PROPOSALS OF THE LAW COMMISSION TO PROVIDE FOR THE MEDICAL TERMINATION OF PREGNANCY IN CASES OF RAPE AND SERIOUS FOETAL IMPAIRMENT

EXPLANATORY NOTE

1. Current status of the law

Relevant sections of the Penal Code that recognize offences in relation to the causing of miscarriage and the termination of pregnancy, are set out below-

1.1 Section 303 of the Penal Code

“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.”

Explanation

A woman who causes herself to miscarry is within the meaning of this section

1.2 Section 304 of the Penal Code

“Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment with either description for a term which may extend to twenty years, shall also be liable to fine.”

1.3 Section 305 of the Penal Code

“Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be with imprisonment of either description for a term which may extend to twenty years, and shall also be liable to fine.”

Explanation

It is not essential to this offence that the offender should know that the act is likely to cause death.

1.4 Section 306 of the Penal Code

“Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine or with both.”

The prevailing law thereby imposes a strict prohibition on abortion, with the only exception being to save the life of the mother.
2. Laws of other jurisdictions
Jurisdictions around the world permit abortion on seven grounds. The grounds range from the most restrictive to the most liberal and are – (1) to save the life of the woman, (2) to preserve a woman’s physical health, (3) to preserve a woman’s mental health, (4) where the pregnancy is the result of rape or incest, (5) because of foetal impairment, (6) for economic and social reasons, and (7) on request. It is reported that since 1974, the vast majority of legal reforms relating to abortion have broadened the circumstances under which it is legal. As stated above, Sri Lanka falls into the most restrictive category.

3. History of law reform in Sri Lanka
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 amendment to section 306 was therefore not passed.

The agitation for introducing an amendment to the strict prohibition on abortion continued and it is in this context that the Law Commission has considered the need for a review of the current provisions.

4. Consultations with the medical professionals
In formulating its current proposals the Law Commission invited representatives from the Sri Lanka Medical Council, the Sri Lanka College of Obstetricians and Gynecologists and the Sri Lanka College of Psychiatrists for discussions. The Commission records its appreciation to the Medical professionals that participated in a series of discussions with members of the Commission. Many of the proposals that impact on the medical regime have been adopted based on their recommendations.

5. Recommendation of the Law Commission
5.1 It is the view of the Law Commission that there is justification to move away from the strict prohibition on abortion to recognize that termination of pregnancy should be permitted in the case of rape and identified conditions of foetal impairment. A draft Bill for this purpose is annexed hereto.

5.2 In proposing the reform of the law, the following matters were considered:
   a) The strict criminalization of abortion as presently contained in section 306 has an adverse impact on the mental health of the woman. Lack of an option would result in women victims seeking illegal abortions or carrying the unwanted pregnancy to term both of which are emotionally disturbing and have long term impacts.
   b) A woman who is a victim of abuse should have the right to terminate a pregnancy which is the result of a crime committed on her and hence It is necessary to provide access to safe

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1 UN World Abortion policies 2011 – UN Department of Economic and Social Affairs/Population division.
2 Briefing Paper on “Abortion Worldwide: Seventeen Years of Reform” by the Centre for Reproductive Rights.
www.reproductiverights.org
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methods of terminating a pregnancy. Similarly, a woman carrying a foetus which is seriously impaired should have access to safe termination of the pregnancy.

c) A victim of incest could also be a victim of rape and hence it is not necessary to recognize incest independently of rape. A woman who has connived in the commission of incest is an offender and not a victim and need not therefore be categorized with victims of abuse. A woman who is guilty of incest would however not be barred from terminating a pregnancy if the foetus is seriously impaired, on the ground of foetal impairment but not as a victim of abuse.

d) Introduction of provision to terminate a pregnancy does not amount to a compulsion to have the pregnancy terminated and should not be viewed as such. Relaxation of the strict prohibition will merely recognize the right of a woman to terminate her pregnancy at her complete discretion leaving her with the freedom to carry the child if she so desires.

