

Judicial Pathways to Incorporating Comprehensive Sexuality Education in Sri Lanka: Navigating Religious and Cultural Normative Claims

Hirantha Imesh de Silva

Department of Law, University of Peradeniya, Sri Lanka.

Policy Paper

Abstract

Despite the scientific evidence, religious and cultural pressures often obstruct the incorporation of Comprehensive Sexuality Education (CSE) in Sri Lanka. From a legal perspective, this raises a conflict between the right to CSE and religious and cultural rights. This study evaluates how CSE could be incorporated as a legal right in Sri Lanka under the current human rights framework, while considering the cultural and religious rights that may be invoked to challenge it. The study aims to evaluate the human rights framework applicable to CSE and assess the feasibility of incorporating CSE as a legal right in Sri Lanka, so that it may be claimed against the State when challenged or restricted on various religious and cultural grounds. This is a qualitative doctrinal legal research study based on primary and secondary legal sources. The Constitution, fundamental rights cases in Sri Lanka, and international human rights conventions and judgments that explicitly/implicitly relate to the right to CSE were used, along with journal articles as secondary legal sources. It is evident that Sri Lanka has acceded to a series of international instruments that recognise the right to CSE. However, in the absence of enabling legislation, these instruments cannot be recognised as part of domestic law. The Fundamental Rights Chapter of the Constitution is silent on many socio-cultural rights, and although Article 27(2)(g) and Article 27(13) of the Directive Principles have significant implications, they remain unenforceable. The only way for a right to CSE to be incorporated is through judicial interpretations of the Right to Education and the Right to Life, with the latter being the relatively more robust pathway at present. For this, the interpretation of the Right to Life and Education should be broadened through the integration of Directive Principles and international conventions. On the other hand, this article posits that the religious rights in the Constitution cannot impede CSE, so long as the curriculum remains objective and pluralistic, without unduly burdening the right to the free exercise of religion. Therefore, it is concluded that the right to CSE can be incorporated into the existing human rights framework in Sri Lanka through the interpretation of the Right to Education and the Right to Life, properly accompanied by the international instruments to which Sri Lanka has acceded and the Directive Principles of State Policy. Despite all the positive evidence, only the formal incorporation of CSE as a right would protect it from normative challenges based on religious and cultural values.

Key Words: right to sex education, comprehensive sexuality education, human right to sex education, legal secularism, right to education

Introduction

Greeks such as Socrates considered knowledge to be virtuous. Knowledge encompasses all aspect of human life, and sex, as an integral part of life, has been studied with awe and sanctity since the beginning of civilizations. In Vedic theology, *Kama*, or the satiation of the sex drive, was considered one of the four goals of life [1]. Mead asserts that in tribal societies such as Samoa, children possessed extensive knowledge of the human body and its functions, including a detailed understanding of sex and autoerotic acts such as masturbation, acquired through the tribe's customary practices [2]. Sexology, the scientific and interdisciplinary study of human sexuality, was first coined as a term by Iwan Bloch in the early 20th century and later advanced through the influential research of Kingsley, Masters and Johnson, and other scholars [3]. Studies on lovemaking in the East predate the scientific inquiries of the West. Scriptures such as the *Kama Sutra* were not necessarily tainted by lust, but rather informed by knowledge [1]. The faith in *Ishta Devatha*, or demigods, also reflects a spiritual dimension of sex and conveys that cultural norms recognised sex as something to be learned, trained, and understood [1].

Despite its rich cultural history, sex and sexual education have now become taboo in many Eastern cultures, Sri Lanka being no exception [4]. The controversy and dissent surrounding *Hathe Ape Potha*, a supplementary reader on sexuality education, serve as a recent and prominent example of societal resistance (or resistance from powerful factions within society) toward sexual education [5]. The recent attempt by PM Amarasuriya to introduce age-appropriate sex education,

based on recommendations from the Health Ministry, the Family Health Bureau, and the National Child Protection Authority, was criticised by a high-ranking religious leader as an 'inappropriate sexual education initiative' [6]. Superficially, this may appear to be a clash between clergy and health authorities; yet for legal scholars, it is, at its core, a conflict between competing interests, a clash of rights.

Science alone cannot incorporate CSE, nor can it defend it against religious and cultural opposition. The path out of this labyrinth lies in establishing CSE as a legal right [7]. Only this approach guarantees the public a remedy when their right to CSE is violated by state actors, *ubi jus ibi remedium*. Hence, this article aims to evaluate the human rights framework relating to CSE and assess the feasibility of incorporating CSE as a legal right in Sri Lanka, while analysing the plausibility of religious and cultural challenges to CSE through a legal lens.

