



## Legal Abortion: A Comparative Study Between Thai Laws and Other Nations in the Context of Immorality and Solving Social Problem

Khruawan Intharasuk\*

Kritsadakon Yoongthong\*

Annalin Kamolnanthakit\*\*

Nat Narinth\*\*

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### ABSTRACT

This research conducts a comparative examination of Thai law with foreign laws regarding legal abortion, focusing on the concepts of morality and Solving Social Problem. The study has two main objectives: (1) to study and analyze the criteria and conditions for abortion according to criminal law in Thailand and abroad, and (2) to study and analyze the impact of legal abortion according to the newly revised Criminal Code on the ideas of immorality and solving social problems. This qualitative research employs documentary analysis, examining both Thai and English texts, including the Thai Criminal Law, foreign laws, textbooks, law books, articles, journals, research reports, Supreme Court verdicts, internet sources, and other relevant information. The findings indicate significant differences in the criteria and conditions for abortion between Thai and foreign criminal laws, particularly regarding gestational age and the health condition of the mother and fetus. Despite the revised Criminal Code allowing abortion within 12 weeks of pregnancy, it is still considered an immoral offense under Thai law. However, to address social problems, the law permits abortions within 12 weeks of pregnancy and includes additional exceptions for safe and legal abortions, considering both moral and social dimensions.

**Keywords :** Abortion / Legal Abortion / Morality / Social Problem

\*Lecturer in Faculty of Humanities and Social Sciences, Rajabhat Phetchabun University

(Corresponding Author) e-mail: khruawan.int@pcru.ac.th

\*\*Lecturer in Faculty of Humanities and Social Sciences, Rajabhat Chiang Mai University

## Introduction

Protecting the life of the fetus is consistent with a moral perspective because legalizing or decriminalizing abortion is based on merit and legal intent, which acknowledges the importance and value of human life that has not yet been born. "Induced abortion" refers to the intentional termination of a pregnancy through medical or surgical means. This topic is sensitive to the idea of immorality and solving social problems. However, since a pregnant woman's rights come before those of the fetus, criminalizing a woman who gets an abortion could lead to unfair treatment of women and the denial or restriction of their rights to their bodies (Suphawattanakul, 2017). This is because every person has the fundamental right to human dignity, which guarantees them freedoms and rights in both their life and body.

This principle aligns with the ruling of the Constitutional Court No. 4/2020 of Thailand, which declares that the offense under Section 301 of the Criminal Code, for a woman to induce her miscarriage or to enable another person to cause her miscarriage, contradicts Section 28 of the Constitution of the Kingdom of Thailand. Section 28 states that "every person shall have the right and freedom of life and body, arrest and detention of persons shall not be carried out, except by order or warrant of a court or on other grounds as provided by law, searching a person or any action affecting the right or freedom of life or body shall not be permitted, except on grounds provided by law, torture and cruelty or punishment by cruel or inhumane means shall not be permitted." This section appears to be in conflict with or contradict the Constitution of the Kingdom of Thailand (Buala, 2020).

The Thai criminal code previously allowed for the offense to be exempted if the abortion was performed by a doctor and the pregnancy had an impact on the woman's health or was the result of a rape offense. However, an amendment has recently been made that permits women to have an abortion even in situations where the pregnancy has no negative effects on the woman's health or was not the result of a criminal offense.

This is important to keep in mind because safeguarding the rights of pregnant women and fetuses is the cornerstone of society. Improving the abortion legislation to reflect the current environment, abortion can be performed for a variety of reasons. These reasons include being pregnant while a schoolgirl, having many children, being in financial hardship, having an irresponsible father, or having a fetus with incomplete organs. All of these situations have an impact on society as a whole in addition to the child's family (Kasemsarn, 2008).

A newborn with partial organs or without limbs or legs may be affected in numerous ways. For example, what effect will this have on the youngster as he gets older? Additionally, what impact will a large family have on the economy and society? Nonetheless, there are still widely held and seemingly incompatible beliefs that certain types of abortions are immoral.

