor in charge (Abeyesekera, 1997).

Therefore, it can be seen that according to the existing literature, while there are numerous definitions which have been given to the term abortion, and the manners in which an abortion may be carried out, it is evident that much of such explanations have not or have failed to capture the reality of the process of abortion that a woman has to go through, which is not as abstract as

what has been provided in these definitions.

c. Discourses of Abortion

Researchers have increasingly been paying attention to the discourses deployed regarding abortion as well as the socio-historical circumstances within which particular discourses emerge (Macleod & Hansjee, 2012). The broader topic of abortion has been considered in many discourses including legal, religious and medical (Collins B. G., 1987). According to Ritzer, '[t]he primary definition of discourse denotes a method of communication that conforms to particular structural and ethnographic norms and marks a particular social group by providing a means of solidarity for its members and a means of differentiating that group from other groups' (Ritzer, 2011). In the current study, abortion discourses in legal, religious, social and medical spheres are selected, since they have become the predominant discourses concerning the abortion studies (Gilbert, 2015). These discourses have tended to focus on specific issues related and prevalent in their respective fields of study which has led to some isolation of ideas that would need to be linked in order to reform the existing laws pertaining to abortions in the country that would help the woman to uplift their integrity and to protect their right to self determination concerning their body.

i. Legal Discourse

The main thrust of the legal discourse of abortion rests with the legality of the abortion. As long as the law of a given country allows an abortion to be carried out under the circumstances in which it is deemed legal, such an abortion would be accepted under the law (Collins L. , 1975). In the Sri Lankan context, as per the provisions of the Penal Code, where section 303 stipulates the condition in which an abortion is allowed to save the life of the mother, such an abortion would be held valid. However, the labelling of abortion as legal or illegal does not appear to provide any insights into the decision-making process of a women. A women may decide to carry on with an abortion even if it is illegal in certain circumstances while she may withhold her decision to do so even when such is legally permitted. It is also to be pointed out that, while the law may allow an abortion to be carried out in order to save the mother life were continuing with the pregnancy may cause a serious threat to her health and life, the interpretation of as to what constitutes a threat to the life of the mother is not defined under the law. Hence, a judiciary who would sit on judgement concerning an alleged illegal abortion may still have the right to interpret the incidents of abortion as being legal under the given circumstances.

The judiciary has also taken different stances in different parts of the world in interpreting the right of a women to have an abortion. In the celebrated case of (*Roe v Wade* , 1973) the

American Supreme Court held that, ‘the right to privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action or in the Ninth Amendment’s reservation of the rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy’. On the other hand, the German Supreme Court in the case of (The Federal Constitutional Court, 1993) held that, ‘termination of pregnancy, must be viewed as fundamentally wrong for the entire duration of the pregnancy and thus prohibited by law. The right to life of the unborn may not be surrendered to the free, legally unbound decision of a third party, not even for a limited time, not even when the third party is the mother herself’. While the Courts of these two countries have taken a different stance on the issue of abortion, the legal discourse, as it is evident here has failed to capture the real essence of the incident of abortion, where as it fails to evaluate the surrounding circumstances that leads a woman to seek an abortion in the first place. Therefore, it becomes clear that, while the legal discourse on abortion is an important discourse in the discussion of reforming the laws related to abortion, it cannot be the only discourse that has to be taken into account when one is trying to suggest reforms to the law which has to take into account the rights of women, especially when it comes to their right to self determination concerning their bodily integrity. This is evident from the fact that, while in many countries where the laws are strict on abortions, the number of illegal abortions is on the rise. Out of the 43.8 million induced abortions estimated for 2008, 22.3 million corresponded to generally safe legal abortions and 21.5 million to mostly unsafe illegal abortions (Quah & Heggenhougen, 2008). The other main question in the legal discourse on the reforming of abortion laws has been the unfound fear of increase in abortion rates if the law is to be relaxed, which has been found not to collaborate the argument that, a relaxation of abortion laws would lead to a sudden increase of abortions (PEIRö, 2001).

ii. Religious Discourse

Despite advances in science, technology, and society, religion remains a major influence on contemporary attitudes to the issues surrounding the beginning and end of life, and particularly those surrounding abortion (Stephens, 2009). All the religions have taken strong positions on abortion; they believe that the issue encompasses profound issues of life and death, right and wrong, human relationships and the nature of society, that make it a major religious concern (Tan, 2010). People involved in an abortion are usually affected very deeply not just emotionally, but often spiritually, as well. They often turn to their faith for advice and comfort, for explanation of their feelings, and to seek atonement and a way to deal with their feelings of guilt. Most major religions express doctrinal disapproval of abortion and this condemnation is

reflected in individuals' stated beliefs; research has demonstrated a strong connection between individual religiosity and negative abortion attitudes (Frohworth, 2018). Considering the fact that abortion is not just a medical or demographical issue, but especially a moral one, all major religions, regardless their origin and theology, disagree – each one of them with specific arguments – with abortion, considering it if not a homicide, at least a grievous transgression.

All most all religions in the world oppose the idea of having an abortion. Historically, the Church's opposition to abortion has been constant throughout fluctuations in scientific and theological opinion as to when a human life comes into being (Jones, 2004). In the Catholic understanding, the human person is not a purely spiritual but a bodily being: the soul is the body's 'life principle', albeit directly formed by God. It follows that any living human individual has both a human soul and human rights, including the right not to have one's life unjustly targeted by others. Increasingly, with growing scientific knowledge, the Church has seen abortion as not only seriously wrong at any stage of pregnancy, but also (as in the earliest Christian tradition) as a form of unjust homicide. Certainly, the unborn child, in Catholic teaching, must be respected as a person from conception.

The Buddhist belief in reincarnation provides a distinctive perspective on the question of when life begins and has important implications for Buddhist views on the termination of pregnancy. A key reason why Buddhist principles treat abortion as such a serious matter is that human life, with all its potential for moral and spiritual development, is seen as a rare and precious opportunity in a being's wandering in the round of rebirths (Harvey, 2000). Buddhism regards the cyclic course of human existence as potentially eternal: it had no beginning and there is no certainty it will ever have an end. All conception is thus reconception, but while there is no single point at which a person's transmigratory career can be said to begin, there is a clear biologic beginning and end to each individual incarnation. Unsurprisingly, given its strong affirmation of the value of life for its own sake, Buddhism is often interpreted as hostile to abortion and foetally destructive reproductive practices. The 'First Precept', as it is often called, prohibits destroying life and affirms the importance of ahimsa or non-injury. Other values associated with Buddhism, mettā (loving kindness), dāna (giving), and karuṇā (compassion), favour sacrifice towards the welfare of others thus undermining reasons that might support a choice to abort (Cozort, 2018).