e) In the case of victims of rape who are under sixteen (16) years of age, there is no issue of whether a crime has been committed or not since the criminal law as contained in the Penal Code recognizes that sexual intercourse with a girl under 16 years of age is a strict liability offence and the grant of consent by her to the act of intercourse, is an irrelevant factor. This is so even though it may be argued by medical professionals that such a girl does possess the mental capacity to grant consent to sexual intercourse. In terms of the criminal law therefore, if the child is pregnant and is under 16 years of age, she is the victim of a crime. The process for termination to be followed in such cases should therefore be simple and devoid of a focus on the facts that led to the pregnancy.

f) In defining the process for termination, it is vital to maintain a balance between providing easy access for termination in genuine cases and ensuring that the law is not abused by those who are not victims of an offence or where there is no foetal impairment.

g) It is considered necessary to set out details of the procedure to be followed in seeking medical intervention to terminate a pregnancy. This would obviate abuse of the process. Hence the enactment of an independent statute is recommended, as opposed to merely amending the Penal Code.

5.3 The principle features of the recommendations of the Law Commission and contained in the annexed Bill are as follows:

5.3.1 Grounds for termination
The termination of a pregnancy should continue to be a criminal offence (as set out in section 306 of the Penal Code) other than, as stated above, in the following circumstances:

a) in the case of rape;

b) in the case of serious foetal impairment.
5.3.2  **Serious foetal impairment**

It is the recommendation of the Medical professionals, that the following conditions are so serious in nature as to render a foetus, if born, to be unviable with life thus justifying the termination of such a pregnancy.

- Osteogenesis imperfect
- Osteochondrodysplasia
- Infantile osteopetrosis (malignant form)
- Bilateral renal agenesis
- Polycystic kidney (recessive form)
- Multicystic dysplastic kidneys
- Potter’s syndrome
- Congenital nephritic syndrome (with hydrops)
- Chromosomal disorders leading to degenerative lesions and brain and kidney involvement, such as vertebrae, anus, cardiovascular tree, trachea, oesophagus, renal system and limb buds (VACTERL) syndrome
- Severe bilateral hydronephrosis
- Alfa-thalassaemia with hydrops foetalis
- Homozygote thrombotic disorders (i.e. protein C or factor V Leiden deficiency)
- Trisomy 8
- Trisomy 13
- Trisomy 16
- Trisomy 18
- Trisomy 3
- Any other confirmed lethal chromosomal abnormality
- Anencephaly
- Foetal hydrops
- Crie du Chat syndrome
- Holoprosencephaly
- Syringomyelia
- Cranioschisis
- Meningoencephalocele or hydroencephalocele
- Thanatophoric dysplasia
- Holoprosencephaly
- Ichthyosis congenital neonatum
- Schizencephaly
- Excencephalia

The recommendation of the Law Commission is that the termination of pregnancy be permitted based on a recommendation of the Panel that the foetus is suffering from any of the above conditions. Such a recommendation would have to be based on medical reports.

5.3.3  **Hospitals at which terminations can be performed**

It is recommended that terminations should be permitted to be performed only at a Government hospital where specialist gynaecological services are available.

5.3.4  **By whom a termination can be performed**

It is recommended that a termination be performed only by a Specialist in Obstetrics and Gynecology (i.e. one who has been certified as a specialist in Obstetrics and Gynecology by the Postgraduate Institute of Medicine), on the recommendation of a Panel comprising relevant professionals who will be required to assess whether there are reasonable grounds for the termination. (Paragraph 5.3.6 sets out further details regarding the basis for the recommendation of the Panel).

The right of a Specialist to refuse to perform a termination on personal grounds is not disturbed.

