



CHAPTER I

Introduction

1.1 Background:

Worldwide, abortion is one of the most controversial issues in modern society. The debate turns around the questions of whether or not abortion should be legal; who has the right to make the decision concerning abortion, the individual or the state; and under what circumstances it may be done. It is obvious that abortion is not new in human society; it has existed in parallel with the life of humans so far. A study by the anthropologist Devereux (1955) showed that more than 300 contemporary human nonindustrial societies practiced abortion. There have been various responses and attitudes toward abortion at individual, organizational, communal and even national levels. Certainly, each society with its own culture has different ways of coping with abortion issues.

Taking a look at the history of abortion, according to Ishii et al. (as cited in Wittaker, 2004: 33), abortion was not considered a legal act based on early Siamese legal codes and was not equated with natural miscarriage. The Three Seals Law of Rama I (1805 AD) contains punishment for anyone causing an abortion, regarding “the use of medicine leading to death of children.” Yet, according to Wittaker, abortion was widespread in Thailand before modern methods of contraception. Later on, the 1908 Penal Code contains articles that are essentially similar to the current law, however, it admits no legal grounds for an abortion in any circumstance. The current law on abortion in Thailand has existed since 1957 under the Penal Code, without amendment. Based on Thai law, abortion is allowed only when the continued pregnancy endangers the health of the mother and in the case of rape. It means the Thai legislation provides very limited possibilities for legal abortion. To be concrete, abortion is dealt with in the Thai Penal Code of 1956, Sections 301-305. Sections 301-302 state that if a woman causes herself to abort, or if another person causes her to abort with her consent, they may be liable to imprisonment or a fine or both.

Section 303 states that whoever causes a woman to miscarry without her consent is liable to a fine or imprisonment or both. Section 304 states that an attempt at abortion by a pregnant woman to procure her own miscarriage, or by another person with the woman's consent, resulting in neither grievous bodily harm nor death to the pregnant woman, is not punishable. Section 305 states that if an abortion is carried out by a medical practitioner, and (1) is necessary for the sake of the women's health; or (2) the woman is pregnant under certain conditions (for example, rape) there is no offence. (The Population Council, 1981)

Despite the restrictive legislation, surveys of the social acceptability of abortion in Thailand consistently show that the Thai public is willing to allow abortion in certain circumstances not currently permitted by law, such as on the grounds of foetal deformity or mental stress of the mother ... A large minority of people supported abortion for unmarried women. Among medical professionals 69 per cent favoured a more liberalized abortion law and 17 per cent favoured complete legalization (Phuapradit, 1986). They expressed widespread approval for abortion in cases of rape, incest, threat to maternal health, mental illness and foetal abnormalities. Under 50 per cent approved of abortion for unmarried women, high or low maternal age, or for child spacing. (Whittake, 2004)

Certainly, attempts have been made to amend the abortion laws in Thailand and each has sparked emotive public debate such as the pro-reform campaigns by Dr Suporn Koetsawang in 1973, Fourth National Seminar on the Population of Thailand in August, 1978; by a number of NGOs like Population and Community Development Association in the same year, by Dr Whithun Eunggraphan in 1994, the textile unions federation who has been demanding legal and safe abortions for a number of years now. Thus, there were the calls for abortion legislation reform in which people who came from individuals and groups, both public and private, argued that prohibition of abortions does not do away with them, but it may induce women to seek illegal and dangerous abortion. Awareness of these regrettable implications of the present abortion law has been growing among various sectors of Thai society. The specific recommendation dealing with abortion states:

“Laws and regulations concerning abortion should be liberalized to suit the current situation by allowing abortions to be obtained, under the supervision of a

physician, for socio-economic and mental health reasons.” (The Population Council, 1981)

One way or another, current debates in Thailand have looked upon the abortion issue from the points of view of socio-economic and health reasons and from that of population control. A fundamental argument seems to be lacking in the debates, or at least not taken enough into consideration: women’s rights. The question of abortion cannot be separated from that of women’s rights. It is the right of a woman to choose her maternity – when and how she considers it desirable and suitable. (The National Council of Women of Thailand, 1983)

In Vietnam, limited information is available on the legal status of induced abortion in early post-colonial times. The information exists suggesting that abortion on request was available in the Democratic Republic of Viet Nam (North) by at least 1971 and has been available in the entire country since its unification in 1975. Previously, abortions could be performed in the Republic of Viet Nam (South) only for narrowly interpreted medical indications, owing to the existence of a 1933 decree enforcing a French law prohibiting abortion and the use of contraception. From another source, Johanson et al. (1996) stated that abortion in Southern Viet Nam has been legal and available on request since the early 1960s, reflecting the Government’s commitment to providing reproductive choice for women. Services have been made widely available and accessible to women. Both contraception and abortion services are widely available as an integrated part of the basic health care services provided by the public sector.

In recent years, the Government of Viet Nam has approved a number of laws that regulate abortion in various ways. The 1989 Law of People’s Health Protection stressed the fact that:

- A woman has the rights to undertake induced abortion at her request, to access health care services for checking and treating gynecologist diseases, to take prenatal and delivery care, to be assistant at delivery care in health services.
- Ministry of Health has a responsibility in sustainable and development the network of gynecologist, obstetric, and newborn care at the community to provide reproductive to every woman

- Prohibit performing induced abortion procedure, and inserting IUD at the public or private services without license from Ministry of Health or Health Department at provincial levels.

