

# Ireland's latest abortion scandal shows the country still suffers from a policy vacuum over the issue

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*Ireland's abortion laws have recently generated controversy following the case of a rape victim – 'Ms Y' – who was refused an abortion and instead gave birth by Caesarean section. The country has experienced previous crises over the issue, most recently after the death of dentist Savita Halappanavar in 2012. [Lisa Smyth](#) writes on the controversy, arguing that Ireland still suffers from a policy vacuum over abortion which has effectively created the circumstances under which such incidents can occur.*

The policy vacuum over abortion in Ireland has once again been the cause of tremendous personal suffering and injustice. A young migrant woman, '[Ms Y](#)', pregnant following rape and suicidal, was refused an abortion. She was forced to give birth by Caesarean section at 26 weeks, in August 2014. This is the latest in a cycle of appalling decisions which have allowed interest groups and medical professionals to directly shape reproductive health policy.

The notorious 1992 [X Case](#) involved a 14 year old girl, also pregnant and suicidal following rape, who was issued with a High Court injunction preventing her from leaving the country for an abortion. More recently in October 2012, the death of dentist [Savita Halappanavar](#), a citizen of India, followed the refusal of medical assistance while she was miscarrying, and created a global storm of criticism. By contrast, Ms Y's apparently stateless status seems to have limited the international interest in her case.

The medical professionals involved in this case doubtless believe that they acted within the terms of the [Protection of Life During Pregnancy Act \(2013\)](#). Ms Y's doctors agreed that they were obliged by law to terminate her pregnancy, given that her life was at risk. However, they did this not by abortion, but by live Caesarean section delivery, on grounds that the pregnancy was too far advanced at 25 weeks to be aborted. The legislation contains no such time-limit.

Ms Y had requested an abortion as soon as she learned that she was pregnant at eight weeks. An Irish Family Planning Association (IFPA) counsellor, concerned about her emotional state, referred her to a member of staff at the public health body, the Health Service Executive (HSE). However, it seems that she was not taken into their care until she was referred to a hospital psychiatrist by a GP at 24 weeks. It was only then that her case was formally reviewed under the terms of the legislation.

By the time an official decision was made, Ms Y had stopped eating and drinking. While she was initially told that she could have an abortion, doctors later seem to have changed their minds, saying instead that the advanced stage of pregnancy only allowed for a termination by Caesarean section. This decision, they reportedly said, would be the same in any other country in the world for a pregnancy at that stage. Ms Y consented to the Caesarean delivery, believing that she '[had no choice](#)'.



Protest in Ireland over abortion laws, Credit: William Murphy (CC-BY-SA-3.0)

## Ireland's policy vacuum over abortion

Ireland allows for abortion where there is a risk to the life of the pregnant woman, including a risk of suicide. The [Constitution](#) was amended in 1983 by referendum to declare an equal right to life for 'the unborn' and 'mothers' (Article 40.3.3°), following intensive political lobbying from the Pro Life Amendment Campaign. Establishing a ban on abortion in the Constitution rather than in ordinary legislation was intended to mark it as a defining feature of the nation, what Anthony Appiah terms an honour code, encapsulating Ireland's apparently special moral character. Legislators and courts have no authority to modify or overrule this amendment. The numbers of women travelling to Britain and elsewhere to access legal abortion were not reduced by this constitutional change.

Following the international controversy generated by the X Case, the right of citizens to travel, and to obtain information about services lawfully available elsewhere, can no longer be compromised by the right to life of the 'unborn'. Subsequent case law and constitutional referendums seeking to reverse the Supreme Court's decision in the X case have been unsuccessful. The recent passage of the *Protection of Life in Pregnancy Act* elaborates to some extent on the processes to be followed in cases where a woman's life is threatened by pregnancy, as well as establishing a penalty of up to fourteen years imprisonment for the crime of intentionally destroying unborn human life.

One important consequence of this honour code has been to generate what the [European Court of Human Rights](#) has recently described as a 'chilling effect', creating a climate of secrecy and shame for those seeking abortions, as well as for health practitioners and others who might be involved. Medical anxieties about the possibility of acting unconstitutionally in a highly charged and ambiguous legal environment has meant that even where the courts have ruled a termination of pregnancy to be lawful, as in [the case of D](#) in 2007, the parties involved have had to travel to Britain.

This most recent case is evidently a consequence of the historic power of the religious right in Ireland, who tried to use the Constitution to guarantee protection for a strongly gendered society. However, it is also the result of the unwillingness of policy makers over three decades to develop clear, unambiguous guidelines on lawful abortions for those working in healthcare. Policy has instead emerged haphazardly, largely in response to periodic international pressure, when serious questions about Ireland's claim to be a democracy have been raised. No sustained policy effort has been made to enumerate in detail the entitlements of women and the obligations of public authorities in cases which meet the conditions established through the X case.

This failure has allowed medical professionals in this case to invent policy, defining 25 weeks, for instance, as a time-limit beyond which an abortion will not be performed, and re-interpreting the obligation to 'terminate a pregnancy' to mean a live Caesarean delivery rather than abortion. The shame many Irish citizens are [currently once again expressing](#) at the actions of their state, forcing a suicidal rape victim to give birth, indicates a growing crisis of political legitimacy. In a world where equality and respect have become hallmarks of democracy, Ireland's abortion ban is a source of shame rather than honour. Whether the suffering inflicted on the apparently stateless Ms Y will result in a policy response similar to that which followed the death of Savita Halappanavar last year remains to be seen.

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*Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.*

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## About the author

**Lisa Smyth** – *Queen's University Belfast*

Lisa Smyth is Senior Lecturer in Sociology at Queen's University Belfast.

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