

## Recognition of 'Post Abortion Care' as a fundamental reproductive health right in Sri Lanka: A Legal Perspective

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**Abstract** - The World Health Organization (WHO) has defined 'Health' as the physical, mental and social wellbeing which extended to the reproductive rights. The major burden of the human reproduction is carried out by the women, for whom a strong legal framework of reproductive rights is of utmost importance. 'Post Abortion Care' (PAC) is equally important as giving birth to a child. The abortion law in Sri Lanka, treasured in the sections 303-307 of the Penal Code is restrictive in nature which allows a 'therapeutic abortion' only as a life preserving option for the mother. But still, abortions are performed at clandestine places. The clandestine services are well known for the performance of unsafe abortions against the acceptable medical standards, which cause complications. Amidst a restrictive legal framework on abortions, it is doubtful whether Sri Lankan women are entitled to a positive post abortion care to treat the complications of unsafe abortions. The study focuses and analyzes the unsafe abortions, post abortion complications and the condition of the post abortion care in Sri Lanka. The methodology of the study is qualitative and involved a documentary analysis, in which the author has done a literature survey including the International/domestic legal instruments, texts and publications. The findings of the study have concluded that, the Sri Lankan women are entitled to a strong framework of post abortion care, whereas the severe complications of unsafe abortions result in the maternal mortality and morbidity.

**Keywords**— Abortion, Health, Post Abortion care, Therapeutic

### I. INTRODUCTION

As defined by the paragraph 7.2 of the Programme Action of the International Conference on Population and Development 1994, 'Reproductive Health' is considered as a universal need, as it encompasses the physical, mental and social wellbeing in relation to the matters connected with the reproductive system. The concept of 'reproductive health' has been recognized as a landmark right in the twentieth century, as it was often subjected to discussions in the international forum. The risks of the human reproduction is connected to the women, and in

some parts of the world, risks are unanswered. The increasing level of reproduction risks have asserted that, the women are entitled to the reproductive rights which are strong and inviolable. The issue of illegal, unsafe abortion is a health problem which is to be addressed by the governments in the world. Majority of the countries have met the problem by liberalizing the Abortion Laws in accordance with the international standards. There are countries, which have restrictive abortion laws. The laws are rigid to the extent, where women, in instances of unwanted pregnancy resort to the clandestine providers. 'Unsafe abortions' are performed by the unqualified, untrained people or quacks under unsanitary conditions. Generally, an 'unsafe abortion' has two consequences. The severe after effects of an unsafe abortion cause the death of the mother. There are instances where the mother is escaped from the death, but continue to be suffered from the fatal complications. The complications may arise even with a legal abortion, performed under safe conditions. In foreign countries, the women are resorted to the obstetric care, if they find to be affected with complications.

'Post Abortion care', (PAC) is a significant necessity to a country, as it deals with the emergency treatment for complications arisen from the spontaneous or induced abortions. This does not include only the physical treatments, but also the psychological counselling as well. Sri Lanka being a country with a restrictive abortion law, confronted the dilemma of unsafe abortions performed by the back door abortionists. After being undergone an illegal abortion, women are reluctant to seek treatments within the existing restrictive legal framework. The problem related to the PAC is not limited to the lack of infrastructure and the facilities. The knowledge of the women in relation to the complications has become an issue.

Internationally, it has been accepted that, the basic aim of recognizing the right to PAC is to address the problem of unsafe abortions and to reduce maternal mortality and

morbidity. The post abortion complications have laid the foundation to the sociological problems as well.

## II. METHODOLOGY

The methodology of the paper has adopted the qualitative approach, involved with a documentary analysis and a literature survey. The literature related to law and medicine have simultaneously been analysed. In addition to the texts, publications and academic research works have been analysed where it involved a review of the international legal instruments.

## III. RESULTS AND DISCUSSION

PAC is an internationally accepted concept which was first subjected to the scrutiny at the International Conference on Population and Development in 1994. The paragraph 8.25 of the conference states, 'In all cases, women should have access to quality services for management of complications arising from abortion. Post abortion counselling, education and family planning services should be offered promptly, which will help to avoid repeat abortions'. Different types of women, in the world seek Post abortion care not only as a physical need but it extends to the psychological concerns as well. If complications have been resulted following a legal abortion, there is no issue with the situation of the woman as she has confidence to receive due care from the hospitals, but still, the situation is negative when it deals with the illegal abortions.

Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights (1966) has recognized that, 'everyone has a right to the enjoyment of the highest attainable standard of physical and mental health'. The international arena has insisted on the healthcare systems with qualities namely, the availability of health services in the sufficient quantity, accessibility to the health services without discrimination, acceptability and adequate quality. It is depicted that, the laws and policies unfairly restricting the safe abortions are not complied with the internationally accepted standards. Health policies which are not complied with the standards are seen as the violation of human rights.

United Nations Treaty monitoring bodies, has emphasised that, the states are under an obligation to provide sufficient PAC to the women in necessary circumstances.