When considering abortion, the Hindu way is to choose the action that will do least harm to all involved: the mother and father, the foetus and society. Hinduism is therefore generally opposed to abortion except where it is necessary to save the mother's life. The Sanskrit terminology regarding abortion is illustrative for the classical Hindu view on this matter. While abortion is

denominated by garbhahatya (pregnancy destruction) and bhrūṇahatya (foetus murder), the terms for involuntary miscarriage are sramsana and garbhasrāva, referring to the falling or emission of the embryo (May, 2016). This differentiated terminology is important because it suggests the moral distinction between abortion and miscarriage: while abortion implies intention and consequently responsibility for killing an embryo or foetus, the miscarriage is unintended and morally neuter. Besides the sacred texts, Hindu arguments against abortion ground in the doctrine also. Taking into account the Hindu embryology and the belief in rebirth determined by karma “the foetus is not developing into a person but, rather, is already a person in the moment of conception and another reason for rejecting abortion is the Hindu principle of “non-killing” or “non-violence” (ahiṃsā) since abortion is a violent act towards a human being yet unborn. Although ahiṃsā does not have the same extent as in Buddhism and Jainism, many Hindus interpret it as an interdiction of killing vulnerable beings, among which we can count the human embryo or foetus, while some others consider ahiṃsā in a positive way, as a duty to protect life, inclusively the life of the foetus (Damian, 2010).

In Islam, life is sacred and highly valued, and for this reason, it must be honoured and promoted. The preservation of life is one of the basic necessities and purposes (Maqasid) in the Islamic law. Therefore, abortion is considered unlawful and a major sin (HARAM) in Islam regardless of the stage of pregnancy. In Islam, and most religions, abortion is forbidden. Islam is considerably liberal concerning abortion, which is dependent on (i) the threat of harm to mothers, (ii) the status of the pregnancy before or after ensoulment (on the 120th day of gestation), and (iii) the presence of foetal anomalies that are incompatible with life. Considerable variation in religious edicts exists, but most Islamic scholars agree that the termination of a pregnancy for foetal anomalies is allowed before ensoulment, after which abortion becomes totally forbidden, even in the presence of foetal abnormalities; the exception being a risk to the mother’s life or confirmed intrauterine death (Al-Matary, 2014).

In the above analysis on the religious discourse concerning the debate on abortion, it seems clear that all the religions in the world, whether founded upon a western tradition or not, it vehemently rejects the argument in favour of abortion. However, as it was seen, many of the religions in the world do find exception to the general prohibition on abortion where there is a threat to the life of the mother. Therefore, in the argument for reforming the existing laws on abortion, even from a religious perspective, there is ample evidence to the fact that the approach taken should be a wholistic one and that the rights of the women should be respected in such an endeavour.

iii. Medical Discourse

Medical information and perspectives on abortion are not just data untinged by values. Throughout history medical facts and moral values regarding abortion have been inextricably intertwined, and the current era is no exception. However, much information biomedical investigation may provide regarding pregnancy, fetal development, and abortion, it cannot provide a determination as to when human life begins. The answer to that question—which deals with the moral status of the foetus—is arrived at by a process that entwines medical facts with experiences, values, religious and philosophical beliefs and attitudes, perceptions of meaning, and moral argument. Such a process extends beyond the special competency of medicine. Safety, efficacy, number of visits, how the method works, how long it takes for the abortion to be complete and cost all affect acceptability are some of the vital aspects that are considered in the medical discourse concerning abortion (Berer, 2005).

In the medical discourse concerning abortion, the main focus has been of finding out ways in which an abortion could be carried out more effectively and safely which does very little or no harm to the women who is seeking the abortion. In the contemporary setting, there is a growing range of contraceptive methods has been available and choice and acceptability of method are considered values in themselves. With abortion, choice and acceptability of method have received much less priority. Although more than one method of abortion has been available for many years now, it is reported that in most countries it is still the provider who chooses the method and providers are often not knowledgeable or skilled in more than one method (Berer, 2005). In many cases, they rely on outdated methods. The perspective of clients has little representation in current abortion quality measures (Baum, 2021). However, medical abortion is rapidly affecting this picture.

Medical discourse on abortion as explained above has been on a voyage, while shifting its focus from finding the best medical procedures to finding what is optimum from the perspectives of the women who is seeking an abortion, whereas the concerns are now much wider as it includes both pre and post care solutions concerning abortion treatment. The advances in the medical fields have definitely helped the women seeking an abortion to have both a safe experience concerning an abortion, the advances in the medical fields have not reflected upon the social dimensions of abortion, where it is still perceived as something very dangerous that is marred with speculations as to what would actually happen when one gets an abortion. In the discourse on law reforms concerning abortions, this fact has to be emphasized properly to give the stakeholders a better picture as to why the reforms in law are needed.

d. Abortion and Women's Rights

Throughout history, women around the world have resorted to abortion as a form of fertility regulation. In many cultures, abortion - whether by herbs, uterine massage or other means - is an integral part of traditional fertility control practices to regulate the timing and number of births. While safe means of terminating a pregnancy are legal and available in many countries, it is widely acknowledged that in countries in which abortion is legally restricted, women seek abortions clandestinely, under conditions that are medically unsafe and therefore life-threatening (Wild, 1995). Abortion has always been an area of controversy in terms of the rights discourse, especially when it has been posed as a conflict between women's right to choose and the right to life of the foetus. Within most legal frameworks, abortion is not conceived in terms of women's right to self-determination (Abeysekera, 1997).

The right to an abortion is not a standalone right. It depends upon people also having other human rights: to health, to equality, to privacy and to live free from violence and discrimination. Restrictive abortion laws violate women's rights, including the right to life, to health, to equality, to privacy, and to live free from discrimination. Because unsafe abortion is closely associated with high rates of maternal mortality, laws that force women to resort to unsafe procedures infringe upon women's right to life. In 2000, in interpreting Article 6.1 of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee called upon states to inform the committee of "any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions" (United Nations , 2000). International law guarantees women the right to "the highest attainable standard of health. Unsafe abortion can have devastating effects on women's health. Where death does not result from unsafe abortion, women may experience long-term disabilities, such as uterine perforation, chronic pelvic pain or pelvic inflammatory disease.

The right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, concerning intimate matters of physical and psychological integrity. Equality in reproductive health includes access, without discrimination, to affordable, quality contraception, including emergency contraception. Countries where women have the right to termination of pregnancy and are provided with access to information and to all methods of contraception, have the lowest rates of termination of pregnancy. Unfortunately, according to WHO, an estimated 225 million women are deprived of access to essential modern contraception (United Nations , 2017).

