

Legal Contradiction on Abortion in Thailand

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1. Reproductive rights as opposed to male dominion of women's sexuality: Criminal law on rape

Thailand's current abortion law became effective in 1956. Article 305 of the Criminal Code of Thailand stipulates that abortion is illegal except committed by a medical practitioner and is considered necessary only if it will endanger the woman's health or when the pregnancy is due to a sexual offense such as rape or incest. A woman is also to be criminalized if she allows someone to illegally perform an abortion on her.

The debate over legal reform started in 1973. A reform bill was passed in 1981 in the House of Representatives but defeated in the Senate in 1983, primarily due to the lobbying efforts of the leader of a broad-based religious coalition, who has been central in the anti-reform movement since then. The various governments that followed have not taken up the efforts for legislative reform on the issue.

Consequently, abortion remains a politically sensitive issue, sensationalized in the press to counter reform efforts. A new advocacy network has recently been formed, including a range of women's organizations, public health advocates, academics and journalists. Current proposals from governmental and medical profession bodies may make abortions available to some women, but most, who seek abortions due to socio-economic and family planning reasons, will continue to have to find abortions by whatever means they can.² Many couples, for example, now feel that a large family size is an

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Whittaker A., "The struggle for abortion law reform in Thailand". *Reproductive Health Matters*. 2002 May;10(19):45-53.

unnecessary burden that interferes with the parents’ more immediate problem of raising and educating their children.³ It can also happen that a marriage can not take place because either party’s family opposes to it. Some female politicians, concerned that their popularity will decrease if they are no longer single or have children to take care of, may be pressured to have an abortion.

The women’s movement on reproductive rights in Thailand had first introduced the concept of ‘termination of unwanted pregnancy’ for ‘abortion’ in the 1990’s. It was gradually accepted among human rights groups and so understood. Nonetheless, the public was not yet ready to grasp the concept behind it and still debate negatively on morality and religious ground of ‘thou shall not kill.’ Thereafter, the reproductive rights movement has begun to give a new interpretation to the term ‘abortion’ as a termination of unprepared pregnancy. The new interpretation explains how a woman is not ready to continue with pregnancy or society is not willing to welcome the baby. It will do harm rather than good to the woman and/or the baby to be born if the pregnancy is forced to continue.

The rigidity of the laws seems to address a male-dominated societal attitude, which has criminalized women despite deprivation of their liberty and violations of their human rights. And, it has brought pain and shame to a great number of women who have been forced to undertake clandestine abortions, which are often unsafe. These abortion procedures often result in feelings of shame, humiliation, and fears of death or sterility. We see the pictures of women at raided abortion clinics covering their faces with shame in the television and newspaper dailies while the reactions of male partners and male medical doctors with significant roles in inducing abortions are not portrayed.

³ Yoddumnern-Attig, Bencha, Kerry Richter, Amara Soonthornhdada, Chanya Sethaput and Anthony Pramualratana. *Changing Roles and Statuses of Women in Thailand: A Documentary Assessment*. Bangkok: Institute for Population and Social Research, Mahidol University, 1992.

As marital rape is not recognized in the Criminal Code currently, a man commits rape only if he does it to another woman who is not his wife. Thus a wife who is raped by her husband and gets pregnant will not be protected under the law. Should she wish to undertake an abortion, she will be criminalized. This provision has been under attack by the women's movement and is now being revised to protect all who are raped, be they women or men.

In 1993, the Ministry of Public Health estimated that as many as 80,000 illegal abortions were performed in that year alone.⁴

Some of the causes of abortion include contraceptive failure and discontinuance of birth-control pills. Hospital reports show that of all abortions in Thailand, only 7-8% are legal. Among the factors contributing to the rise in the number of illegal abortions are the country's national development plans to reduce population growth and rapid modernization which has resulted in the decision of families to reduce the size of their families in order to cope with higher expenditures resulting from consumerism above all else.

The issue of connections between judgments on abortion and the conditions of male domination and subordination of women have not been sufficiently discussed. Thus the public has not been convinced that women who seek abortions are actually victimized by the laws and social values while their reproductive rights are violated. Conservative religious lobbies have blocked attempts to amend the laws, which were actually passed by the House of Representatives and dropped by the Senate. Furthermore, family planning programs either initiated by governmental or non-governmental organizations have all along targeted women, despite the higher cost and more complex procedure of sterilizing women. It is only quite recently that certain

4. Ratanakul, Pinit, "Abortion among Buddhists in Thailand" in Keown, Damien, *Buddhism and Abortion*. London: Macmillan, 1998

campaigns have promoted men’s responsibility for contraception and vasectomies.⁵

When making the decision to terminate their pregnancy, the women subsequently experienced mixed emotions. A study shows⁶ that 64% were worried, 55% were fearful of exposure, and 36% were afraid of the ensuing bad *karma*. For a small proportion of respondents (18%), these feelings made them sleepless and they experienced loss of appetite. Immediately before the procedure, many women suffered from anxiety relating to the fear of pain and death; others worried about increased vulnerability to illness, while a small minority (9%) believed they might become infertile.