Reformations to the Abortion Law of India, have given effect to the Medical Termination of Pregnancy Act 1971. As (Reddy 2013), states, there are 04 types of legalized

abortions in India, namely Therapeutic, Social, Humanitarian and Eugenic. Therapeutic abortions are performed on medical purposes basically with the aim to save the life of the mother, where as Eugenic abortions are recommended when there are foetal abnormalities. Humanitarian and Social abortions are predominant on socio-legal grounds. A social abortion is allowed on the grounds of social/economic reasons; contraceptive failures whereas a Humanitarian abortion is performed in an instance of rape/ incest victims are present. As per the view of (Cook, Rebecca & Dickens 2003) a pregnant rape victim is seen as a woman who confronted an unwanted pregnancy. Her pregnancy is considered as a consequence of a crime which has forcibly been inflicted without her consent. Thus, the perspective of law is humanitarian, as the pregnancy of a rape victim is not consensual.

The constitution of the Democratic Socialist Republic of Sri Lanka has recognized by its Article 12, the gender equality and the freedom from discrimination on the basis of sex. Thus following the very step kept by the parent law of the country, Women's Charter 1993 was implemented, where under the Article 13 (III) it has been recognized the right of women to control their reproductivity. Under this specific right, the education counselling, family planning services which are safe have been predominantly discussed.

The Abortion Law in Sri Lanka is enshrined in the Penal Code of Sri Lanka. Being the substantive Criminal Law of the country, Penal code has criminalized the performance of abortions unless to preserve the life of the mother. (Section 303 of the Penal Code). The restrictive nature of the law has compelled the women to resort to clandestine services / back door abortionists. Majority of the clandestine providers of abortions are untrained and perform abortions under unsanitary conditions. Complications incurred due to the unsafe abortions are fatal which lead to the death of the mother, if not treated. In general perception, a woman resorted to a clandestine service implies that she has no social and legal support.

### *A. Criminal Unsafe Abortions and Complications*

The focus of this study is positioned on the Criminal unsafe abortions, which directly result in the maternal deaths. (Dinethri et al 2016) states that in Sri Lanka, it has been recognized that, the unsafe abortions have become the third commonest cause for the maternal mortality. The complications of the unsafe abortions which have criminally been performed are severe. The reason is that, criminal unsafe abortions are performed under unsanitary and unhygienic conditions. In such an instance, the

women are reluctant to seek post abortion treatments on the fear of meeting legal repercussions for being resorted to clandestine providers. As (Pathiraja & Senanayake 2013) identified, the delay in seeking post abortion treatments is occurred due to the lack of knowledge on the part of women about the complications. In addition to the issue of maternal mortality, maternal morbidity is of prominent concern. The morbidity is basically consisted of immediate post abortion complications.

A Criminal abortion is risky in nature due to the fact that, there is a tendency to perform it under unhygienic conditions. (Jayawardena 1995) states that, in Sri Lanka, 03 methods have been recognized in the performance of criminal abortions: Abortifacient drugs, General Violence and Local interference. As the Abortifacient drugs, Ecboic, Emmenagogues, Sex hormones are of predominant consideration. 'Ecboic' is scientifically identified as a drug, which increases the uterine contractions while 'Emmenagogues' has the effect of increasing the menstrual flow of the women's body. The sex hormones namely oral contraceptives, oestrogens in high doses, cause the abortions. In addition to the drugs which have a medical influence, traditional methods are used for the performance of criminal abortions. The food items with high acidic concentrations such as unripe Pineapple, Papaw have abortifacient effects.

(Jayawardena 1995) further states that, women are subjected to the general violence which is considered as a method of aborting. The methods such as violent exercising, cycling, blows and kicks on the abdomen are categorized under general violence. The methods of local violence are connected with the internal organs of the body, specifically with the reproductive system. That is specifically known as the 'Local violence in the genital tract'. Insertion of metallic objects and non metallic objects namely plastic rods, caster stem through the vagina, and surgical equipments are among the methods of local violence. Among the surgical equipments, Higginson's syringe is used to inject chemical substances Lysol, turpentine, and formaldehyde to the uterus.

Self induced abortions represent a single handed attempt on the part of the woman to have an abortion. The administration of medications to own body is the basic conduct which is involved in the Self induced abortions. The popular method of self induced abortion is the administration of Misoprostol and Mifepristone. (Hyden 2011) further elaborates on 'Misoprostol' which is generally known as a medicine, where it is used to treat ulcers and simultaneously has a power to influence the hormone regulatory system of the body. When a pregnant

woman takes the medicine in to her body, the muscles contract including the muscles of the uterus and subsequently, the uterine contents are removed.