In the current discourse, the necessity of putting women's human rights at the center of the policy considerations regarding termination of their pregnancy is obfuscated by the rhetoric and political power behind the argument that there is a symmetrical balance between the rights to life of two entities: the woman and the unborn. But there is no such contestation in international human rights law. It was well settled in the 1948 United Nations Declaration on Human Rights and upheld in the International Covenant on Civil and Political Rights that the human rights accorded under international human rights law are accorded to those who have been born (United Nations , 2017).

In the discourse on women's rights concerning abortion, it can be argued that when one considers the plethora of international legal instruments that deal with the rights of women would be helpful in establishing a right to have an abortion as a part of the autonomy of the bodily integrity of a women. While there is no specific right which plainly states that a woman has a right to abortion, when one considers the combinational effect of right to life and right to health care under international human rights law, it becomes inevitable that the right to have an abortion is a right capable of vindication, belonging to the women as a part of their autonomy.

e. Abortion and the Experience of Women

It has been documented that child birth and abortion have many things in common but the two are viewed very differently from one another (Altshuler, 2017). As with birth, how abortion happens matters to women, their families and communities. Birth tends to be viewed as joyous and physiological and intrapartum services are well-integrated into healthcare: they are linked to antepartum and postpartum services, have private and public insurance coverage, and are accessible to most women. By contrast, abortion is politicized and stigmatized. Services tend to be provided separately from other medical care in limited supply at specialized abortion facilities, requiring a majority of women to travel far and to pay out of pocket for care (Joffe, 2013).

The lack of understanding concerning the experiences of women who seek an abortion has resulted in them facing many obstacles, though not intended but are present in many parts of the world, especially in those countries with restrictive abortion laws. When a country's restrictive abortion law is described in publications, often the grounds for which abortion is allowed are listed without a critical look at the procedures that must be gone through to access a legal abortion. It is not only the legal indications for abortion that are important. Restrictive regulations also place tremendous obstacles in women's paths (Schuster, 2010). In the Sri Lankan context, there is a lack of procedure established under the law as to how a woman could

legally obtain an abortion. Section 303 of the penal code only provides that an abortion may be permitted to save the life of the mother and that is the only instance in which an abortion may be carried out legally. However, the exact procedure for carrying out a legal abortion is not properly defined in the Sri Lankan context, and the experience has shown that this has created so many difficulties for women who are seeking an abortion within the permissible grounds under the Sri Lankan law.

Where abortion is criminalized, women are more likely to be exploited, both financially and otherwise. They are first traumatized by the experience of accessing an abortion in a criminalized context. Then they are likely to encounter abortion-related stigma in postabortion care. And let us not forget those women who lose their lives because they get to a hospital too late. It results in substandard services without mechanisms of accountability to protect women. The risk of prosecution also deters women from seeking health care (Kumar, 2013).

It is to be emphasized that women are often victimized for seeking an abortion since it is considered as taboo in many parts of the world, although almost no consideration is given to the circumstances in which the woman is seeking the abortion before a judgement is made on her. Even in instances where the woman is seeking an abortion due to rape or incest, the ground on which she is seeking the abortion has no bearing on the society which has already condemned the idea of an abortion. This instilled fear in women make them more vulnerable to exploitation and it leads them to take life threatening decisions when it comes to making an abortion, which is against their own best interest. Thus, the reformation of the laws which does not criminalize abortion is a sine qua non for the wellbeing of the women.

f. Summary

The literature review has revealed that the incidents of abortion cannot be looked isolated from the many aspects that surrounds it. From the circumstances that makes a woman to go and seek an abortion to the post and pre-clinical care which should be protected and the social stigma which is attached to a woman who has gone through an abortion are all vital considerations which has to be taken in to the bigger picture in discussing about law reforms. Mere listing of several grounds as being permissible under the law for having an abortion would not help a woman to make a well-informed decision if she is not provided with such services, she would not be able to know the real consequences of having an abortion, whether it would mean that she would not be able to have children at all in the future are some of the questions that she would want answers before deciding to have an abortion. Therefore, when one is considering about reforming the existing laws, which are may be restrictive, the approach that has to be

taken is a wholistic one and a socio-legal approach could be best suited for this.

(G)Methodology

a. Introduction

The purpose of research is to discover answers to questions through the application of scientific procedures. The main aim of research is to find out the truth which is hidden and which has not been discovered as yet. One can also define research as a scientific and systematic search for pertinent information on a specific topic (Kothari, 2019). When it comes to sociological research, understanding and reporting how or why people behave as they do involves analysing and presenting reality. In practice, this means sharing with an audience a convincing account of what was observed and its meaning (Marvasti, 2003). The current research also follows in this general idea, where it focuses on proposing legal reforms to the existing laws on abortion in the Sri Lankan context with an analysis of the lived experiences of women who had to undergo an abortion.

b. Research Philosophy

There are several research philosophies that can be employed in conducting research. A research philosophy is defined as a system consisting of assumptions and beliefs regarding the development of knowledge (Saunders, 2019). The current research uses pragmatism as its research philosophy. According to pragmatism, research starts with a specific problem with an aim of providing practical solutions to that question. Under pragmatism, the research is oriented at providing practical solutions rather than making abstract representations. The current research also utilizes pragmatism as the research philosophy of the study, as the current research is formulated at providing suggestions at law reforms concerning abortion in Sri Lanka with the use of a socio-legal approach.

c. Choice of Qualitative Methodology

The current research utilizes the qualitative methodology in formulating the answers to the research question as to how a socio-legal approach could be undertaken at suggesting legal reforms to the existing laws on abortion in the Sri Lankan context. Qualitative research provides detailed description and analysis of the quality, or the substance, of the human experience (Marvasti, 2003). In broad terms, qualitative research is an approach that allows one to examine people's experiences in detail by using a specific set of research methods such as in-depth interviews, focus group discussions, observation, content analysis, visual methods, and life histories or biographies (Hennink, 2020). As the qualitative method is concerned with words rather than quantification of the collection and analysis of the data, it is best suited where the

research focuses on the lived experiences. The current research therefore utilizes the qualitative methodology as it studies about the lived experiences of women who has under gone an abortion.