Due to the significance and nature of the issue, the researcher is interested in and aware of the need to investigate and analyze the recently changed criminal code regulating abortion, including international laws concerning the issue. Even though the law permits women to have abortions under certain conditions, the safety of the fetus and the mother's body must be taken into consideration if an abortion is necessary (Srihanu, 2019). Additionally, research should be conducted to determine whether such abortions will impact morality and the solution of social problems.

In this context, "moral" refers to actions and decisions that align with societal ethical standards and values, promoting the well-being and rights of individuals (MacIntyre, 2007). Conversely, "immoral" refers to actions and decisions that violate these ethical standards, causing harm or injustice to individuals or society (Williams, 1985).

Regardless of the stage of pregnancy, there will inevitably be some groups of individuals who oppose abortion, particularly those with Buddhist views. This opposition arises because having an abortion puts the woman at risk of suffering consequences from the procedure. As a result, it is crucial to consider whether having an abortion would be morally wrong or if it would be necessary to prevent further issues (Center for Reproductive Rights, 2019).

### **Research Objectives**

1. To study and analyze the criteria and conditions for abortion under Thai criminal law compared to those of foreign countries.
2. To study and analyze the impact of legal abortion according to the newly revised Thai Criminal Code on the concepts of immorality and Solving Social Problem.

### **Research Methodology**

#### **1. Scope of Content**

This research focuses on studying the concepts, theories, and provisions related to abortion under the newly revised Criminal Code of Thailand and the principles and criteria of foreign abortion laws. The countries studied in this research include the United Kingdom,

France, Argentina, and Singapore. The aim is to understand how these Thai abortion laws impact the concepts of immorality and Solving Social Problem.

## 2. Location Scope

The research is conducted within the Department of Law, Faculty of Humanities and Social Sciences, Phetchabun Rajabhat University.

## 3. Research Tools

This study employs documentary research methods, gathering and compiling information from documents and internet sources. The primary sources include the Criminal Code, legal provisions from foreign laws, textbooks, law books, articles, journals, academic seminar reports, and other relevant information in both Thai and English.

## 4. Data Analysis

4.1 Study the concepts, theories, and provisions according to the newly revised Criminal Code on abortion and compare these with the concepts and principles of foreign abortion laws to identify similarities and differences.

4.2 Identify solutions to the abortion problem to prevent societal issues by analyzing data from studies of concepts, theories, and related research.

## Conclusion

This research on legal abortion, as a case study of morality and Solving Social Problem, compares Thai law with foreign laws. The objectives are to compare the criteria and conditions for abortion under Thai criminal law with those of foreign countries and to analyze the impact of legal abortion according to the newly revised Criminal Code on the concepts of immorality and solving social problems. The data analysis can be summarized as follows:

### 1. Comparative Study of Abortion Criteria and Conditions according to Thai and Foreign Criminal Laws

The research findings reveal that abortion has been prohibited in Thai society since ancient times. It is considered a criminal offense and inconsistent with Thai culture. This is evident from the laws enacted by King Rama I in 1804, which codified and refined existing laws into the "Three Seals Law." This law imposed penalties on those who administered drugs or caused harm to pregnant women, leading to miscarriages. The Penal Code of 1907, under Sections 260-264, further stipulated penalties for women who induce their abortion or for those who perform abortions, with harsher penalties if the perpetrator is a doctor or if the woman did not consent.

According to the Penal Code of 1956, Part 2, Section 10, offenses related to life and body, abortion is criminalized under Sections 301 to 304. Abortion is considered a criminal offense, even with the pregnant woman's consent or if the woman performs the abortion herself. However, exceptions are provided under Section 305, allowing doctors to perform abortions when necessary for the woman's health or if the pregnancy resulted from a sexual offense (Penal Code Reference Edition, 2007). In 2021, abortion is still regarded as a criminal act. However, on February 19, 2020, the Constitutional Court issued a ruling 4/2563, declaring that Section 301 of the Penal Code, which criminalizes women who induce their abortions, is unconstitutional and recommended amending the law within 360 days. Consequently, on February 6, 2021, the Penal Code Amendment Act No. 28, B.E. 2564, was enacted, allowing women to have abortions within 12 weeks of pregnancy and including additional exceptions for safe and legal abortions. This amendment came into effect on February 7, 2021.