Accordingly, this article evaluates international human rights frameworks, the Fundamental Rights and Directive Principles of the Sri Lankan Constitution, and the relevant jurisprudence to assess the feasibility of incorporating such a right through existing legal structures. The findings suggest that, despite the absence of a direct right, judicial interpretations of Article 12 of the Constitution could be further extended to include the right to CSE. Moreover, the analysis could assist CSE lobbyists in understanding what changes may be required to the Fundamental Rights framework to provide CSE with rights-based protection. Subsequently, the potentially conflicting religious and cultural rights under the Sri Lankan Constitution with CSE are outlined and analysed. This analysis suggests that CSE could not, and

should not, be rejected on the basis of religious and cultural rights, whether from a positivistic or normative perspective.

Methods

This research adopts a qualitative, doctrinal methodology. While outlining the human rights framework, the study relies exclusively on primary legal sources such as the Constitution of Sri Lanka, selected Sri Lankan fundamental rights cases and Supreme Court determinations, and international conventions that explicitly or implicitly refer to sexuality education. These materials were screened for relevance and authenticity and obtained through the verified websites of the Parliament, the Supreme Court, and the UN. The analysis further draws on judicial decisions delivered specifically on sexuality education in jurisdictions such as the EU, the US, and India, as well as decisions of human rights courts such as the Inter-American Court of Human Rights. Furthermore, the study draws upon selected secondary legal sources to support and contextualise the research analysis. Peer-reviewed journal articles on the contemporary human rights framework of Sri Lanka were used to identify landmark cases and to analyse the legal framework.

International Human Rights Framework for CSE

CSE: An Intimate Companion to Human Rights

The sanitationist ideology, which gained momentum in the mid-nineteenth century, inter alia emphasised the importance of improving education and encouraging voluntary participation in public efforts to combat disease [8]. However, it was during the third wave of sexology in the

20th century, that modern approaches to sex education emerged. These approaches focused more on a preventive approach aimed at reducing unintended pregnancies and sexually transmitted diseases [3,9]. The contemporary approach to sexuality education as developed and promoted by the UN Educational, Scientific and Cultural Organization (UNESCO), and the UN Population Fund (UNFPA), is Comprehensive Sexuality Education (CSE). CSE is a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality [10].

Comprehensive Sexuality Education (CSE) is distinctive for two reasons: first, CSE is an evidence based approach, supported by extensive research; second, it represents the most comprehensive rights-based approach to sexuality education [11]. As the name suggests, this goes beyond the conventional understanding of sex education. It aims to equip children and youth with the knowledge, values, and practical skills needed to lead healthy, dignified lives, build respectful relationships, make thoughtful decisions, and safeguard their rights over time [11].

International Human Rights Framework

The WHO Constitution (1946), in its preamble, declares the highest attainable standard of health as a fundamental human right, emphasising that access to medical, psychological, and related knowledge is essential to the full realisation of this right [12]. Subsequently, when Article 26(2) of the Universal Declaration of Human Rights (1948) which states that “education shall be directed to the full development of the human personality and to the strengthening of respect for

human rights and fundamental freedoms" is read together with Article 25, which guarantees the right to a standard of living adequate for health, it may be argued that education should include knowledge of diverse aspects of sexuality, since such knowledge constitutes a component of the standard of living necessary for adequate health. The UNESCO Convention against Discrimination in Education (1960) also declares that "education shall be directed to the full development of the human personality."

In the International Covenant on Economic, Social and Cultural Rights (ICESCR) the basis for sexual education derives from the Right to the Highest Attainable Standard of Health (Article 12) and the Right to Education (Article 13) [13]. ICESCR General Comment No. 14 recognises access to health-related education and information, including sexual and reproductive health information, in interpreting the right to health [14]. The Committee on Economic, Social and Cultural Rights has further identified that a failure to "ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate, and comprehensive sexuality education into their required curricula" may amount to a violation of international obligations [15].

Article 10(h) of the Convention on the Elimination of All Forms of Discrimination Against Women (1979) is unique in international human rights law, as it is the only human rights treaty to expressly mention family planning [16]. It obligates States Parties to ensure that women have access to "specific educational information to help to ensure the health and well-being of families, including information and advice on family planning" [16]. Article 16(e) reinforces this by guaranteeing access to

the information and education required for women to exercise these rights. This includes information about contraceptive measures and their use, and access to sex education [17]. Furthermore, States Parties are recommended to prioritise the prevention of unwanted pregnancies and sexually transmitted diseases through family planning and sex education.[18] Taking a step further, Article 10(c) of CEDAW mandates the revision of educational aids and the elimination of gender stereotypes in the field of education.