d. Socio-legal Method

Socio-Legal Research or Study is an event where the science of law meets that the science of society. This research requires a multidisciplinary approach to analyze and interpret the law, the legal phenomenon, the relationship between those two and also their relationship with the society in its widest sense. Socio-Legal Research has its theoretical, practical and methodological bases in the social sciences. Law is an important aspect when it comes to any social investigation. The originates and functions in a society based upon the particular needs, customs, traditions of the society and it also possesses the ability to greatly influence the social structure and functions of any society. Therefore, just as researchers are clueless and hapless if they have no knowledge of even the basics of the law, legal system and the various important if not all the law institutions, legal researchers too would be clueless and hapless and would do no justice whatsoever to legal inquiry if they do not possess the basic knowledge and are not aware of the mechanics of social research methods. In societies where the development is planned, law plays the role of a catalyst which helps and speeds the process of social reform. Thus, in a dynamic or developing society a legal researcher must adopt a multi-disciplinary approach as the legal problems in the society will be largely in connection with the social, economic, political and psychological issues (Creutzfeldt, 2020).

e. Case Study Technique

A case study is an in-depth study of one person, group, or event. In a case study, nearly every aspect of the subject's life and history is analysed to seek patterns and causes of behavior. Case studies can be used in a variety of fields including psychology, medicine, education, anthropology, political science, and social work. The hope is that learning gained from studying one case can be generalized to many others. Simply put, case study is a research strategy whose characteristics include: a focus on the interrelationships that constitute the context of a specific entity (such as an organization, event, phenomenon, or person); analysis of the relationship between the contextual factors and the entity being studied; and; the explicit purpose of using those insights (of the interactions between contextual relationships and the entity in question) to generate theory and/or contribute to extant theory (Mills, 2009). The current research also utilized the case study method since many studies have been conducted on the topic of abortion using this method. (Bok, 1976) (Zamaniah, 2016).

f. Data Collection

Data collection for the current study mainly comprised of three case studies that were utilized in analysing the issue of reforming the abortion laws. Data were gathered from the three case studies using a semi-structured interviews that were carried out using the telephone. Semi-structured face-to-face interviews mainly consist of open-ended questions based on topics the researcher wants covered in the interview. Although the interview focuses on key topics, there is also the opportunity to discuss, in more detail, some particular areas of interest. The interviewer has the opportunity to explore answers more widely or other areas of discussion spontaneously introduced by the respondent (Lavrakas, 2008). In the current study, the researcher formulated questions on general themes inclusive of, circumstances surrounding the abortion, knowledge about the laws and procedures, availability of care (both mental and physical), support in decision making and the suggested reforms in the system.

This research used narrative analysis since it represents how the author and others value events, characters, and elements differently (Mills, 2009). Narrative analysis can be applied to cases used for pedagogy and theory building in the social sciences. Case narratives are sensory representations derived from oral, document, or observational sources (including dramaturgical gestures, decor, or architecture). Narratives of the participants were utilized in the analysis in discussing about the reformation of laws related to abortion in Sri Lanka.

g. Sample of the Study

Sampling in case study research involves decisions that the researchers make regarding sampling strategies, the number of case studies, and the definition of the unit of analysis. It is central to theory-building and -testing through case study research. Sampling is a complex issue in case study research, because there are many variations of sampling strategies described in relevant literature. Researchers have generally agreed that the aims of the particular study should guide how cases are selected. Sampling in case study research is largely purposeful, that is, it includes the selection of information-rich cases for in-depth study. Information-rich cases are those from which the researcher can learn a great deal about issues of central importance to the purpose and investigated phenomena of the study. The case study approach offers flexibility in terms of the justification of sampling choice, the number of investigated cases, and sampling techniques (Mills, 2009).

The current study utilizes three case studies in analysing the lived experiences of women who have gone through an abortion. By narrating through their experiences, the research will explain and explore in their own words the experiences that they had to go through from finding a

suitable place to get the abortion done, the stigma they had to face and the post abortion incidents that they had to experience when the abortion was finished. The three women who have been selected in the study hail from different backgrounds. The first women, who helped in finding the other two participants in the case study was a women employed at an apparel factory and after having an affair with a co-worker, she got pregnant and as she found no support from her lover, she sought an abortion. The second women, who was married and had two children decided to have an abortion as she did not want a third child and the third women, after eloping with her lover at the age of 15 had to go through an abortion after her parents brought her home. The narrative of this study is told from their perspective.

h. Interpretative Phenomenological Analysis

The aim of interpretative phenomenological analysis is to explore in detail how participants are making sense of their personal and social world, and the main currency for such a study is the meanings particular experiences, events, states hold for participants. The approach is phenomenological in that it involves detailed examination of the participant's lifeworld; it attempts to explore personal experience and is concerned with an individual's personal perception or account of an object or event, as opposed to an attempt to produce an objective statement of the object or event itself. At the same time, this approach also emphasizes that the research exercise is a dynamic process with an active role for the researcher in that process (Smith, 2003). The current research also utilizes interpretative phenomenological analysis as the current study is conducted using three case studies, where lived experiences of three women who had undergone an abortion are analysed with the aim of making suggestions at reforming the laws related to abortion with a socio-legal approach.

i. Ethical Considerations

Ethical consideration is a collection of principles and values that should be followed while doing human affairs. The ethical considerations make sure that no-one acts in such a way that is harmful to society or an individual. It refrains people and organizations from indulging in vicious conduct (DeRenzo, 2020). Since abortion is a sensitive issue, steps were taken to hide the identity of the individuals who took part in the case studies by excluding details about them that would make it possible to identify the participants. Participant's consent was taken orally before moving on with the interview and no question was pressed if they refused or declined to answer. The discussions that were carried out with the participants were also not recorded as they specifically requested not to record any of the conversations that were had with them in conducting this research. In explaining the narratives of the three women who took part in the

case study presumed names will be utilized.

II. RESULTS AND DISCUSSION

(A) Abortion and the Sri Lankan Context

As explained broadly under Chapter 2, the incidents of illegal abortions have increased rapidly over the years. It is reported that around 125000-175000 abortions take place during a year (Suranga MS, 2016). While having very strict laws that regulate the incidents of abortions, the number of illegal abortions that are taking place in the country has revealed that, having strict laws alone would not be helpful in reducing the number of illegal abortions that occur during every year. In trying to deter these illegal abortions, the law enforcement agencies in the country have also struggled to cope with the situation since they are overburden with other priorities. This is escalated by the fact that there will not be many complaints that would be logged against those who carry out with illegal abortions, even if things go wrong since both the women and the individual who performed the abortion will be prosecuted. In addition to this, the victim may be afraid to go to the police since she will be questioned and embarrassed for opting for an abortion in the first place, and it is more likely that she will be prosecuted without carrying on any further investigations as to who had conducted the abortion.

