

A commentary on the recent ruling by the Thai Constitutional Court in relation to abortion law in Thailand

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Maternal health in Thailand suffers from complications of unsafe abortion.¹ The National Health Security Office continues to spend millions of Baht every year of its precious health care budget to care for complications of unsafe abortion, with fatality rates for unsafe abortion at 300 per 100,000 abortions.²

Abortion laws in Thailand, originally imported from Europe in the nineteenth century,³ criminalise women seeking abortion, punishing them with imprisonment of up to three years, or a fine of up to 6000 Bahts (about USD 180), or both. As for the abortion provider, he or she could be imprisoned for up to five years, or fined 10,000 Bahts (about USD 300), or both.

The case of an obstetrician who had been arrested in February 2018 for providing abortions was brought before the Constitutional Court. On 19th February 2020, one year after the case was brought to its attention, the Court ruled that existing laws criminalising abortion are unconstitutional and ordered the government to amend the law.

The government has assigned the Council of State to amend the law in consultation with four ministries: the Ministries of Public Health, Justice, Interior and Social Development and Human Security. According to the Court ruling, the new law should be in place 360 days after the date of the ruling, i.e. by the 13th of February, 2021.

Comment

It is as yet unclear how the law should be amended, but the ruling is an important step towards protecting the reproductive rights of women in Thailand. Others have noted that criminalising abortion does not prevent abortion

but leads to stigmatisation, stereotyping,⁴ and more unsafe abortions.⁵ Significant inequalities in accessing information and services for safe abortion in Thailand have resulted in increased morbidity and mortality from unsafe abortion.⁶

There has been social discourse around abortion laws in Thailand ever since it was encoded in 1905. The law was first amended by adding section 305 in 1949, allowing a physician to carry out an abortion for certain medical conditions, in rape cases, and in children under the age of 13 years. There has been much social discourse by those who oppose it, entirely on moralistic grounds, misrepresenting it as allowing “free abortion” and unacceptable in Thailand's Buddhist society. Those who argue that abortion is a health and rights issue have been outvoted. Subsequent amendments of the abortion law failed to pass the Thai Parliament many times.⁷ The term “health” in the law (section 305) was interpreted literally by many to mean only physical health. This discourse on the definition of health was eventually resolved in 2005 by the Thai Medical Council issuing a regulation defining health as meaning physical as well as mental health, in line with the World Health Organization's definition.

The historic February 2020 ruling by the highest court of the land may eventually decriminalise abortion and make it more accessible. The ruling and final comment by the judges makes the health and rights of women paramount factors in the coming new amended abortion law. However, changing the law will not make the myriad aspects of the medico-social abortion discourse disappear overnight.

The attitudes of Thai society as a whole, as well as those of healthcare providers, are other

important factors to consider in making abortion safe, equitable and universally accessible. Stigma still remains. Advances in medical technology will not cure stigmatisation. Decriminalisation, public education and medical education together can gradually make stigma disappear.⁸ Advancements in medical technology, eventually leading toward the demedicalisation of abortion, will truly make

women free to control their own fertility and bodies.

This historic ruling will hopefully take women in Thailand another small step towards equality and freedom of choice. However, this remains optimistic speculation for now and we will have to wait for the new law to be formulated and written.

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