

PENAL CODE (AMENDMENT) ACT, 1991

No. 15



of 1991

An Act to amend the Penal Code

Date of Assent: 11th October, 1991.

Date of Commencement: 25th October, 1991.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Penal Code (Amendment) Act, 1991. Short title
2. The Penal Code is amended by renumbering section 160 as subsection (1) thereof and by adding the following new subsection — Amendment of section 160

“(2) Notwithstanding the provisions of subsection (1), it shall not be an offence under this section if a pregnancy is terminated or an abortion is caused within the first 16 weeks of pregnancy, in the following circumstances and under the following conditions —

 - (a) where the medical practitioner carrying out the operation is satisfied, by acceptable evidence, that the pregnancy is the result of rape, defilement or incest, and the termination or abortion is requested by the victim, or, where the victim lacks the capacity to make such request, by her next of kin or guardian or the person in loco parentis; or
 - (b) where the continuance of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health, and such woman consents to the termination or abortion, or, if she lacks the capacity to give such consent, it is given on her behalf by her next of kin or guardian or the person in loco parentis; or

(c) where established evidence shows that there is a substantial risk that, if the child were born, it would suffer from or later develop such serious physical or mental abnormality or disease as to be seriously handicapped, and the pregnant woman consents to the termination or abortion, or, if she lacks the capacity to give such consent, it is given on her behalf by her next of kin or guardian or the person in loco parentis:

Provided that —

- (i) the termination or abortion is carried out by a registered medical practitioner in a Government hospital or a registered private hospital, or a clinic approved for the purpose by the Director of Health Services; and
- (ii) two medical practitioners have given their opinions formed in good faith, in writing, in the case of paragraph (b) above, that continuation of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health, or, in the case of paragraph (c) above, that there is substantial risk that, if the child was allowed to be born, it would suffer such serious physical or mental abnormality or disease as to be seriously handicapped.”

PASSED by the National Assembly this 20th day of September, 1991.

C.G. MOKOBI,
Clerk of the National Assembly.