As per section 303 of the penal code which puts a blanket prohibition on the possibility of having an abortion where the only exception is the protection of the mother, the law has not clearly laid out the procedure which must be adopted in allowing a woman to have a legal abortion. Where a case relating to illegal abortion comes before a Court of law, they have also tended to apply the black letter law without inquiring into the surrounding circumstances which has led the particular woman in question who has opted to carry out with the abortion. Even in instances where prosecution is brought before the Court concerning an alleged illegal abortion, proving whether such has been carried out is no easy task as was seen in the case of (*Sheela Sinharage v AG* , 1985) where it was alleged that the defendant had caused the death of one Merlin Ranasinghe a woman with child by inserting two pieces of sticks into her vagina on. 22.4.1973 with intent to cause a miscarriage and thereby with committing an offence punishable under section 305 of the Penal Code. However, when the evidence was led, the prosecution was unable to prove beyond a reasonable doubt that the defendant was the person who inserted the two sticks and as a result the Court had to return a verdict of not guilty. Therefore, it become evident that even in an instance where then alleged offender is brought before justice, the chances of successfully proving that an illegal abortion had indeed been carried out remains very slim.

From the above context, it seems clear that merely having strict laws on abortion itself is very

much insufficient to stop the incidents of illegal abortions and that it tends to do more harm on those who do eventually seek an abortion. Even when it comes to prosecuting incidents of abortion, it seems clear that, it too is no easy task as the burden of proof lies with the prosecution to prove beyond a reasonable doubt that the accused has actually carried out the abortion. Therefore, it can be argued that a reform of abortion laws is a *sine qua non*.

Many attempts have actually being made at reforming the laws governing abortion, and the most recent initiative came in 2013 where a special report was compiled by the law commission of Sri Lanka with a proposal for amending the existing laws on the matter (Law Commission of Sri Lanka, 2013). In 1995, the Ministry of Justice presented the Penal Code (Amendment) Bill to Parliament in which Clause 3 provided for the relaxation of the strict prohibition on the termination of a pregnancy and sought to de-criminalize termination in the case of rape, incest and congenital abnormalities incompatible with life. However, in presenting the Bill in Parliament Clause 3 was withdrawn by the then Minister of Justice and was not voted on.

The commission report has suggested that the laws relating to abortion be liberalized with the inclusion of several other grounds which would expand the number of legally permissible grounds upon which an abortion may be allowed. 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 (Thilakarathna, 2018). However, it is regrettable to state that no initiatives have been taken to even seriously consider the proposals brought by the law commission in its 2013 report.

The static nature of the colonial rules relating to abortions in the country has seriously undermined the right to life and healthcare of the woman in the country and it seriously hampers the right to self-determination of woman concerning their bodily integrity which should allow for the power in woman to make choices and decisions affecting their lives. The unavailability of proper mechanisms and knowledge has led Sri Lankan women to suffer tremendously when they try to seek an abortion and this is evident from the narrations of woman who have participated in this research. The following sections cover their narratives on selected themes.

(B) Surrounding Circumstances that Leads to an Abortion

As succinctly explained under chapter 2, the incidents of abortion can take place due to a variety of reasons, and still the only permissible ground that is recognized under the current law only allows an abortion to be carried out only when there is a serious threat to the life of the mother.

Yet, the surrounding circumstances which leads a woman to have an abortion vary across and are unique in their own right.

The first case study utilized in this research Ms. Pamila was an employee at an apparel company having only being educated till grade 10. She was the third in a family of five and from a very early age she was separated from her house as she had to find employment to support herself and her family. During her employment, she met with a co-worker who was working in the same section and soon they started up with a relationship. They were having an active sex life and as a result of unprotected sex, she became pregnant and did not know what to do. When she broke the news to her lover, the lover insisted that she should terminate the pregnancy as he was not willing to except the child. In explaining her thoughts when her lover asked her to terminate the pregnancy, she recollected the following:

“I felt angry and betrayed, I was hoping to raise a family and get married, when he said that he was not willing to be the father of the child and wanted the child aborted, I was distorting and did not know what I could do”

Her narration clearly indicates that she was willing to have the child and carry on with her lifer if her lover was willing to lend a hand. However, since her lover was not willing to do so, she was in a serious dilemma and did not know what should be done about it. When questioned as to whether she wanted to inform someone of this incident, she immediately mentioned that such would not be possible since to break the news of pregnancy without being married would be total unacceptable in her society and that she would also be harassed in the workplace if the news broke through. In the end she decided to carry on with the abortion, and by this time her lover who tried to persuade her to have an abortion was not by her side as he had already left her.

The second case study (Ms Lola) involves a middle-aged woman who already has two children of her own, two daughters. She was not employed but served as a housewife and she had completed her Advanced Level. Her husband was a private sector employee, while making sufficient to feed the mouths, the family has had some economical trouble in the past. When questioned as to why she would want to abort the child when she was already a mother of two children, she had the following to say:

“Yes, you may think that I am the devil, how can you kill a baby when you have two. But I have no choice, I already have two daughters and don’t know whether the third will also be one. I am making this sacrifice because of them, because I know that, if I am to have a third, it will make it difficult for all of us regarding the finances”

When questioned as to whether the husband agrees with her decision, she pointed out that while he did not agree initially, after rethinking about their financial situation, they had no other alternative. While it was a very difficult decision, it had to be made in the hope that it will serve all the others.

The third case study (Ms Anne) relates to a girl who was 15 years at the time of the incident and now a married women with one child. While she was schooling, she had started an affair with a person who was around 20 years of age and they both eloped one day. When her parents took her back home and produced before a doctor, it was revealed that she has in fact become pregnant and chargers were brought against her lover who was prosecuted for statutory rape, who according to her was willing to marry her, yet the it was not possible for two reasons, one being the minimum age of marriage which stood at 18 years of age for both the sexes and the objection of the mother of the girl, who vehemently objected to their relationship. When questioned about as to why she went with the abortion, she told that:

“Well, it was not my decision, I was too little to realize what was going on and I acted according to what my mother wanted me to do. She became very upset about what I have done and I knew that I could not resist whatever she wants me to do”

The above instances clearly show that, these women while all had to go through an illegal abortion according to the existing laws in the country since none of them even tried to know whether they would become eligible to have an abortion, decided nevertheless to have one, albeit even if it was illegal due to reasons which were not within their control, may be except for the second women in the case studies.

The existing law nor the procedures that are adopted in carrying out an abortion does not take into consideration the circumstances in which women have decided to have an abortion or whether there will be any alternatives which could be provided. None of the women in the study thought of delivering the child and giving the child for adoption as they were either not encouraged to do so or they were too scared of the consequences of facing social taboos. This was especially the case concerning the second case study where Ms. Lola was unable to deliver the child and give that child for adoption since she had two children of her own which would have brought a great amount of pressure and stress on her, especially from her close relatives.