The movement to amend the laws is to broaden the exceptions, especially in the case of the fetus’ infirmity or AIDS/HIV infection, or the failure of contraceptive devices. Also, the interpretation of health as only physical, while excluding mental health, is totally incorrect and narrow-minded. The meaning of health needs to be that if pregnancy endangers mental or physical health of a woman, she can seek for an abortion of such pregnancy. Yet, the false campaign against the abortion law reform paints it as an endeavor from the free sex group or ‘loose women’ who want to enjoy sexual freedom without having to be concerned about pregnancy since there will be a legal unrestricted right to abortion. They will thus not have to be worried about any ‘sexual misconduct.’

2. Liberalism in law: The Civil and Commercial Code of Thailand

Virada Somswasdi, **With Hindsight, Heading Forward: Integrative Thai Feminist Standpoint**, Chiangmai: Wanida Press, 2006. p. 210.

Malee Lerdmaleewong and Caroline Francis, **Abortion in Thailand: a Feminist Perspective**, Mahidol University, Bangkok, Thailand

Anti-abortion advocates have structured the debate so that the fetus is accorded the same value as other human beings (and hence entitled not to be killed), while many defenders of abortion, in contrast, have argued that the fetus is without intrinsic value⁷ and that fetuses do not have any independent existence without the support of a specific other.

Here, I argue with the legal account of the Civil and Commercial Code contradicting the Criminal Code on the offense of rape that punishes not only procurers of abortion but also the woman whom allows others to do it on her.

The Civil and Commercial Code of Thailand Article 15 reads:

*“Personality begins with the full completion of birth as a living child and ends with death.
A child en ventre sa mere is capable of rights provided that it is thereafter born alive”*

The above article of the Civil and Commercial Code signifies that legal recognition for a person starts only when one is born alive and completion of birth takes place.

An exception shown in the second paragraph of Article 15 may lead to a misunderstanding that the law allows a fetus to rights before its birth. However, the critical element here is on being born alive and thus rights can be claimed for the time starting after conception.

According to the Civil and Commercial Code, the fetus while in its mother's womb is not yet considered as having any legal rights as a person. It does not hold any legal status as being a person. Consequently, it is not a person as yet. The exception to this clause is only when the fetus is born alive and rights to be bestowed will be

Sherwin, Susan. "Abortion Through a Feminist Lens." In Baylis et al eds., *Health Care Ethics in Canada*. Toronto: Harcourt Brace and Company, 1995.

commenced since its conception in the mother's. The fetus is thus a part of the women's body and not before birth is it a separate personality from that of the mother. The rights given are retrospective when it is born alive not as a personality but a fetus conceived at that point in time will benefit at its birth later on. The crucial following clause gives light to an infant's rights to inheritance if it was born alive within 310 days after death of the testator. The 310-day requirement for a fetus is derived from medical account for the longest period of conception in the mother's womb.

3. Feminists on abortion

After the above-mentioned legal points, we should also bring in the discussion of pregnancy as often the result of women's subordination. The material and emotional costs of pregnancy are so unfairly distributed, falling heavily and disproportionately on women's shoulders.⁸

Hence, feminist discussions of abortion "must be moved beyond the framework of a 'woman's right to choose', 'basic and inalienable right to limit her reproduction', and connected to a much broader revolutionary movement that addresses all of the conditions of women's liberation"⁹.

First, it has to be seen as ¹⁰ "the most visible manifestation of a healthcare system that is 'anti-women' in the way the system limits women's access to, and legal rights to, abortion.

Second, abortion controls are part of the ideology of sexuality in capitalist patriarchy.

Dworkin, Ronald. **Life's Dominion: An Argument about Abortion, Euthanasia and Individual Freedom**. New York: Vintage Books, 1993.

Petchesky, Rosalind. "Reproductive Freedom: Beyond A Woman's Right to Choose." In Catherine R. Stimpson and Ethel Spector. *Person, Women: Sex and Sexuality*. Chicago: University of Chicago Press, 1980.

¹⁰ Maggie Humm, **The Dictionary of Feminist Theory**, Ohio State University Press, 1990.

Third, the abortion issue is part of a political battle over women’s liberation because the curtailment of abortion rights is the main aim of both the American and British new right anti-feminist campaigns.

Fourth, feminists understand that anti-feminist and some feminist arguments about abortion are very Euro (religious) centric. For example, in Brahmin scriptures, abortion is possible until the fifth month. Also, the legal and extra-legal coercion regulating abortion are part of the institutionalizing of motherhood.”

In sum, I would like to support the argument that “women’s control over the termination of pregnancy is central to the future of women.”¹¹ Women will then be able to make their own decisions on how to continue living in the world and in what capacity they are to exist as human beings.

¹¹ Ibid.