A medical professional who performs a termination in compliance with the provisions of the Act should be indemnified against suits and prosecutions for carrying out the termination.
5.3.4 When can a termination be performed?
Detailed consultations were had with the Medical professionals on this issue and the consensus was that in the case of rape, a termination should be permitted within fourteen (14) weeks of gestation. In the case of foetal impairment, since acceptable medical reports indicative of any impairment/abnormality of the foetus may not be available in the early period, it is recommended that a termination be permitted within twenty two (22) weeks of gestation.

5.3.5 The Panel of professionals
It is recommended that the Panel should be constituted with relevant professionals (as set out below) from outside the District of the Hospital in which the termination is performed. The recommendation to appoint persons from outside the District is based on the need for security and confidentiality with regard to the totality of the procedure. For the same reason, it is recommended that the identity of the persons of the Panel be kept confidential.
It is recommended that the composition of the Panels in the different circumstances, should be as follows:

(1) In the case of rape-
   (a) a Board certified Specialist in Obstetrics & Gynecology; and
   (b) a Board certified Specialist in Forensic Pathology.
   (c) a Board certified specialist in Psychiatry.

(2) In the case of rape of a girl under 16 years of age -
   (a) a Board certified Specialist in Obstetrics & Gynecology;
   (b) a Board certified specialist in Psychiatry.

(3) In the case of foetal impairment-
   (a) a Board certified Specialist in Obstetrics & Gynecology; and
   (b) a Board certified Specialist in Pediatrics or Neonatology; and
   (c) at least one of the following:
      i) a Board certified Specialist in Radiology;
      ii) a Board certified Specialist in Psychiatry

It is recommended that an Indemnity Clause be included in the Act to safeguard Panel members from possible suits and prosecutions based on the recommendations made by them.

It is also considered important to include provision that, in any prosecution for rape or incest, the recommendation of the Panel shall not be admissible as evidence of guilt or otherwise of the commission of the crime. This is based on the premise that the opinion of the Panel is formed on material available to the Panel at the time the recommendation is required to be made, i.e. within a period of less than twelve weeks and is irrelevant to prove guilt or otherwise of the accused.
5.3.6 Factors that are relevant for a recommendation to be made, by the Panel

The recommendation of the Commission is that a termination should be performed only on the recommendation of the Panel formed in good faith that there are reasonable grounds to believe that -

a) in the case of rape - that the pregnancy was caused in circumstances that are indicative of rape;
b) in the case of a girl under 16 years of age - that the girl whose pregnancy is to be terminated is under sixteen (16) years of age;
c) in the case of foetal impairment - that there is adequate medical evidence to confirm that the foetus is suffering from any one of the congenital abnormalities set out.

The incorporation of the principle of good faith is recommended so as to ensure protection to the Panel against possible allegations of wrong judgment. A recommendation based on the best available evidence would be accepted as one made in good faith. It may also be noted that the recommendation of the Panel is based on the existence of reasonable grounds to believe that the circumstances justifying termination as set out in the law, do exist. This requires the Panel only to ensure that the evidence on which reliance was placed was such that a reasonable man would have arrived at the same conclusion.

The recommendation of the Panel is required to be in writing and should contain the basis upon which the opinion is formed.

a) In the case of allegations of rape

It is recommended that there should mandatorily have been a complaint made to the Police. The challenge here is that a determination is required to be made based on the best possible evidence available at the appropriate stage that there are reasonable grounds to believe that the woman requesting a termination of her pregnancy is in fact a victim of rape. Several matters become relevant here.

i) Due to constraints of time, it is not possible to place any reliance on a conviction by court. (In any event, an acquittal may not necessarily mean that the woman is in fact not a victim of rape). Hence the reliance upon the judgment of a Panel of medical persons.

ii) The challenge is to identify who is best positioned at this stage to make a determination which will justify a recommendation that there are reasonable grounds to believe that the woman requesting a termination of her pregnancy is in fact a victim of rape. The Commission notes that the 1995 Bill provided for a report to that effect to be made by the JMO alone. It is the view of the Commission that the multi-disciplinary panel is a more acceptable substitute for the JMO. This was also the recommendation of the Medical professionals.