The above narratives clearly show that, these women are not murderers and that if things were better, they might have all wanted to have delivered the children, may be except for Ms Anne who was a child herself when the incident happened. These narratives also show that in deciding to have an abortion, apart Ms Lola, other were not able to make an informed decision of their

own and they had to circumvent their decision-making authority to outside forces, especially Ms Anne who was only 15 when her mother decided that she should abort the child. This clearly indicates that a mere relaxation of abortion laws would not help these women, especially Ms Pamila and Ms Lola who would not find any of the grounds for their advantage even if the possible grounds for having an abortion was to be expanded. Therefore, it seems clear that any attempt at law reforms should not simply be limited to changing the scope of section 303 of the Penal Code by widening the instances in which an abortion may be held permissible, but it would require a separate legislation as we find in countries like India, where the 1971 Medical Termination of Pregnancy Act covers many aspects concerning abortions which is not only limited to expanding the possible grounds upon which an abortion may be held responsible and such an approach would be most suitable from a Sri Lankan context as it would help to advance a socio-legal approach in reforming the abortion laws.

(C) Knowledge, Access and Laws on Abortion

While incidents of abortion have become common, the knowledge of those who seek such abortions have not definitely helped as many of the women have almost no knowledge of either the procedures or the laws that are applicable. In Sri Lanka, past studies have implied poverty, poor knowledge and varying attitudes on abortion among women who seek abortion (Arambepola, 2014). The lack of knowledge about the procedures adopted in an abortion leads women to seek information from unreliable sources which often leads them to back-alley abortions which are conducted in unhygienic and unsafe surroundings resulting in pain and suffering which the women seeking such abortions should not face (Ministry of Health , 2015).

In the three studies that were conducted, all the women went through with illegal abortions without having the prior knowledge as to what would exactly be done. The lack of knowledge was more visible with regard to Ms. Pamila and Ms. Anne who were unmarried and had no experience whatsoever. Ms. Lola had some idea as to what would actually happen as she was already a mother of two, but she too was not aware of the exact procedure that would be followed. Ms. Pamila recalls what happened when she entered the room in which a male was present with a medical attire, and she recalls the following:

“I can remember still, the room was dark and it had bad smells coming from all over the place, the bed I was asked to lay down was dirty and I could even smell the fragrance of cigarette coming from the doctor (the illegal practitioner). I was administered with some aesthetic and I felt something being inserted through my vagina, and after I woke up, I was in tremendous pain”

The strange thing about the three case studies that were conducted in this research was that apart from Ms. Lola, the other two women did not even know as to how long they have been pregnant for. Out of the three women, Ms. Anne was the only one who did not operate but instead was given an abortion pill. She recalled that when the sap came out of her stomach, it gave her tremendous pain. She recalls that:

“First I was given a pill, I had no complains then, but after I was given a second pill, I had craping and tremendous pain which lasted for hours”

The lack of knowledge and misinformation caused a great deal of pain upon both Ms. Pamila and Ms. Anne as they were totally unprepared for their abortions. The lack of available care concerning abortions could be seen as the main cause for this issue. What was more damaging was the misinformation that is available for these women who sought information from others who had gone through these illegal abortions; where themselves have been victims of such misinformation, that has led them to suffer as well.

As there is a blanket prohibition on getting an abortion in Sri Lanka except to protect the life of the mother when her health is seriously hampered if she was required to carry on with the pregnancy, there is a serious lack of access to abortion facilities, even if one were to obtain it legally. Although maternity services are accessible free of charge through the public sector, the legal status of abortion does not allow women to access this service in government hospitals. As in other restrictive contexts, abortion services are quite easily accessible in Sri Lanka where clandestine services are available through the private sector. These services, including their quality and cost, are unregulated because of their clandestine nature. However, poorer women may be compelled to access less expensive alternatives. Because low socioeconomic status, low levels of education, and rural background have been found to be associated with a higher risk for resorting to abortion in Sri Lanka, it is not surprising that the highest rates of abortion have been recorded in poorer rural provinces (Kumar, 2013).

Out of the three case studies, only Ms. Lola even thought of accessing a hospital facility to get the abortion done, and that through via a private hospital. However, as she found that her insurance policy would not pay for the abortion, she quickly gave up any hope of having the abortion in a proper hospital facility. She recalls that:

“I called the hospital and asked whether I could get the abortion done, they said that with the approval of a doctor I may be able to get it done, then I called the insurance which my husband has, given to him by his employer that also covers me, but they said an abortion will not be covered, well I did not exactly say that I was going to have an abortion (she has asked whether

insurance will cover a miscarriage operation), but they knew what I was talking about and they said no”

This clearly emphasise the fact that lack of access to abortion facilities is more serious than one would imagine when you think about the experiences of these women and this fact has been overlooked in many of the initiatives that have been put forward at reforming the abortion laws in Sri Lanka. Even the law commission report that was prepared in 2013 does not address the matter of access to abortion facilities in a proper manner (Law Commission of Sri Lanka, 2013). Therefore, it is axiomatic to have legal provisions for providing access to abortion facilities if women’s rights are to be protected concerning abortions.

The three case studies revealed that none of the women had any idea about the law governing abortions, both Ms. Pamila and Ms. Anne thought that there would be no circumstances in which an abortion would be allowed by the law, not even when it was done to protect the life of the mother as they thought in a Buddhist country like Sri Lanka such would not be possible.

This clearly signifies that in many South Asia countries including Sri Lanka, both cultural and religious norms can often hold more social power than laws themselves. This is clear from the fact that, while the law allows a women to have a legal abortion where there is a threat to her life due to the cultural and religious stigma that women are not aware that such laws even exist. As a result, many women who could terminate a pregnancy legally still solicit illegal abortion methods. The fear of being shunned by their communities prevents these women from seeking out legal services available to them. Therefore, it is very important to carry out awareness programmes about the laws and policies regarding abortions, and such should be specially done concerning rural women who have less access to this information which they can find on their own.

In drawing inspiration, some positives could be drawn from the 1971 Termination of Pregnancy Act in India, which provides for both the substantive and procedural aspects of carrying out with a legal abortion. The Act in particular provide provisions as to who can decide upon terminating the pregnancy and where such abortions are to be performed. Either one medical practitioner or two can give their verdict on the termination of pregnancy depending on the duration of the gestation, and the Act requires that an abortion can only be carried out in a building which is registered as a hospital. While some of the other factors as access to abortion care, providing awareness and pre- and post-abortion care are not specifically dealt with under the Act, the Indian legislation can be taken as a token model for reforming the laws in Sri Lanka. The above discussion and the narrations provided by the participants of the case studies clearly

indicates that laws reforms should go far beyond than expanding the list of incidents in which an abortion may be allowed to providing knowledge, accessibility and awareness about the abortion as a whole are very important when it comes to protecting the rights of women.