The Convention on the Rights of the Child (1989) is a cornerstone of the human rights framework on sexuality education, as it establishes the child as an independent rights-holder. Article 24 obliges States Parties to ensure that children have access to information and education on, inter alia, "the advantages of breastfeeding, hygiene," etc. Article 17 guarantees the child's right "to access information and material from a diversity of...sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health" The CRC General Comment No. 4 places a duty on States Parties to provide young people with access to sexual and reproductive health information, covering contraception, family planning, the risks of early pregnancy, and the prevention and treatment of HIV/AIDS and other STDs [19]. Further, Article 29 (1) which focuses on education states that education must be directed to "the development of the child's personality... to their fullest potential". The CRC General Comment No. 1, which addresses the aims of education recommends that States Parties provide children with the life skills needed to make well-balanced decisions and maintain good social relationships [20]. Importantly, the Committee on the Rights of the Child has recommended that "CSE

should be part of the mandatory school curriculum and reach out-of-school adolescents" [21].

The International Conference on Population and Development (1994) had a monumental influence on the matters discussed above, serving as the pioneering forum that highlighted globally the importance of CSE. Paragraphs 4.29, 7.37, 7.41, and 7.47 of its report specifically deal with sexual education and urge States to provide sexuality education that supports adolescent well-being [22]. They stress that this education should start early, be age-appropriate, and take place both in schools and communities. The goal is to help young people make mature decisions and promote gender equality. They also call on governments and NGOs to cover key topics such as gender relations, violence, contraception, family life, responsible sexual behaviour, and STI/HIV prevention [22-23]. The United Nations Special Rapporteur on the Right to Education has also issued reports that directly frame sexuality education as a human right. These reports build on the need to provide CSE and critiques other approaches, such as abstinence-only education [24]. It is further acknowledged by the UNFPA Operational Guidance for Comprehensive Sexuality Education, states that "programmes which do not provide comprehensive and accurate information are not fulfilling young people's right to information" [25].

Domestic Application of International Human Rights Framework

Although the Sri Lankan State has signed, ratified, or acceded to the instruments discussed above, such rights remain unenforceable. This is because Sri Lanka, by convention, is a dualist country. A dualist country requires legislative action

to incorporate international treaties into its domestic law. In the Singarasa judgment, it was unequivocally stated that the ICCPR could not be directly enforced, as it had not been incorporated domestically through enabling legislation at that time [26].

Therefore, instruments such as the ICESCR remain unincorporated into Sri Lankan domestic law, while the partial domestication of treaties like the CRC and CEDAW through policy frameworks does not provide a robust legal foundation for safeguarding the right to CSE. Nonetheless, the relevance of these treaties to judicial interpretation is undeniable and will be discussed later in this article.

Navigating Through the Constitutional Silence on Sexuality Education in Sri Lanka

Blindness of 'The Fundamental Rights Chapter'

The above analysis on international human rights principles suggests that sexual education may be incorporated through broader rights such as the right to education, the right to a dignified life, the right to health, and the right to information. Of these, only the right to information is presently guaranteed as a fundamental right under the Sri Lankan Constitution; however, it generally remains framed as a civil and political right. This is evident when Article 14A of the Constitution is read together with the Preamble and Section 3(1) of the Right to Information Act, No. 12 of 2016, which stipulates that the right to information is framed as the citizen's right to access information in the possession, custody, or control of a public authority.

Hence, in the absence of socio-economic rights in the Fundamental Rights Chapter,

the Directive Principles of the Constitution should be analysed, as they provide a framework for recognising socio-economic rights.

Sterility of the 'Directive Principles of State Policy'

Article 27(1) of the Constitution declares that the Directive Principles of State Policy guide the Parliament and the Executive in the enactment of laws and the exercise of governance. Among other objectives such as the realisation of fundamental rights, the promotion of welfare, and the assurance of adequate living conditions and opportunities, Article 27 (2) pledges that the State is committed to the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels. Further, the State is duty-bound to raise the moral and cultural standards of the People and ensure the full development of the human personality [27].

When these articles are read together, the State's duty to provide CSE could be inferred, as CSE constitutes a major component of an individual's physical, social, and mental well-being. The correlation between CSE and the reduction of intimate partner violence, improved social learning, and enhanced emotional empathy is supported by extensive evidence and meta-analyses [28]. CSE is also identified as an effective strategy for reducing causal risk factors of sexual violence (1) sex, gender, and violence-related risk factors; (2) child abuse-related risk factors; (3) sexual behaviour-related risk factors; and (4) social-emotional intelligence-related risk factors and protecting children and youth from exploitation, thereby advancing the objectives of the pledged Directive

Principles [29]. This evidence suggests that CSE is a means of achieving the State's obligations under the Directive Principles, including the responsibility to promote with special care the interests of children and youth, ensure their full development, and protect them from exploitation. The rights-based approach of CSE could further guide the State towards realising the just and free society envisioned in Article 27(1).