Furthermore, the Medical Council's regulations specify guidelines for medical abortion under Section 305(1) and (2) of the Penal Code. In cases where a woman has severe mental health issues or significant stress due to a high risk of severe fetal abnormalities or genetic diseases, a doctor can legally perform an abortion without penalty for both the doctor and the woman.

#### Overview of Abortion Laws in Various Countries

According to a report by the Center for Reproductive Rights, information on legal abortion rights from 202 countries is categorized into five types:

1. Countries where abortion is prohibited without exception: 26 countries, including Egypt, Iraq, El Salvador, Nicaragua, and Senegal.
2. Countries where abortion is permitted only to save the woman's life: 9 countries, including Mexico, Brazil, Venezuela, Bangladesh, Afghanistan, Yemen, and Oman.
3. Countries where abortion is allowed for health reasons: 56 countries, such as Pakistan, Chad, Saudi Arabia, Guinea, Congo, and Zimbabwe, with 25 of these countries allowing abortion for mental health reasons, including Algeria, Israel, Colombia, and Bolivia.
4. Countries where abortion is allowed under specific conditions unrelated to the woman's health: 14 countries, including India (for cases of rape or fetal health issues) and Japan (with spousal consent or in cases of rape).

5. Countries where abortion is available on request within a specified gestational period: 67 countries, typically allowing abortion within 12 weeks of pregnancy, such as Kazakhstan, Italy (90 days), and Spain and Germany (14 weeks).

Since 1994, several countries have reformed their abortion laws, transitioning from restrictive conditions to allowing abortion on request within a gestational limit. Nepal and São Tomé and Príncipe have completely lifted abortion bans, allowing abortions within specified gestational limits since 2002 and 2012, respectively.

#### Specific Country Examples

United Kingdom: Abortion laws were first introduced in 1803, penalizing post-quickenings abortions with the death penalty and pre-quickenings abortions with imprisonment or whipping. Currently, under the Abortion Act 1967, amended by the Human Fertilization and Embryology Act 1990, abortions are permitted up to 24 weeks of gestation if two doctors certify that continuing the pregnancy poses greater risks to the woman's physical or mental health or the well-being of existing children in the family. Abortion is also allowed if continuing the pregnancy risks the woman's life, to prevent permanent injury to the woman's physical or mental health, or if there is a substantial risk that the child would suffer from severe physical or mental abnormalities leading to serious disabilities (Changhuahana, 2009).

France: Historically, abortion was punishable by death, influenced by religious beliefs that life and death are matters for divine intervention. Following advocacy for liberalized abortion laws by feminist, socialist, welfare, and equality movements, the French National Assembly approved the Veil Law in 1974, decriminalizing abortion. Today, abortion is legal within the first 12 weeks of pregnancy upon the woman's request, provided it is performed by a state hospital doctor and the woman undergoes counseling with a doctor and social worker (Saengkanokkul, 2005).

Argentina: Currently, abortion in Argentina is classified as illegal and considered a criminal offense with severe penalties. Exceptions are granted in only a few cases, such as pregnancies resulting from rape and pregnancies that pose a life-threatening risk to the mother, potentially due to religious moral reasons (Engkutanon, 2020).

Singapore: Abortion became legal in 1969. Prior to this, abortion was only legal when the woman's health was endangered by the pregnancy. Today, abortion is legal for Singapore citizens, individuals holding work passes under the Foreign Employee Employment Act, or persons who have resided in Singapore for at least four months. Abortion can be

performed if the woman's life is at risk due to the pregnancy. Singapore is one of the 67 countries that allow abortion on request ([https://hmong.in.th/wiki/Abortion\\_in\\_Singapore](https://hmong.in.th/wiki/Abortion_in_Singapore)).