(D) Availability of Care and Decision Making in Abortion

One of the more significant issues pertaining to abortion in the context of women's rights relates to the availability of care at both pre and post abortion period. Availability of care should not be limited to the physical care which is to be afforded but it should also extend to mental care as well. This is because more than the physical pain which may result from having an abortion, the mental pain of knowing that the women has ended her pregnancy carries with it a stigma that needs to be addressed. Stigma has been found to be an obstacle in delivery of some health services due to negative consequences for those who are, or who fear being, stigmatized. While abortions have become a common occurrence, yet it is still loaded with strong social stigma expressed in negative attitudes and secrecy by both women who get abortions and clinicians involved in the process. Thus, abortion stigma is one of the main barriers to women seeking termination of an unwanted pregnancy and a challenge to abortion service providers. This stigma translates into shame and silence for women and into marginalization for providers, and creates or perpetuates myths and misunderstandings about abortion. Stigma manifests differently depending on legal frameworks, religious beliefs, and social and cultural contexts (Cárdenas, 2018).

All the three women faced significant mental distress both before and after they had terminated their pregnancy by an abortion. The stigma was more present with Ms. Lola who was already a mother of two. She recalls that:

"I never wanted to end the pregnancy, but the economic situation did not allow me to have a third child, so when I decided to abort, it gave me chills, I would wake up sweating at night, having nightmares about what I am going to do"

Ms. Lola pointed out that the most difficult phases of her stigmatized period was prior to the abortion and that once it was all over, while being saddened she had to be strong a carry on with her life as she has the responsibility over the two children whom she had to care for. Ms. Pamila on the other hand had a more difficult time after she decided to terminate the pregnancy as she was wanting to build a family with her lover. She recalls that:

"I was angry when I had to terminate my pregnancy, but that anger helped me to cope with it better. However, once I had terminated my pregnancy, I became depressed and lonely, I always entertained thoughts of becoming a single mother, but it's too late now"

Ms. Anne who was the youngest among the selected case studies stated that, she was not having much idea as to what was going on with her life when she went for the abortion and that she was always influenced by her mother in making the decision to abort the child.

In the Sri Lankan context, there is a lack of both physical and mental care at both pre and post abortion period. However, there is a policy which has been formulated in 2015 concerning the post-abortion care for those who have even undergone illegal abortions. Under this policy, the providers at the health facilities are not permitted to withhold post-abortion care services citing personal, moral and/or religious beliefs. While this being mentioned, the policy does not specifically mention that both the service providers and those who seek services should be afforded with some especial protection and that interfering with their affairs should constitute an offence as it has been proposed in India.

The policy also emphasises on the providing of emotional and counselling facilities to women who had undergone an abortion (Ministry of Health , 2015). However, the statistics as to how many women have utilized these services are unavailable and there is no mention about pre abortion care. The fact that women face many difficulties before they perform an abortion has to be considered in reforming the laws related to abortion in a Sri Lankan context in order to advance the rights of women.

Decision difficulty can be seen as a healthy response when faced with an unwanted pregnancy. It involves a dilemma with two unfavourable options; some women immediately know what to choose, whereas others need time to weigh their arguments, wishes, and emotions (Brauer, 2018). However, in the South Asian context, decision-making about if and how to terminate a pregnancy is a dilemma for young women experiencing an unwanted pregnancy. Those women are subject to sociocultural and economic barriers that limit their autonomy and make them vulnerable to pressures that influence or force decisions about abortion (Frederico, 2018). The decision making concerning the abortion is for the most part is not by the women who actually undergo the abortion but by others who makes the decision on behalf of her which is at conflict with the bodily autonomy of the women.

In the respective case studies that were carried out only Ms. Lola has the slightest opportunity of making her own decision concerning the termination of her pregnancy. Ms. Anne who was 15 at the time also most had no say in the termination of her pregnancy and it was her mother who decided on behalf of her and her opinion on the matter did not even matter. When it comes to Ms. Pamila, her decision was somewhat independent, but it was more due to the social pressure exerted on her that she had to take the decision to abort the child, which was also the

opinion given to her by her departing lover.

The autonomy in decision making about having an abortion should be a right vested with the woman who is to face all the pain and suffering associated with an abortion, so as to at least say that it was her own independent decision that brought about whatever the consequences that it has brought. In most occasions, the decision to abort is not independently taken but is exerted upon the women through external forces which seriously undermines her bodily autonomy, and any law reform regarding abortion laws should make conscience note of this fact if it is to secure the rights of women who seek an abortion.

(E) Suggested Reforms

As shown from the previous discussions, the issue of abortion while being problematic also warrants a serious conversation as to how it should be handled and managed, especially when it comes to protecting the rights of women who had to go through an abortion, albeit illegal or illegal. In the current context of Sri Lanka where the law is strict on abortions, where it is still seen as a criminal offence instead of a right of a women under the broader themes of right to life and right to healthcare as recognized under many of the international human rights treaties, abortion still remains something prohibited more by the cultural and the religious context than the law. Therefore, the participants were specifically asked about what kind of reforms that they would like to see in the existing laws and policies that controls the incidents of abortion.

One of the main things that came out from all the participants related to making women aware about the whole process and providing them with accurate information so that they would be able to make an appreciate decision by considering all the facts that are made available to them. It was suggested that the topic should be discussed and even be introduced in the school curricula concerning reproductive health, which too has remained a rather controversial issue. However, the participants were of the view that the stereotypes that are present in the society which condemns abortion are not in the best interest of the women, since many opposers to abortions are the ones who creates circumstances in which woman would be wanting to have an abortion.

The second suggestion came about providing much needed emotional and psychological support both prior to and after the abortion is conducted. All of the participants, especially Ms. Pamila and Ms. Lola emphasized on the need of emotional support which is required to cope with the after effects of having an abortion, particularly the mental stress they had to cope with and the lack of empathy that they felt for circumstances which were beyond their control that led them to go ahead with the abortion.

Another suggestion that was brought by the participants was the establishment of a separate unit in hospitals where women could go and keep their confidentiality in discussing the issue of abortion. All of the women who took part in the study felt that they had no one to talk to and to express their concerns and to get proper advice. While they had people who they could trust to share their concerns, they lacked the knowledge on the topic so that they could give proper advice to these women who were having difficulties in deciding on proceeding with an abortion. When asked about expanding the grounds upon which an abortion should be permitted, all agreed that rape and incest should be included but only Ms. Lola stated that economical concerns should also be included in the list. None of the participants however expressed the view that an abortion should be permitted upon mere request. They also raised concerns over labelling an abortion as a criminal offence since it creates a stigma whether as to anyone who has carried on with an abortion could be held as a criminal.