iii) The Panel may need to obtain statements/Reports from other Authorities (eg. the Police, medical reports), to assist their conclusion.

iv) While a complaint to the Police is a mandatory requirement, if the complaint is belated the Panel will not have the benefit of forensic evidence and a Police investigation that will be useful.

v) While a belated complaint to the Police casts doubts on the authenticity of the complaint in assessing the credibility of that evidence in a court case, the reality is that there may be very
valid reasons for the delay. Hence, the degree of suspicion that will attach to a belated complaint assumes a different connotation in a non-judicial process, which is required to determine the matter on reasonable grounds.

vi) While a determination can be made without difficulty where there is convincing and formidable forensic evidence, in instances where the forensic evidence is weak or not available, it will be extremely difficult to make such a determination based on evidence that a crime was committed.

vii) The evidence that the Police would have gathered at the relevant stage will be of great value.

viii) If the alleged victim requests a termination at a very late stage and there is no investigation conducted by the Police at the time, there will be no investigative evidence to be considered.

ix) The reality is that, in some of the above situations, it may not be possible for the Panel to recommend termination due to the absence of acceptable evidence to form its opinion, even though in fact the applicant may be a victim of rape.

b) In the case of a girl under 16 years of age.

In a case of a girl under 16 years, the only matters to be ascertained to justify a recommendation from the Panel are (a) that the girl is in fact under 16 years of age and (b) that the girl is in fact pregnant. Both of these are matters of fact and not of opinion and can be established without difficulty.

Age will be based on a Birth certificate and perhaps supported by a physical examination that will validate the claim that the girl is under 16 years. Pregnancy will be based on medical reports. Hence it is believed that a Panel of two members is adequate. The consent of the girl and of the legal guardian are mandatory prior to carrying out the termination.

c) In the case of foetal impairment

An assessment as to whether the foetus is suffering from any one of the conditions set out in the list must of necessity be based purely on medical evidence. Hence the recommendation for a Panel comprising multi-disciplinary medical personnel who will make a professional judgment based on relevant medical reports.

5.3.7. Minors and persons of unsound mind

An application on behalf of a minor must necessarily be made by her parent or guardian. However, it is considered important that the minor should also consent to the termination of her pregnancy and sign the application denoting her consent. This recommendation is made on the basis that a girl who is old enough to conceive is also of adequate maturity to signify her consent to a medical procedure although she may not be legally recognized as having capacity to consent.

Similarly, it is recommended that an application on behalf of a person of unsound mind should be permitted to be made by the lawful Guardian or next of kin, or close relative or other person who has an interest in the welfare of the woman.
The Commission is mindful of the fact that within the category of persons of unsound mind there will be those who have been declared to be a person of unsound mind by a court of law and also those who have not been so declared but nevertheless lack the capacity to give consent due to mental infirmities. The recommendation is that the definition of ‘person of unsound mind’ includes both categories. In the case where there is no court order, the certification by a Board certified Psychiatrist who has examined the woman stating that in his opinion the person is incapable of granting consent to the termination of her pregnancy due to her mental condition, must be submitted as proof of her incapacity.

5.3.8. Procedure for the grant of approval for the termination

The procedure for the process commencing with an application for the termination of a pregnancy and ending with the termination of the pregnancy, is as follows.

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<tr>
<th>Step</th>
<th>Step in the process</th>
<th>Time limit</th>
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| 1    | Application made by the pregnant woman or Parent/Guardian of minor child or person of unsound mind, to the Administrative Head of the Hospital (Director/Medical Superintendent) to have the pregnancy terminated.  
  • Application in a format prescribed in the Act.  
  • Medical reports and copy of Police complaint (where relevant or when available) to be annexed. | NA                                   |
| 2    | Application referred by the Director/MS to the Regional Director of Health Services (RD/HS), to constitute the Panel of medical professionals. | Forthwith, ie. Immediately upon receiving Application |
| 3    | Panel constituted                                                                   | Within 3 days of receipt of Application from Director/MS |
| 4    | Deliberations of Panel held and concluded                                            |  
  • Rape - Within one week  
  • Foetal impairment- Within two weeks |
| 5    | Recommendation of the Panel forwarded by way of a Report to the Director/MS of the Hospital through the RD/HS | Immediately upon concluding deliberations |
| 6    | If termination is recommended, surgical procedure carried out.                       | Within statutory time limit           |