Considering the laws of the United Kingdom, France, and Singapore, it can be said that these countries allow abortion primarily in cases where the pregnancy poses a risk to the woman's physical or mental health, or if the fetus may have severe physical abnormalities, aiming to ensure a healthy population. In contrast, the main reason for the strict abortion laws in Argentina appears to be religious moral beliefs. Singapore's abortion laws are considered progressive, and in 1994, Singapore was one of the 179 members that signed the International Conference on Population and Development's action plan, which calls for the liberalization of abortion laws.

## 2. Study and Analysis of the Impact of Legal Abortion According to the Newly Revised Criminal Code on Morality and Solving Social Problem

The research findings indicate that the impact of legal abortion under the newly revised Criminal Code on the concept of immorality remains contentious. The recent amendments permit women to have abortions even when the pregnancy does not affect the woman's health or result from a criminal offense. Many still view such abortions as immoral due to religious beliefs. In Buddhism, abortion is seen as the destruction of life, which is considered sinful and immoral because life is believed to begin at conception. Abortion is thus regarded as murder and sinful according to Buddhist ethics. The main criterion for determining the morality of an act is the intention behind it and its effect on the mind, with a secondary criterion being one's conscience and the acceptance of scholars. Narratives of misfortune following abortion reinforce beliefs in karma and sin.

Similarly, in Islam, abortion is considered sinful as the unborn child is viewed as a gift from God and should not be destroyed. Christianity also holds that the fetus has a life equivalent to that of an adult, created by God, making abortion morally wrong. From a Buddhist perspective, abortion under the newly revised law is considered immoral and sinful for both the pregnant woman and the abortion provider.

The impact of legal abortion under the newly revised Criminal Code on social problem solving is multifaceted, involving social, medical, and legal issues. Unplanned pregnancies in students, large families, financial difficulties, irresponsible fathers, or fetuses with incomplete organs all affect the families involved and society as a whole. Children born

into unprepared environments face various challenges, such as physical and mental health issues if they have incomplete limbs or disabilities, affecting their education and upbringing.

Large families may face economic and social strains, leading to broader societal impacts. Therefore, there is support for allowing women the right to decide whether to continue or terminate a pregnancy, encompassing the pregnant woman's right to bodily autonomy. Punishing pregnant women can lead to unfair treatment and the restriction of their natural rights, which are fundamental to human dignity. Denying women's rights without appropriate conditions or timelines, as seen in Section 301 of the Penal Code, overly restricts their freedoms.

Unplanned pregnancies can occur at any age, resulting from various factors such as economic issues or lack of readiness. Pregnant women facing such situations often experience social and psychological problems. While some can adapt and find solutions, others cannot and may resort to unsafe abortions, risking death. Legal abortion can be beneficial, especially in cases where the fetus is expected to have severe disabilities. Allowing abortion in these circumstances can prevent suffering for the child. The revised criminal law offers a choice for women, reducing social, physical, and psychological problems. Thus, a balance must be struck between preventing abortions to uphold morality and allowing them to avoid further issues, ensuring a balance between the rights of the fetus and the pregnant woman.

## Discussion

This research on legal abortion, focusing on the concepts of immorality and Solving Social Problem, compares Thai law with foreign laws. The discussion of the research findings can be summarized as follows:

### 1. Comparative Analysis of the Criteria and Conditions for Abortion Under Thai and Foreign Criminal Laws

The study compares the criteria and conditions for abortion under Thai criminal law with those of the United Kingdom, France, Argentina, and Singapore. The findings reveal that the history and evolution of Thai abortion laws show that abortion has long been prohibited in Thai society, with penalties for those who administer drugs or cause harm to pregnant women resulting in miscarriage. Currently, abortion is governed by the Criminal Code, which was amended on February 6, 2021. The Royal Gazette published the Amendment to the Penal Code Act No. 28, B.E. 2564, allowing women to have abortions within 12 weeks of pregnancy and adding other exceptions to ensure safe and legal abortions.