(F) Summary

The narratives presented under this chapter revealed the true reality of women who had undergone an abortion. It was made clear that when one thinks of reforming the existing laws on abortion that the matter cannot be simply solved by expanding the number of permissible grounds upon which an abortion may be legally allowed. Such reforms would require wider implications from providing the necessary information to women to providing them with pre and post abortion care. Hence, it is evident that the law reforms should be brought about by having due consideration to the social factors which dictates the decision making in going for an abortion. Therefore, it is evident that a socio-legal approach provides the best way forward at bringing these reforms.

III. RECOMMENDATIONS AND CONCLUSION

(A) Introduction

This chapter is written on recommendations and the conclusion of the extended essay. The recommendations of the study are drawn from the shared experiences of the women who took part in this research as participants who gave their ideas and views on the incidents of abortion by sharing their own experiences as to what they had to undergo when they decided to get an abortion. It was evident from the analysis of their narratives that the experience of women is a vital consideration which has been often overlooked in discussing about law reforms. While many attempts have been formulated concerning the reformation of laws relating to abortion, such has not fertilized into laws and policies which endeavours to protect and advance the rights of the women. However, it is expected that some of the recommendations made herein under

this research would be of some value for both the law makers and policy makers alike. This chapter is concluded by providing an over all conclusion of the research.

(B) Recommendations

The recommendations suggested herein are made in connection with the narratives provided by the participants as well as from the other researchers that have been conducted around the globe. It is expected that these recommendations could be utilized by both the law makers and policy makers in reforming the existing outdated laws related to abortion and thereby advance the rights of women concerning their bodily integrity and their right to self-determination.

It is recommended that there should be a separate Act which should be enacted concerning the incidents of abortion and the criminalization of abortion should be repealed. The main reason for this recommendation stems from the fact that, criminalization of abortion itself can be identified as discriminating against women who are just going to move forward with a medical procedure which is not so much different from giving birth to a child, or at least as common as giving birth to a child. The criminalization of abortion also attaches a stigma to the woman who is seeking an abortion and such criminalization also leads to condemnation of the woman which needs to be prevented.

It is recommended that incidents such as rape, incest and medical deformity should be included as permissible grounds for having an abortion with an all-inclusive phrase where all the surrounding circumstances should be evaluated in deciding to go ahead with the abortion. In interpreting these incidents, they should be interpreted less severely than in instances of criminal prosecution. For example, one should not wait for the perpetrator of a rape to be convicted by a Court of law in order to allow the abortion to be carried out since the time it would take to convict a rapist would take too much of time. Even in the reforms that have been suggested in the Sri Lanka context, this aspect has been overlooked and merely pointing that rape should be an instance in which an abortion should be allowed is insufficient.

It is recommended that, women should be afforded with both pre and post abortion care at both public and private hospitals or other approved facilities and that their confidentiality should be protected at all times. The women should be made aware about their rights and they should be provided with accurate information regarding abortions. A call desk should be established under abortion legislation which should be available in all the official languages in the country to help women who are seeking information about abortions. A separate unit in every hospital should be established, or at least on each district with an assigned specialist doctor in the field to assist the women in need of medical advice concerning abortions.

It is recommended that both the service providers and service seekers be protected by law when it comes to abortion care and one should make it an offence to interfere with their affairs. This is especially important considering the cultural and religious stigma and condemnation of abortion which is prevalent in Sri Lanka.

It is also recommended that women should be given all the resources available at the disposal of the government in helping to make their own choices when they decide to undergo an abortion. There should be a supportive mechanism for women who want to carry on with their pregnancy if they are in need of financial assistance for caring and upbringing the child. At the same time, where a woman is seeking an abortion, she should be provided an opportunity where she would be able to give the child up in adoption in case, she does not want to upbringing the child yet wanting not to abort.

It is recommended that the ultimate decision of aborting the child should be equally vested with the mother and the doctor who should come to a final decision after considering all the possibilities that are out there. The environment should be made conducive for both the parties to discuss the matter and to come up with the most optimum solution to the problem.

It is recommended that in house care facilities should be provided with counselling facilities to women who are seeking an abortion in instances where she had become pregnant against her will. Emotional support and empathy should be provided upon these women in helping them to better cope with their termination of pregnancy.

It is recommended that the above should be made the law governing incidents of abortion by enacting a separate legislation on the matter with an authority to monitor the implementation of the above recommendations and as a rule the wellbeing and the rights of the women should be given primacy over the other competing interests. The government should also take steps to allocate the necessary resources in achieving these endeavours.

(C) Conclusion

Abortion is a topic of interest in many since as it has been present from the very early days of civilization, yet it has remained controversial without having a proper meaning as to when it should be permitted or should it be permitted at all. When one considers many of the religions in the world, they vehemently oppose the idea of abortion and even the cultural context condemns instances of abortion without looking in to the surrounding circumstances that makes a woman to decide on terminating her pregnancy by getting an abortion. These social norms which are prohibitive of abortion are also backed by legal sanction in Sri Lanka where abortions are held as criminal offences and the only exception being to save the life of the mother. The

restrictive laws coupled with the restraints put forward by both religious and cultural factors overlooks the rights of women when they want to make a decision affecting their body and even in the 21st century with all of its technological advances, the women are taken out of the decision-making process when it comes to having an abortion in the Sri Lankan context.

The laws relating to abortion needs to be reformed not only because they are outdated and represent colonial values, but also because they are against the rights of the women which has come to being recognized under many of the human rights treaties internationally. Far too often the rights of women have been overlooked in the discourse of law reforms concerning the abortion debate, where the discussion has not gone further than expanding the instances in which an abortion may be held liable. However, such an approach alone has failed to minimize the number of abortions and the casualties which have resulted from such illegal abortions in Sri Lanka. Factors such as availability of information, knowledge and care are some of the aspects which have been overlooked and not addressed properly in the discourse concerning reforming the abortion laws in the country. Therefore, it seems evident that when it comes to reforming the existing laws on abortions, a socio-legal approach is the best one available at solving the issue since it allows for the consideration of social factors and the surrounding circumstances to be weighed in concerning laws reforms related to abortion.

Therefore, it is concluded that a socio-legal approach which looks at the experiences of women and their understandings on the matter of abortion are very important considerations in the discourse of law reforms concerning abortions, and as such, abortion law reforms should strive to consider these socio-legal context in order to bring about law reforms on abortions which would help to both protect and advance the rights of women of the country.

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