6. Awareness

The enactment of new legislation such as is proposed must be supported by adequate awareness of its implementation requirements. It is recommended that awareness programmes be conducted by relevant authorities. Details of the substantive law, its requirements, the hospitals at which facilities are available to carry out the termination procedures, and the hospital procedures therefor must be widely disseminated including by posting on websites for easy access by the public.

7. Unsafe abortions
The Law Commission is aware of a study that has concluded that the majority of those who access unsafe methods of terminating a pregnancy are not victims of rape or incest and are not those who desire a termination due to foetal impairment. Hence the majority who access unsafe methods will not benefit by the reform recommended. The reform suggested above, is not a response to the issue of preventing unsafe abortions, but seeks to provide a remedy to a deserving category of women who are victims of abuse resulting in a pregnancy and/or carrying a foetus with serious congenital deformities. The issue of unsafe abortions and the mortality rate resulting from unsafe abortions, will need to be addressed through other policy interventions.
PROPOSED BILL

LAW TO PROVIDE FOR THE MEDICAL TERMINATION OF PREGNANCY IN CASES OF RAPE AND FOETAL IMPAIRMENT

1. This Act shall be cited as the Medical Termination of Pregnancy (Special Provisions) Act, No. ... of 2013.

2. Notwithstanding anything contained in the Penal Code or any other law for the time being in force, a person who terminates a pregnancy in compliance with the provisions of this Act shall not be guilty of an offence under the Penal Code or such other law.

GROUNDS FOR TERMINATION OF A PREGNANCY

3. Notwithstanding anything contained in the Penal Code, the termination of a pregnancy shall be deemed not to constitute the offence of causing miscarriage or an offence defined in section 306 of the Penal Code, if-

   (1) the termination is performed within a period of fourteen weeks of gestation at a government hospital where specialist Gynaecological services are available, by a board certified specialist in Obstetrics and Gynecology, on the recommendation of a Panel consisting of the officers specified in sub section (1) of section 4, that it is of the opinion formed in good faith that there are reasonable grounds to believe that the pregnancy was caused in circumstances which are indicative of rape; and a complaint regarding the incident of rape has been lodged with the Police; or

   (2) the termination is performed within a period of fourteen weeks of gestation at a government hospital where specialist Gynaecological services are available, by a board certified specialist in Obstetrics and Gynecology, on the recommendation of a Panel consisting of the medical officers specified in sub section (2) of section 4, that it is of the opinion formed in good faith that the woman whose pregnancy is to be terminated was under sixteen years of age at the time of gestation; or

   (3) the termination is performed within a period of twenty two weeks of gestation at a government hospital where specialist Gynaecological services are available, by a board certified specialist in Obstetrics and Gynecology, on the recommendation of a Panel consisting of the officers specified in sub section (3) of section 4, that it is of the opinion formed in good faith that there is a substantial evidence to indicate that the foetus is impaired with a condition set out in Schedule I hereto.

4. (1) The Panel referred to in sub section (1) of section 3 shall comprise the following:-

   (a) a Board certified Specialist in Obstetrics & Gynecology; and

   (b) a Board certified Specialist in Forensic Pathology; and

   (c) a Board certified specialist in Psychiatry.

(2) The Panel referred to in sub section (2) of section 3 shall comprise the following:-

   (a) a Board certified Specialist in Obstetrics & Gynecology;
(b) a Board certified specialist in Psychiatry.