In the United Kingdom, abortion is permitted under conditions requiring certification by at least two doctors that the pregnancy is under 24 weeks and that continuing it would pose a risk to the woman's physical or mental health, or that the fetus may have severe abnormalities. In France, abortion is allowed within the first 12 weeks of pregnancy upon the woman's request, provided it is performed by a state hospital doctor and, if the woman is a minor, she must be accompanied by an adult. In Argentina, abortion is currently illegal, with severe penalties, except in cases of rape or when the pregnancy endangers the mother's life. In Singapore, abortion has been legal since 1969 and is allowed on request for Singapore citizens, work pass holders, or residents of at least four months. Abortions between 16 and 24 weeks must be performed by qualified medical practitioners.

The laws of countries that permit abortion often specify gestational limits or health conditions of the woman and fetus, similar to Thai criminal law. Countries that do not permit abortion often cite moral and religious reasons for their restrictive laws.

## 2. Impact of Legal Abortion According to the Newly Revised Criminal Code on Morality and Solving Social Problem

The impact of legal abortion under the newly revised Criminal Code on the concepts of immorality and Solving Social Problem reveals that most abortion issues in Thailand arise from unplanned pregnancies and economic problems, such as pregnancies in students, large families, financial difficulties, irresponsible fathers, and fetuses with physical disabilities. These issues affect not only the pregnant woman and her family but also society as a whole. Children born into unprepared environments face various challenges, including physical and mental health issues if they have disabilities, which impact their upbringing and education.

Large families may face economic and social strains, leading to broader societal impacts. Pregnant women in these situations often face social and psychological problems, and some may resort to unsafe abortions, risking their lives. Allowing legal abortion can prevent suffering for children with severe disabilities and reduce social, physical, and psychological problems for women. Therefore, opinions on abortion can be divided into two groups: those who support it, emphasizing economic and family well-being, and those who oppose it, prioritizing moral and ethical considerations and the rights of the fetus.

Supporters of abortion highlight the importance of economic stability and women's rights to make decisions about their bodies, while opponents focus on moral values,

ethics, and the future rights of the fetus. Balancing these perspectives is crucial to addressing the issue of abortion in a way that respects both the rights of the pregnant woman and the fetus.

Thus, society's views on abortion are divided into two distinct perspectives: one that considers abortion immoral and another that views it as a means to solve social problems. These perspectives are rooted in the concepts of the right to life of the fetus and the right to privacy of the woman, as outlined in the Universal Declaration of Human Rights (Changhuahana, 2009). The right to life of the fetus is based on religious and moral principles, while the right to privacy allows women to make decisions about their bodies and lives, determining what actions are appropriate and the best choices for their circumstances.

The right to life supports the respect and protection of the fetus's right to be born and live as a human being. Allowing abortion is seen as equivalent to accepting the killing of a fertilized human. On the other hand, the right to privacy empowers women to decide about their bodies and lives, including whether to continue or terminate a pregnancy. This right ensures that women can address their life issues and make the best choices for themselves.

## **Suggestions**

### **Recommendations for Application of Research Findings**

The researcher suggests that to effectively implement legal abortion under the newly revised Criminal Code in the context of immorality and Solving Social Problem, further studies should be conducted to understand the root causes of abortion. This will help in developing solutions that align more closely with the societal context. Additional research should focus on establishing guidelines and methods for government agencies, educational institutions, and private employers to support pregnant women, whether they are subordinates, employees, or students. This should include protections and promotions for women's health, particularly in sexual and reproductive health, as a complementary approach to addressing abortion issues while ensuring proper care and welfare for pregnant women.

### **Recommendations for Further Research**

Future research should explore ways to develop knowledge for organizations providing reproductive health counseling and services. These organizations can offer advice, conduct physical and mental health check-ups for pregnant women, and provide fetal health assessments. They can also suggest problem-solving methods for pregnant women. Expanding these efforts to include village health volunteers who understand the principles, reasons, and

methods of providing counseling could be beneficial. Village health volunteers, being community members and relatives or friends of the pregnant women, can offer accessible and comfortable support. Developing training programs on appropriate counseling methods for unplanned pregnancies and educating volunteers about the legal aspects of abortion could help address the issue of legal abortion while also solving broader social problems.

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