Vladimir Lenin famously observed that "theory without practice is sterile, and practice without theory is blind." Likewise, the effectiveness of the Directive Principles is limited by Article 29 of the Constitution, which expressly stipulates that the Directive Principles "do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal." Nonetheless, they have played a crucial role in constitutional interpretation. The courts have found a beacon of hope in the Directive Principles of State Policy, which, in combination with the Bill of Rights, constitute the conscience of the Constitution [30].

Judicial Expansion of Fundamental Rights

In a context where relevant international instruments remain unincorporated, the Constitution is largely silent on socio-economic rights, and the Directive Principles are unenforceable, the Supreme Court has broadly interpreted the existing fundamental rights so as to encompass, *inter alia* the rights to health, life, and education. Is there sufficient room within these interpretations for the journey towards establishing CSE as a right to be undertaken or must we instead proceed along the road illuminated by international conventions and the Directive Principles of State Policy?

Although the country maintains a free healthcare policy, the recognition of the right to health remains limited [7,31]. Only a passing reference made while analysing a matter concerning civil and political rights can be found in cases such as *Gerald Mervin Perera v. Officer-in-Charge, Police Station Wattala*, which briefly refers to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) [31].

On the contrary, the right to education has been incorporated unambiguously. As Bandaranayake J. held in *Kavirathne v. Pushpakumara*, "by way of application of Article 12(1) of the Constitution, the Supreme Court, from time to time, has upheld the right to education" [32]. This makes clear that any claim for CSE should be grounded in this precedent, and one may fairly opine that the path towards establishing the right to CSE has already been paved. Yet, an understanding of the said right may also suggest that the road ahead is neither a bed of roses nor a pleasure cruise.

The judiciary's approach to incorporating the right to education has consistently been a merger of Article 12(1) which states the fundamental right that "all persons are equal before the law and are entitled to the equal protection of the law" and Article 27(2)(h) of the Directive Principles, which emphasises the complete eradication of illiteracy and the assurance of universal and equal access to education at all levels [32]. This approach has effectively narrowed the broader right to education to a guarantee of equal access to education [33]. *Accessibility* constitutes only one element within the 4-As framework of the right to education, which also encompasses availability, acceptability, and adaptability [34]. The fulfilment of all human rights through education is fundamentally anchored in

adaptability [34]. The current judicial recognition of the right to education does not explicitly guarantee this dimension. However, the observation of the Supreme Court in its determination on the *Holidays (Amendment) Bill* that "any attempt to undermine the overall objective of education by limiting, restricting, or attaching undue prominence to textbook-related or school-curricular exam-oriented education will erode the Right to Education" may be a harbinger of future developments [35].

Until then, any claim based on the right to education should be reinforced by three approaches: (1) invoking the international obligations to which Sri Lanka has acceded; (2) interpreting the right to education in conjunction with Article 27(13) of the Directive Principles, thereby directing education towards the interests of children and youth, ensuring their full physical, mental, moral, religious, and social development, and protecting them from exploitation and discrimination; and (3) linking the right to education with the right to life.

Since the days of *Sriyani Silva v. Iddamalgoda*, the Courts have declared that Article 13(4) of the Constitution encompasses the right to life [36]. The contemporary approach, as pronounced by Thuraiajah J. in *Tharanga Lakmali v. Niroshan Abeykoon*, is relatively broad. According to Thuraiajah J., although "the Fundamental Rights Chapter in our Constitution does not expressly refer to a right to life, constitutional interpretation should be informed by the values embodied in it." The Preamble (Svasti) of the Constitution recognises the dignity and well-being of the People as fundamental values that should be furthered by assuring to all People freedom, equality, justice, and fundamental human rights" [37]. Thus,

the Court considered that the right to life furthers these fundamental values [37].

This approach serves as an invitation to revisit the right to life through values such as well-being and a dignified life, thereby potentially imposing a burden on the State to provide CSE. In simple terms, would not the curriculum-based process of teaching and learning about the cognitive, emotional, physical, and social dimensions of sexuality be essential to the full development of an individual, which ultimately contributes to a dignified life? The vast body of literature from biology, psychology, sociology, pedagogy, and related disciplines scientifically demonstrating the necessity of CSE, provides evidence of the correlation between a dignified life and CSE.

The Way Forward

So far, we have discussed the avenues available to a claimant seeking to establish the right to CSE. Despite their individual shortcomings, the collective strength of international human rights instruments, Fundamental Rights, Directive Principles, and judicial interpretations should not be undermined or overlooked. Thus, in the quest for a rights-based claim to CSE, the primary legal sources of the claim should be the right to education and the right to life. The supporting sources should be the international human rights standards and Directive Principles discussed above, along with the scientific evidence in support of CSE.