(3) The Panel referred to in sub section (3) of section 3 shall comprise the following:-
(a) a Board certified Specialist in Obstetrics & Gynecology; and
(b) a Board certified Specialist in Pediatrics or Neonatology; and
(c) at least one of the following:
   i) a Board certified Specialist in Radiology;
   ii) a Board certified Specialist in Psychiatry

PROCEDURE
5. (1) An application for the termination of a pregnancy of a woman on any of the grounds set out in section 3 of this Act, may be made as follows-
   a. In the case of an adult woman of sound mind, by the woman herself
   b. In the case of a minor child, on her behalf by her parent or lawful guardian; and
   c. in the case of a person of unsound mind, on her behalf by her lawful Guardian or next of kin or a relative or other person who has an interest in the welfare of such person.

   (2) An application under subsection (1) shall be made to the Administrative Head of the Government hospital at which the termination is to be performed and shall be in the Format in Schedule 2 hereto, and shall have annexed thereto such medical reports as may be available, copy of the complaint made to the Police where relevant, the birth certificate of the applicant and such other relevant documents as may be relevant to the Application.

   (3) Every application shall be signed by the applicant signifying the grant of consent to the termination and an application made by a parent or lawful guardian on behalf of a minor of sound mind shall also be signed by such minor, signifying her consent.

6. Upon receipt of an application under section 5, the Administrative Head of the hospital shall-
   (1) if the hospital is one at which specialist gynaecological services are available to carry out the termination of the pregnancy and has facilities to perform the required surgical procedure therefor, forthwith refer the application to the Regional Director of Medical Services (hereinafter referred to as the “Regional Director”) requesting that a Panel be constituted to obtain a recommendation with regard to the carrying out the termination of the pregnancy.
   (2) if the hospital does not have the facilities referred to in sub section (1) above, forthwith inform the Applicant accordingly.
   (3) where a reference has been made under sub section (1), ensure that the procedure to obtain the recommendation of a Panel is carried out in compliance with the time limits specified herein.

7. Upon receiving a reference under section 6, the Regional Director shall within three days of such reference, constitute from among persons who serve outside the administrative District of the Hospital from which the Application was referred, a Panel comprising of the relevant persons referred to in
section 4 and shall forward the application to the members of the Panel so constituted, for a recommendation containing an opinion in terms of section 3.

8. The Panel to which an Application has been referred shall –

   (1) consider all such material as may be relevant to form an opinion as set out in section 3, and may for that purpose call for and obtain such reports and other information as may be relevant including investigation reports from the Police, where relevant and may carry out such clinical examination of the pregnant woman as may be necessary; and.

   (2) submit a Report in writing containing its recommendation, to the Regional Director within the following time limits or within such later time as may be granted by the Regional Director having regard to the time limits within which a termination of a pregnancy can be performed-

      (a) In the case of a Panel constituted for the purpose of sub sections (1) or (2) of section 3, within one week of the constitution of the Panel

      (b) In the case of a Panel constituted for the purpose of sub section (3) of section 3, within two weeks of the constitution of the Panel.

9. The Regional Director shall upon receipt of the Report containing the recommendation of the Panel forthwith forward same to the Administrative Head of the relevant Hospital and the Administrative Head shall, where the carrying out of a termination has been recommended by the Panel, take all such action as may be necessary to carry out the surgical procedures within the time limits set out in section 3 of this Act.

MISCELLANEOUS

10. (1) No suit or prosecution shall lie against a member of a Panel constituted in terms of section 7, on account of any opinion given in a Report submitted in terms of the provisions of this Act.

    (2) No suit or prosecution shall lie against a Medical Practitioner for carrying out the termination of a pregnancy in compliance with the provisions of this Act.

