

Mandatory spousal authorisation for abortion: characteristics of countries in which it exists and the potential for modernisation of the law

ABSTRACT

Purpose: Spousal authorisation for abortion (SA) does not align with modern thinking on respect for autonomy. The World Health Organization guideline on abortion specifically recommends that abortion should be available on request without third-party authorisation. The objectives of the study were to: a) to determine which countries insist by law on SA, b) describe the characteristics of these countries and c) to assess the impact of such legislation on access to abortion.

Methods: Interrogation of known databases on global abortion laws. A literature review of material on how mandatory SA relates to reproductive rights.

Results: Fifteen countries were found to require SA. These include 10 which can be described as those with Islamic values and policies and two of predominantly Christian faith. Three South Eastern Asian countries stand out from the rest as modern, progressive and without strong religious influence: Japan, South Korea and Taiwan. These three also have a high degree of freedom in terms of political rights and civil liberties, indicating that there is realistic scope for citizens to influence policymakers. Broader studies on third-party authorisation for abortion show delayed access to abortion and emphasise the general principle that it is the healthcare seeker alone whose consent should be required for a health intervention. A qualitative study from Turkey showed specifically how SA requirements could impair access to abortion.

Conclusions: Deeply patriarchal societies will take generations to change. In contrast, Japan, South Korea and Taiwan are prime candidates for liberalisation of abortion law.

245 words

Keywords

Authorisation; consent; spouse; partner; abortion; abortion law

Short condensation

Three out of 15 countries with mandatory spousal authorisation for abortion are considered good candidates for modernisation of their abortion laws.

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Background

There is a global consensus that there are no paternal rights in abortion and that a woman's right to control her body must take precedence [1]. Case law in England, Scotland, Australia, New Zealand and Canada has rejected challenges brought by fathers and determined that men cannot prevent their wives' abortions. However, in a small minority of countries, statute law relating specifically to abortion lays down that a husband's consent must be obtained before an abortion can go ahead.

Spousal authorisation (SA) for abortion (or any health procedure) will seem to many who live in 'Western' countries to be a highly restrictive condition of consent that does not give due respect to reproductive rights. It does not align with modern thinking on respect for autonomy [2]. The CEDAW Committee has recognised SA requirements as a violation of Article 15 of CEDAW, which requires states to "accord women equality with men before the law". Recommendation 196 of the Concluding Observations on Turkey specifically call for review of the requirement for SA [3]. The WHO guideline on abortion specifically recommends that abortion should be available on request without third-party authorisation [4].

Restrictions on access to abortion such as SA are associated with patriarchal societies including states with Islamic influences in government [5]. Tunisia was a pioneer state, liberalising its abortion law in 1973, including repeal of the requirement of SA [5]. Since the 1990s, six states have rescinded SA laws: Egypt, Guinea-Bissau, Iraq, Malawi, the Maldives and Nicaragua [6].

Objectives

The objectives of the study were to:

- Determine which countries still insist by law on SA for abortion.
- Describe the characteristics of these countries.
- Describe the impact of such legislation on service users' access to abortion.
- Evaluate the chances of repeal of such SA laws.

Materials and methods

Interrogation of the following databases on global abortion laws: the Center for Reproductive Rights World's Abortion Laws 2024; WHO Global Abortion Policies Database 2018.

A literature review of material on how mandatory SA relates to reproductive rights. The search excluded the requirement for spousal notification of an abortion request.

Results

Fifteen countries were found to require SA for abortion (Table 1). These include 10 which can be described as countries with Islamic values and policies and two of predominantly Christian faith. Three South Eastern Asian countries stand out from the rest as modern, progressive and without strong religious influence: Japan, South Korea and Taiwan. These three also have a high degree of freedom in terms of political rights and civil liberties, indicating that there is realistic scope for citizens to influence societal structures. To some extent, South Korea and Taiwan share a history of abortion law, having both been colonies of Japan for several decades prior to the end of the Second World War. Timor Leste is a small, poor country but it is democratic and there seems to be no reason why it should not be a realistic possibility given time to liberalise the abortion law there too.