Legal Hurdles Along the Way

When the *Hathe Ape Potha* project was initiated, a few Buddhist monks vehemently criticised it, claiming that it would promote masturbation. These are common myths that have been scientifically debunked [38].

The burden on legal scholars, however, is to assess the legal hurdles that might arise along the way and examine potential challenges to the establishment of a right to CSE.

A believer in positive science may question whether objective grounds exist to challenge sex education. However, normative grounds found in Articles 9, 10, 14(1)(e), and 27(2)(g) of the Sri Lankan Constitution may potentially conflict with CSE. The above hindrances were identified through the Supreme Court's determination on the Gender Equality Bill (2024), together with foreign judgments, including *Lemon v. Kurtzman* (1971), *Wisconsin v. Yoder* (1972), and *Mahmoud v. Taylor* (2025), where religious and cultural claims were advanced against sex education and sexuality education [39].

Health is the Ultimate Profit (Arōgyā Paramā Lābhā)

Article 9 of the Constitution states: "the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)." The possibility of raising Article 9 and other religious rights to curtail CSE can be challenged as follows:

On the one hand, the objective of embedding such an Article was not necessarily to render State policies non-secular, but rather to safeguard against the neglect of Buddhism, as had occurred during the colonial era. This historical context is discussed *In the Matter of an Application by Rev. Sumana Thero to be Admitted and Enrolled as an Attorney-at-Law* [40]. The courts have further noted that granting foremost recognition to one religion does not necessarily render a

constitution non-secular [41]. The secular nature of the State has been affirmed in cases such as *Ghouse v. Ghouse* and *Ashik v. Bandula* [42,43]. Thus, evidence based and secular education, which fosters various goals of a free democratic society, cannot be arbitrarily curtailed by Article 9. On the other hand, Buddhism emphasises the supreme importance of health, a prime example being verse 204 of the Dhammapada, which states: "Health is the greatest profit" (Arōgyā paramā lābhā). Accordingly, CSE does not neglect or undermine the principles of Buddhism but, in fact, can support them.

Dialogues Concerning the Two C's: Culture and CSE

Contentiously, further arguments may be raised that CSE conflicts with the cultural and moral values of the country. These arguments are not without legal support. For instance, the Sri Lankan Supreme Court, citing *inter alia* Article 27(2)(g), which obliges the state to "raise the moral and cultural standards of the People and ensure the full development of the human personality," has held that same-sex marriages would bear significant cultural and moral implications for the existing moral fabric of Sri Lankan society [44].

The soundness of the claim that the right to CSE conflicts with the cultural standards of Sri Lanka is questionable, as CSE is both scientific and culturally adaptable. This becomes evident when the principles of CSE, as codified in the United Nations' *International Technical Guidance on Sexuality Education*, are analysed [45]. According to the Guidelines for a programme to be considered truly 'comprehensive,' it must be scientifically accurate, incremental, and age and developmentally appropriate, curriculum-based and cover a wide range

of topics, while also being grounded in a human rights approach and committed to gender equality [45]. Moreover, CSE must be culturally relevant and contextually appropriate, transformative aim to challenge harmful social norms, and cultivate essential life skills such as critical thinking, communication, and negotiation [45].

A consequentialist may also question whether a body of knowledge designed to reduce the risks of STDs, adolescent pregnancies, and sexual harassment could genuinely erode the moral fabric of society [7,28,29]. This approach is evident in *Guzmán Albarracín v. Ecuador*, decided by the Inter-American Court of Human Rights, where the Court identified that the absence of sexual education deprives children of 'an adequate understanding of the implications of sexual and emotional relationships,' thereby rendering them vulnerable to sexual harassment [46].

These reasons have prompted countries with strong cultural identities and rich cultural heritages to adopt CSE, with recent examples emerging across the Palk Strait. The position of the Indian Supreme Court is clear and unequivocal: 'Sex education should be provided to children from a younger age and not from Class IX onwards. It is for the authorities concerned to apply their mind and take corrective measures, so that children are informed of the changes that happen after puberty and the care and cautions to be taken in relation thereto' [47].

Battle Inside the Chalk Circle

The final focus is to examine the potential conflict between the individual right to religion and the right to CSE. Article 10 of the Sri Lankan Constitution provides that 'every person is entitled to freedom of thought, conscience and religion, including

the freedom to have or to adopt a religion or belief of his choice.' Further, Article 14(1) guarantees that 'every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.' These constitutional protections may give rise to two potential points of conflict with CSE: (1) individual religious rights may be invoked to challenge the incorporation of CSE, and (2) parents may seek to assert a right to withdraw their children out of such instruction.