(Code No 44, chapter VIII. Implementing Family Planning and Maternal and Child Health Protection. In Law of People's Health Protection in 1989).

In addition, Decision No. 162 of the Council of Ministers in January 1989 obligates the State to supply, free of charge, birth control devices and public-health services for abortions to eligible persons who work for the Government, to persons to whom priority is given under policy, and to poor persons who register to practice family planning. Under the regulations of 1991, which deal with pregnancy termination in the context of maternal and child health care, a medical establishment or person may not perform an abortion without the proper authorization. Decree No. 12/CP on the promulgation of Social Insurance Regulations authorizes sick leave for abortions. Most importantly, Vietnam's Criminal Code contains no abortion provisions, and it became evident that the procedure has been decriminalized. In short, grounds on which abortion is permitted in Vietnam included: (1) To save the life of the woman, (2) To preserve physical health, (3) To preserve mental health, (4) Rape or incest, (5) Foetal impairment, (6) Economic or social reasons, (7) Available on request. (Abortion policies, 2002)

It can be inferred from the background that Thailand and Vietnam have very different laws and attitudes to abortion. Therefore, this makes a comparative study interesting.

1.2 Objectives:

- a. To explain the reasons for the differences in public policy towards the abortion laws between Thailand and Vietnam based on the similarities and differences in history, religion, culture and governance in the two countries
- b. To explore whether changing public attitude and opinion in Thailand and Vietnam has had any impact on government policy
- c. To put forward some suggestions for practical solutions

1.3 Research questions:

- (1) What is the theoretical debate around abortion internationally and regionally? (SEA, or in Thailand and Vietnam)
- (2) What are the differences in the abortion laws and policies in Thailand and Vietnam and what are the major factors which determine these differences? (Buddhist viewpoint; Government political viewpoint about women's rights; attitudes of health professionals, the providers, etc.)
- (3) What are the results of these differences and how should these results be changed? (the demand of the public to change the existing laws and policies on abortion; the need to conduct family planning programs; the desire to extend women's rights in relation to abortion; etc.)

1.4 Major arguments/Hypotheses:

- (1) The debate between pro-choice and pro-life is on-going while pro-life supporters argue that life begins at conception and to stop life during pregnancy is killing and morally unacceptable. On the other hand, pro-choice supporters argue that a fetus is not a person and abortion is simply the destruction of the 'form'; thus, it should not be judged morally. Instead, what should be taken into consideration is that the mother is the real person who has to suffer from mental burden caused by abortion affairs. Abortion should be regarded as a fundamental and personal issue of a woman because it is not only the issue of abortion but also about the value of women in the society.
- (2) Making abortion illegal has little to do with Buddhism and more to do with attempts to control women's behavior. Women should be the ones who make their own decisions when or whether to have children based on their economic, physical and psychological background after having consulted with their physicians and perhaps spiritual counselors. Banning abortion is thus contrary to women's rights. Legalization of abortion should be a sounder and more humane social policy than prohibition. Banning abortions does not eliminate them; it merely forces women to go the dangerous route of illegal or self-induced abortions. Even worse, it makes abortion a "rich-poor" issue. A well-to-do woman can always find a safe abortion, but a poor woman too often finds herself in incompetent hands.

(3) By legalizing abortion, Vietnam has much safer abortion cases compared with Thailand. In addition, public attitudes in Thailand are changing and would accept the right to abortion.

1.5 Methodology:

The study first explored theoretical arguments about abortion rights concerning the particular aspects of abortion in Thailand and Vietnam. In the second part, the study adopted a qualitative research method. The research techniques included documentary research and interviews of government officials and social activists. As for documentary research, the review of relevant literature and documents, both primary and secondary sources in English and Vietnamese were considered. In terms of interviews, there are three kinds of interviews were employed: (1) Key informant interview refers to a particular type of participants who are the influential, the prominent, and the well-informed people in an organization or community and are selected for interviews on the basis of their expertise in abortion field such as doctors and nurse, social activists, government officers, and organizations for the youth and women (i.e. Youth's Union, Women's Union) in Thailand and Vietnam; (2) Group interview is an advantageous method, because it provides quick results with high validity, and by interviewing many people at the same time it can create triangulation of data source. In this research, group interview was carried out with students, doctors, nurses and parents as key informants; (3) Interview of a hundred ordinary people in Bangkok, Thailand from September to November, 2008 and a hundred ones in Hanoi, Vietnam from December 2008 to January 2009. Interviewees are from different walks of life at different locations such as offices, houses, school, malls, stations, etc.

1.6 Significance/ Usefulness of research:

- a. To improve the knowledge about abortion laws and policies in Thailand and Vietnam in different periods of each country's history
- b. To explore current public opinions towards abortion issues in Thailand and Vietnam

- c. To provide preliminary findings for further studies about abortion issues in Thailand and Vietnam
- d. To suggest some solutions to abortion issues in both countries under study.