11. A report of a Panel submitted in terms of the provisions of this Act shall not be admissible in evidence in a prosecution of any person for the offence of rape

12. (1) Every person who carries out any function in terms of the provisions of this Act shall maintain absolute secrecy with regard to the identity of an Applicant, reports and other information provided by the Applicant or obtained by the Panel, the identity of the person whose pregnancy is terminated and all other matters done or carried out in terms of the provisions of this Act:

    Provided however that such a person shall not be prohibited from using the reports and recommendation of the Panel as evidence in a court of law in proof of compliance with the provisions of this Act.
(2) Any person who acts in contravention of the provisions of sub section (1) of this section shall be guilty of an offence under this Act, and shall on conviction be liable to a fine not exceeding Five Hundred Thousand Rupees.

13. In this Act,

“Administrative Head of the Government hospital” shall mean either the Director of the Government hospital or in the case of a hospital in respect of which a Director has not been appointed, the Medical Superintendent of that hospital.

“Board certified Specialist” shall mean a person who has been certified by the relevant Board of study of the Postgraduate institute of Medicine established under the Act No. .............

“Government hospital” shall mean a hospital maintained with funds from the Government.

“Minor” shall mean a girl under 18 years.

“Person of unsound mind” shall mean a person declared to be a Person of unsound mind by an order of court or a person who is, in the opinion of a Board certified Psychiatrist incapable of granting consent to a termination due to her mental infirmity.

“Regional Director of Health Services” shall mean the functionary appointed to that post for the Region within which the Hospital to which the Application for the termination of a pregnancy is made, is situated.
### SCHEDULE 1

[Section 3(3)]

**FOETAL IMPAIRMENTS**

- Osteogenesis imperfect
- Osteochondrodysplasia
- Infantile osteopetrosis (malignant form)
- Bilateral renal agenesis
- Polycystic kidney (recessive form)
- Multicytic dysplastic kidneys
- Potter’s syndrome
- Congenital nephritic syndrome (with hydrops)
- Chromosomal disorders leading to degenerative lesions and brain and kidney involvement, such as vertebrae, anus, cardiovascular tree, trachea, oesophagus, renal system and limb buds (VACTERL) syndrome
- Severe bilateral hydronephrosis
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- Any other confirmed lethal chromosomal abnormality
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- Cranioschisis
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- Thanatophoric dysplasia
- Holoprosencephaly
- Ichthyosis congenital neonatum
- Schizencephaly
- Excencephalia
SCHEDULE 2

[Section 5(2)]

[A]

MEDICAL TERMINATION OF PREGNANCY (SPECIAL PROVISIONS) ACT, NO. .... OF 2013
APPLICATION FOR THE MEDICAL TERMINATION OF A PREGNANCY
[This Form is to be used by persons over 18 years of age and of sound mind]

To:
Director/Medical Superintendent of Government Hospital,
………………………………………………. (insert location of Hospital)

1. I, ……………………………………. (NIC No. ………) hereby make an Application for the termination of my pregnancy on the following ground-
   a) The pregnancy is the result of rape; or
   b) The foetus I am carrying has a condition set out in Schedule 1 to the Medical Termination of Pregnancy Act, No. … of 2013

2. I am over 18 years of age and hereby grant my full consent to the termination of my pregnancy

3. The following documents are annexed-
   a) Medical reports
   b) Certified copy of complaint made to the Police (mandatory in the case of a pregnancy resulting from Rape)
   c) Birth certificate

4. I hereby swear/affirm that the information given above is true and accurate.

…………………………………………………………………..      ……………………………………………
Signature of Applicant        Date
(Signature must be placed before the Administrative Head of the Hospital)

TO BE COMPLETED BY DIRECTOR/MEDICAL SUPERINTENDENT OF HOSPITAL

This Application was signed by the Applicant, before me today …………………… (insert date)

……………………………………………………….
Signature of Director/Medical Superintendent
Government Hospital, ……………………………….
APPLICATION BY PARENT/GUARDIAN FOR THE MEDICAL TERMINATION OF A PREGNANCY OF A MINOR
[This Form is to be used for persons under 18 years of age and of sound mind]

To:
Director/Medical Superintendent of Government Hospital,
……………………………………………. (Insert location of Hospital)

1. I, ……………………………… (NIC No. …………………..) am the parent/lawful guardian of ……………………………………. (NIC No. ………...) who is a minor/person of unsound mind.