When religious beliefs conflict with scientific findings, the latter does not gain legal supremacy merely by virtue of their scientific basis or epistemological authority. This position is evident in *Premalal Perera v. Weerasuriya*, where Ranasinghe J. observed that "beliefs rooted in religion are protected, and a religious belief need not be logical, acceptable, consistent, or comprehensible in order to be protected" [48]. The Court further held that a regulation which is "unduly burdensome" on the exercise of religion would be struck down [48]. Judicial involvement in clashes between educational curricula and religious beliefs is not novel to the field of law. When the State of Arkansas made it a crime to teach evolution in public schools, the U.S. Supreme Court invoked the Establishment Clause of the First Amendment, holding that the Clause requires governmental neutrality both among religions and between religion and non-religion [49]. Article 10 of the Sri Lankan Constitution likewise reflects a commitment to such neutrality, as it refers to freedom of thought and conscience; and in a free society, multiplicity of opinions is an inevitability. As Thilakawardane J. observed, "a truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs

and codes of conduct." [48] This view of Thilakawardane J. resonates with the Svasti and Article 27(1) of the Constitution, which stipulate an unwavering commitment to the establishment of a just and free society [50]. Thus, my observations are that CSE should not be struck down by invoking religious rights for two reasons: (1) CSE is not burdensome on the exercise of religious rights; and (2) a free society should embrace multiplicity and scientificity in order to advance its true democratic values.

The subsequent legal issue concerning the parental right to opt their children out of CSE is intricate and remains without consensus. Recently, the U.S. Supreme Court in *Mahmoud v. Taylor*, upheld parents' right to opt their children out of LGBTQI+-inclusive instruction, ruling that the rescission of an opt-out policy violated the free exercise of religion [51]. Even the UDHR under Article 26(3) recognises the right to education, while also recognising the prior right of parents to choose the kind of education to be given to their children. However, authors such as Packer argue that this right is not absolute, but rather subject to the best interests of the child [52]. The European Commission of Human Rights, in *Hendriks v. The Netherlands* upheld this view and stated that the best interests of the child should prevail over parental choices [53]. A similar issue arose in *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (1976), where a group of parents argued that compulsory sex education infringed their right to ensure that their children received an education in accordance with their religious and philosophical convictions. In response, the Court emphasised that education must promote pluralism and tolerance, not indoctrination. Provided that the State's instruction remained objective and pluralistic, and parents retained the freedom to impart their own

beliefs, compulsory sex education was not considered inconsistent with the Convention [54].

The child, therefore, stands at the centre of the chalk circle of a dignified life, while the biological parents and the State, both bearing responsibilities towards the child's education, pull from opposing sides. The question is not simply who has the stronger claim, but who ultimately serves the best interests of the child. Like Azdak in Brecht's *The Caucasian Chalk Circle*, the challenge is to determine which claim should prevail when the competing interests of adults must yield to the welfare of the child.

Conclusion

Following a comprehensive study of international instruments, constitutional rights and duties, and judicial extensions to existing fundamental rights, this study asserts the feasibility of incorporating a right to CSE through an expanded judicial interpretation of the right to education and the right to life, supplemented by the Directive Principles of State Policy and the international conventions to which Sri Lanka has acceded. Provided the curriculum remains objective and pluralistic, the likelihood of challenging CSE on the grounds that it infringes religious rights are limited. However, it is only by recognising CSE as a right that its implementation can be protected from challenges based on religious and cultural normative claims.

Incorporating CSE as a right, however, is only the tip of the iceberg. The ultimate conflict before us resembles that faced by Copernicus and Galileo during the Renaissance, the imperative to change established paradigms. Russell, as early as 1926, set out two rules in answering

questions on sex: namely, to be truthful and to regard sexual-knowledge as exactly like any other form of knowledge. The identification of CSE as a right is thus not merely a commitment to justice; it is equally a commitment to truth. Moreover, judicial intervention even in the form of a lone dissenting judgment when the majority submits to dogma, would mark a significant step towards normalising CSE as knowledge like any other form of knowledge.

Ethical Approval Statement

This study is doctrinal in nature and does not involve human participants or personal data.

Author Contribution Statement

All research, analysis, and writing were undertaken independently by the author.

Acknowledgement

The author wishes to thank Ms. Nishamini Ruth for assistance with proofreading.

External Funding Statement

This research did not receive any external funding.

Conflict of Interests

The authors declare no conflict of interests.

Data Availability Statement

This study is doctrinal in nature and relies exclusively on primary and secondary legal sources. No datasets were generated or analysed during the course of this research.

Statement on the Use of AI

Artificial intelligence tools were used solely to support brainstorming and idea generation. All analysis, interpretation, and writing were conducted by the author, who retains full responsibility for the content of the article.