As (Guillaume & Rossier 2018) state, it has been researched that, in the year 2012, 6.9. Million women in the world were hospitalized due to the complications arisen from the induced abortions, and they have not been provided with treatments. In Sub-Saharan Africa, the severe complications of the induced abortions have been reported.(Hatthotuwa, Desai & Senarath 2009) emphasize that the injuries may cause as a consequence of an abortion. The blunt injuries in the vagina, including lacerations and contusions, penetrating injuries in the lower part of the vagina, infections are common among the unsafe abortions. There are internal damages within the body, which directly involved in the maternal deaths. Internal bleedings and the presence of blood clots in the uterus, haemorrhage, and air embolism are major complications, which lead to the death of the woman if not properly treated. The immediate causes of death are vagal inhibition, severe haemorrhage, perforation and massive embolism. The delayed causes of death can be identified as Septicaemia, Tetanus, secondary haemorrhage and Pneumonia. Even, a woman is escaped from death; there is a risk of complications, including sterility, and Pelvic inflammatory disease which bring forth lifelong disabilities. In addition to the physical losses and disabilities, there are psychological traumas as well.

#### *B. International perspective on 'Post Abortion Care'*

It has internationally been accepted that, the unsafe abortions are directly connected to the maternal mortality and morbidity. The paragraph 8.25 of the Programme Action of the International Conference on Population and Development 1994 has emphasized that, "in all cases, women should have access to quality services for management of complications arising from abortion. Post abortion counselling, education and family planning services should be offered promptly, which will help to avoid repeat abortions".

(Pathiraja & Senanayake 2013) suggest that, the PAC programmes could be provided by the different health professionals with varied qualifications. The skills of PAC are transferable from physicians to nurses and midwives in the health pyramid. The transferability of skills amounts to the decentralization of health services to the different parts of the countries where the services are concentrated in city hospitals. It has internationally been asserted that, the PAC programmes are essential to the countries where the Abortion laws are restrictive. This is

basically owing to the fact, the programmes have the potential to change the view of the health professionals on the subject of 'abortions' and to legalize the practise even when the abortion is illegal. In developed countries, there are sufficient infrastructures to meet the needs of the women. This situation is different in the developing countries, basically due to the limited resources, and inadequate training of the health professionals.

(Gyaneshwar 2009) holds the imperativeness of, the 'emergency post abortion complication management' which is a health concept which ensured that, the products of the conception are completely removed from the uterus as the retention of the products lead to the bleeding and sepsis. In 1991, World Health Organization has accepted 'Vacuum aspiration' as a safe and sustainable method of evacuating the uterus. Amidst the medical concerns on the uterine evacuations, core considerations have been discussed in the international arena in the provision of post abortion treatments, namely the providing respect and support, creation of a friendly environment, Pre counselling and counselling, providing pain relief, performing surgery with gentle techniques etc.

### *C. Post Abortion care as a Reproductive Health Right in Sri Lanka*

"Reproductive health" is considered as a universal need, but is doubtful whether Sri Lanka has facilitated the effective Post abortion treatments. As per the view of (Pathiraja & Senanayake 2013), in Sri Lanka, the provision of post abortion care treatments is limited to the emergency situations but not extended to the emotional support towards the women. The guidelines issued by the ministry of health in 2015, stipulated the right of a woman who subjected to an illegal abortion to seek PAC at government hospitals without the fear of prosecution. The government hospitals are empowered by the guidelines to use Misoprostol in the event of an incomplete abortion. In an instance of admitting to the hospital, the condition of the woman may find uncomplicated, but later it would become life threatening. Thus, the early medical treatments following the accurate, initial assessment are considered as essential. In addition to the medical treatments, the family planning services have not been developed within Sri Lanka.

Subsequent to an unsafe abortion, women undergo psychological traumas. The reasons for the emotional distress and psychological traumas after being subjected to illegal abortions are of different kinds. The isolated life of the woman after an abortion, less emotional support

from the family and friends, adverse post abortion change in relationship with the spouse or the partner are major among the reasons. The psychological issues subsequent to an abortion are purely subjective and depend on the tolerance of each individual. The depression, remorse or guilty feelings, recurrent fantasising are major psychological and emotional issues which can be noted among the women. It is essential to provide emotional support to the women through the staff of the health services, but this has become a difficulty with the existing limited staff. In Sri Lanka, the priority has been given to the providing of medical treatments, but still the additional services related to PAC such as providing education, screening, diagnosis and treatment of sexually transmitted infections, treatment of nutritional deficiencies, and treatment of reproductive system related cancers are in need of development.

The 'primary health care' in relation to the post abortion treatments is in need of an improvement. This can be developed by making the facilities available and improving the staff. The necessity still exists to improve the skills and capacities of the care providers, to provide an effective PAC. There must be a partnership developed between institutional care providers, community health care professionals, advocacy groups and ministry of health to achieve the universal access to the sustainable Post abortion care'.

### IV. CONCLUSION

PAC is an internationally recognized right which basically deals with the treatment of complications arisen from the abortions. It covers the physical and psychological spheres of the women health. Internationally, it has been recognized the necessity of improving the PAC as a fundamental health right. In Sri Lanka, the restrictive Abortion Law has resulted in illegal unsafe abortions with fatal complications, which lead to the maternal mortality and morbidity. The health facilities and the methods of treating psychological traumas should be improved in Sri Lanka to strengthen PAC as a fundamental reproductive health right.

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