While human rights bodies have recognised that it may in principle be desirable for a decision to terminate a pregnancy to be made in consultation with a spouse/partner, that decision must not be limited by spouses or other third parties [7]. Broader studies on third-party authorisation for abortion show delayed access to abortion and emphasise the general principle that it is the healthcare seeker alone whose consent is required for a health intervention [7]. A qualitative study from Turkey showed specifically how SA requirements could impair access to abortion [8]. Some women are forced into the private sector because they know their husband would not give consent.

In Japan, the consent of the spouse or regular partner is required for an abortion to be performed. The Ministry of Health, Labour and Welfare has stated that exceptions to mandatory SA can be made if a marriage has substantially broken down due to domestic violence or other reasons [9]. Otherwise, SA remains in Japan despite pressure being applied to the Ministry of Health & Welfare to repeal this aspect of abortion law [10]. Japanese society remains male-dominated with significant gender inequality [11]. In South Korea, despite decriminalisation of abortion in 2021, the National Assembly has yet to pass legislation to clarify how and where South Korean women can obtain legal abortions and abortion services remain stigmatised with poor access and poor quality [12,13]. In Taiwan, women's rights groups are already contributing to debates and advocating for modernisation and liberalisation of the abortion law [14]. Pressure on the Taiwan Ministry of Health & Welfare has resulted in the production of a draft Fertility Health Law which would abolish SA but this has not progressed up to now [15].

Discussion

Findings and interpretation

Fifteen countries require SA for abortion. Of these, three are considered possible candidates for modernisation of their abortion law in terms of their freedom scores and lack of religious influence. Indeed, pressure has already been put on the authorities in all three countries to modernise the law, so far unsuccessfully.

Results in the context of what is known

The number of states requiring SA continues to dwindle. This study identifies three of the remaining 15 that should be amenable to change if challenged by groups within civil society. Such pressure on these three governments, added to existing non-conformity with international human rights laws, may persuade governments to change policy.

General implications

Repeal of SA laws would potentially benefit up to 40 million women of childbearing age in these three populous countries.

Research implications

Surveys of attitudes to abortion, including SA, in Japan, South Korea and Taiwan would provide further objective evidence of readiness in society for modernisation of abortion law.

Strengths and limitations

Due to the ready availability of legal databases and diffusion of recent changes in abortion law through multiple channels, it is likely that the number of jurisdictions with SA laws is accurate. The ability to change laws, however, is subject to the vagaries of public opinion, the opinion of elected representatives and the government of the day.

Conclusions

Deeply patriarchal societies with strong religious influence will take generations to change. In contrast, Japan, South Korea and Taiwan would seem prime candidates for liberalisation of abortion law through elected representatives being influenced by civil liberties and women's rights advocacy campaigns.

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The author reports there are no competing interests to declare.

Data availability statement

The author confirms that the data supporting the findings of this study are available within the article.

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Table 1 Countries with spousal authorisation laws in relation to abortion

N = 15

<i>Country</i>	<i>Global freedom score</i>	<i>Predominant religion</i>	<i>Law</i>
Equatorial Guinea	5	C	Law No. 1/1991 art 16d
Indonesia	57	M	Law No. 52 of 2009 on population growth and development of the family, art 76
Japan	96	N	Act No. 156 on Maternal Health 1948 art 14
Kuwait	38	M	Practice of Medicine, Dentistry and Paramedicine, Law no. 25 of 1981
Morocco	37	M	Penal Code 2015 art 453
Oman	24	M	Law regulating the practice of medical profession 2019 art 36
Qatar	25	M	Practice of Physicians, Surgeons, and Dentists 1983 art 17
Saudi Arabia	8	M	Laws pertaining to Practice of Health Professions 2005 art 22
South Korea	83	N	Mother and Child Health Act art 14
Syria	1	M	Law on the exercise of medical professionals No. 12/1970
Taiwan	94	F	Eugenics and Health Care Act 2009 art 9
Timor Leste	72	C	Penal Code 2009 art 141
Turkey	33	M	Second Population Planning Law No. 2827, 1983 art 6
United Arab Emirates	18	M	Medical Liability Law 2008 art 2
Yemen	10	M	Decree No. 32 on Health Professions 1992

<https://freedomhouse.org/countries/freedom-world/scores>

Religions: C = Christian, M = Muslim, F = folk, N = none

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