Disclaimer

The views and interpretations expressed herein are those of the author alone and do not necessarily reflect the positions of any institution. Any errors or omissions remain the sole responsibility of the author.

References

1. Banerji R. Sex and Power. Penguin Books Ltd; 2008.
2. Mead M. Coming of Age in Samoa. William Morrow & Company; 1973. 136 p.
3. Coleman E, Ford JV. A brief history of sexology and lessons learned. J Sex Med. 2024 Oct 1;21(10):835–8. doi:10.1093/jsxmed/qdae081 PubMed PMID: 39350660; PubMed Central PMCID: PMC11442977.
4. Joseph JT. Comprehensive Sexuality Education in The Indian Context: Challenges and Opportunities. Indian J Psychol Med. 2023 May;45(3):292–6. doi:10.1177/02537176221139566 PubMed PMID: 37152376; PubMed Central PMCID: PMC10159571.
5. De Silva N. EconomyNext [Internet]. 2020 [cited 2025 Nov 5]. 'Hathe Ape Potha' was product of much effort and research, says author. Available from: <https://economynext.com/hathe-ape-potha-was-product-of-much-effort-and-research-says-author-48132>
6. PM Amarasuriya says age-appropriate sex education in the offing - Breaking News | Daily Mirror [Internet]. 2025 Nov [cited 2025 Nov 11]. Available from: <https://www.dailymirror.lk/breaking-news/PM-Amarasuriya-says-age-appropriate-sex-education-in-the-offing/108-324553>
7. Manuratne PM. Education and Human Rights. In: Sri Lanka : State of Human Rights 2018-2020. Law and Society Trust; 2023.
8. Witt JF. American Contagions: Epidemics and the Law from Smallpox to COVID-19. Yale University Press; 2020.
9. Rufo K. Public Policy vs. Parent Policy: States Battle Over Whether Public Schools Can Provide Condoms to Minors Without Parental Consent. NYLS Journal of Human Rights. 1997 Apr 1;13(3):95-130
10. UNESCO; Joint United Nations Programme on HIV/AIDS; United Nations Population Fund; United Nations Children's Fund; United Nations Entity for Gender Equality and the Empowerment of Women; World Health Organization. International technical guidance on sexuality education: an evidence-informed approach. Paris: UNESCO; 2018. 144 p.
11. Daly AC, Heah R. Mandatory Relationships and Sex Education (RSE) in England—Educators' Views on Children's Rights. Youth. 2023 Sep;3(3):1013–29. doi:10.3390/youth3030065
12. World Health Organization. Constitution of the World Health Organization. Geneva: World Health Organization; 1946.
13. United Nations General Assembly. International Covenant on Economic, Social and Cultural Rights. New York: United Nations; 1966 Dec. p. 3. Report United Nations, Treaty Series, vol. 993.

14. United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 14: The right to the highest attainable standard of health (Art. 12). Geneva: United Nations; 2000 Aug. 21 p. Report No.: E/C.12/2000/4.
15. United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 22 (2016) on the right to sexual and reproductive health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights). Geneva: United Nations; 2016. 23 p. Report No.: E/C.12/GC/22.
16. Shalev C. Rights to Sexual and Reproductive Health: The ICPD and The Convention on the Elimination of All Forms of Discrimination Against Women. *Health Hum Rights*. 2000;4(2):38–66. PMID: 10796970.
17. United Nations Committee on the Elimination of Discrimination against Women. General Recommendation No. 21: Equality in marriage and family relations. New York: United Nations; 1994. (Report of the Committee on the Elimination of Discrimination against Women, Thirteenth Session). Report A/49/38.
18. United Nations Committee on the Elimination of Discrimination against Women. General Recommendation No. 24: Article 12 of the Convention (Women and health). New York: United Nations; 1999 p. 8. Report A/54/38/Rev.1.
19. United Nations Committee on the Rights of the Child. General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child. Geneva: United Nations; 2003 Jul. Report CRC/GC/2003/4.
20. United Nations Committee on the Rights of the Child. General Comment No. 1 (2001): The aims of education (Art. 29 (1)). Geneva: United Nations; 2001 Apr. Report CRC/GC/2001/1.
21. United Nations Committee on the Rights of the Child. General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence. Geneva: United Nations; 2016. 21 p. Report No.: CRC/C/GC/20.
22. International Conference on Population and Development. Programme of Action adopted at the International Conference on Population and Development, Cairo, 5–13 September 1994. 20th Anniversary Edition. New York: United Nations Population Fund; 2014. p. 282.
23. European Expert Group on Sexuality Education. Sexuality education – what is it? *Sex Education*. 2016 Jul 3;16(4):427–31. doi:10.1080/14681811.2015.1100599
24. United Nations General Assembly. Report of the Special Rapporteur on the right to education, Vernor Muñoz. New York: United Nations; 2010 Jul. Report A/65/162.
25. United Nations Population Fund. Operational guidance for comprehensive sexuality education: A focus on human rights and gender. New York: UNFPA; 2014. 72 p.
26. *Singarasa v. Attorney General* (2013) 1 SLR 245
27. Article 27 (2) (g) of the Constitution of the Democratic Socialist Republic of Sri Lanka.
28. Goldfarb ES, Lieberman LD. Three Decades of Research: The Case for Comprehensive Sex Education. *Journal of Adolescent Health*. 2021 Jan 1;68(1):13–27. doi:10.1016/j.jadohealth.2020.07.036
29. Schneider M, Hirsch JS. Comprehensive Sexuality Education as a Primary Prevention Strategy for Sexual Violence Perpetration. *Trauma, Violence, & Abuse*. 2020 Jul 1;21(3):439–55. doi:10.1177/1524838018772855
30. *Minerva Mills Ltd. and Ors. v. Union Of India and Ors* (1980) 3 SCC 625.