2. I hereby make an Application for the termination of the pregnancy of the said minor/person of unsound mind, on the following ground-
   a) The pregnancy is the result of rape; or
   b) The said minor child was under 16 years of age at the time of gestation; or
   c) The foetus that the said minor is carrying has a condition set out in Schedule 1 to the Medical Termination of Pregnancy Act, No. ... of 2013

3. The following documents are annexed-
   a) Medical reports
   b) Certified copy of complaint made to the Police if relevant
      (mandatory only in the case of a pregnancy resulting from the Rape of a minor over 16 years of age)
   c) Copy of Birth certificate and NIC

3. I have explained to the said minor that an application is being made for the termination of her pregnancy and she has agreed to the carrying out of the medical procedure therefor.

4. I hereby swear/affirm that the information given above is true and accurate.

…………………………………………………………………..      ……………………………………………
Signature of Applicant        Date

____________________________________________________________________________________________

TO BE COMPLETED BY THE MINOR

I have understood the nature of this application and grant my consent to the termination of my pregnancy.

…………………………………………………………………      ……………………………………………
Signature of minor        Date

____________________________________________________________________________________________

TO BE COMPLETED BY DIRECTOR/MEDICAL SUPERINTENDENT OF HOSPITAL

This Application was signed by the Applicant and the minor, before me today …………………… (insert date)

………………………………………………………
Signature of Director/Medical Superintendent
Government Hospital, …………………………….
MEDICAL TERMINATION OF PREGNANCY - PROPOSALS OF THE
LAW COMMISSION OF SRI LANKA

[C]
MEDICAL TERMINATION OF PREGNANCY (SPECIAL PROVISIONS) ACT, NO. .... OF 2013
APPLICATION FOR THE MEDICAL TERMINATION OF A PREGNANCY
[This Form is to be used for persons of unsound mind]

To:
Director/Medical Superintendent of Government Hospital,
……………………………………………. (Insert location of Hospital)

1. I, ……………………………… (NIC No. …………………..) am the parent/the lawful guardian/next of kin/a relative/a person interested
in the welfare of ……………………………………. (NIC No. ………) who is a person of unsound mind.

2. I hereby make an Application for the termination of the pregnancy of the said person of unsound mind, on the following
ground-
   a) The pregnancy is the result of rape; or
   b) The foetus that the said person of unsound mind is carrying has a condition set out in Schedule 1 to the Medical
Termination of Pregnancy Act, No. ... of 2013

3. The following documents are annexed-
   a) Medical reports
   b) Certified copy of complaint made to the Police, if relevant
      (mandatory only in the case of a pregnancy resulting
      from Rape of a person over 16 years of age)
   c) Copy of Birth certificate and NIC
   d) Copy of court order declaring the person to be of unsound
      mind, if obtained

4. I have explained to the said person of unsound mind that an application is being made for the termination of her
pregnancy.

5. I hereby swear/affirm that the information given above is true and accurate.

…………………………………………………………………..      ……………………………………………
Signature of Applicant        Date

______________________________________________________________________________________________

TO BE COMPLETED BY BOARD CERTIFIED PSYCHIATRIST
I have examined ……………………………….., on whose behalf this application is being made and certify that I am of the opinion that
she has no capacity to grant her consent to the termination of her pregnancy due to mental infirmity.

…………………………………………………………………      ……………………………………………
Signature by Board certified Psychiatrist       Date

______________________________________________________________________________________________

TO BE COMPLETED BY DIRECTOR/MEDICAL SUPERINTENDENT OF HOSPITAL
This Application was signed by the Applicant before me today …………………… (insert date)

…………………………………………………………………..
Signature of Director/Medical Superintendent
Government Hospital, ……………………………..