31. *Gerald Mervin Perera v. Officer-in-Charge, Police Station Wattala* (2003) 1 SLR 37
32. *Visal Bhashitha Kavirathne and Others v. W.M.N.J. Pushpakumara and Others* SC FR No: 29/2012
33. De Silva HI. Right to education in Sri Lanka: Constitutional blindness and judicial blind alleys [Internet]. 2024 Dec 19 [cited 2025 Dec 2]. Available from: <https://ir.lib.pdn.ac.lk/handle/20.500.14444/4928>
34. Tomasevski K. *Education Denied: Costs and Remedies*. Zed Books; 2003. 228 p.
35. *Holidays (Amendment Bill)* [SC (SD) 67/2019]
36. *Sriyani Silva v. Iddamalgoda and Others* (2003) 2 SLR 063
37. *Rathnayake Tharanga Lakmali v. Niroshan Abeykoon, Inspector of Police, Officer-in-Charge, Crime Branch, Embilipitiya Police Station and Others* (2019) 3 SLR 562
38. United Nations Population Fund. 10 myths – and truths – about comprehensive sexuality education [Internet]. New York: UNFPA; 2026 Jun 16 [cited 2026 Aug 18]. Available from: <https://www.unfpa.org/stories/10-myths-%E2%80%93-and-truths-%E2%80%93-about-comprehensive-sexuality-education#>
39. *Lemon v. Kurtzman*, 403 U.S. 602 (1971) & *Wisconsin v. Yoder*, 406 U.S. 205 (1972)
40. *In the Matter of an Application by Rev. Sumana Thero to be Admitted and Enrolled as an Attorney-at-Law* (2005) 3 Sri LR 365
41. Supreme Court Determination on “Ayurveda (Amendment)” Bill SC (SD) Nos. 22-24/2023, 34-35/2023, 52/2023, 55/2023, and 57/2023
42. *Azhar Ghouse v. Mohamed Ghouse* (1986)1 SLR 48
43. *Ashik v. Bandula and Others (Noise Pollution Case)* (2007) 1 SLR 191.
44. Supreme Court Determination on “Gender Equality” Bill. 2024 SC SD Nos: 54/2024, 55/2024
45. UNESCO. International technical guidance on sexuality education: an evidence-informed approach [Internet]. Paris: UNESCO; 2018 [cited 2026 Aug 18]. Available from: <http://healtheducationresources.unesco.org/library/documents/international-technical-guidance-sexuality-education-evidence-informed-approach-0>
46. *Guzmán Albarracín et al. v. Ecuador* (2020) Series C No. 4052020.
47. *Santosh Rai. X Juvenile vs State Of U.P. And 3 Others* 2025:AHC:176565
48. *Premalal Perera v. Weerasuriya* (1985) 2 SLR 177
49. *Epperson v. Arkansas* 393 US 97 (1968)
50. Nineteenth Amendment to the Constitution Bill. (Decisions of the Supreme Court on Parliamentary Bills (2004-2006)). Report No.: Volume VIII.
51. *Mahmoud v. Taylor* (2025) is 606 U.S. 52
52. Packer C. Sex Education: Child's Right, Parent's Choice or State's Obligation?. In: Heinze E, editor. *Of Innocence and Autonomy*. Ashgate : Dartmouth; 2000. p. 163 178.
53. European Commission of Human Rights. *Hendriks v. The Netherlands*, Application no. 8427/78, Report adopted 8 March 1982. Strasbourg: Council of Europe; 1982.
54. *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (1976) 1 EHRR 711