
COMPARATIVE ANALYSIS OF ABORTION LAWS IN INDIA AND THE UNITED STATES OF AMERICA

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ABSTRACT

Abortion has been re-established as a woman's freedom to choose whether or not to bear children. In India, this privilege is both socially and economically advantageous. Abortion of unwanted pregnancies lowers birth rates, lowering the population growth ratio. While this is required to slow the country's population increase, it is also economically beneficial to low-income households. If the family had more children than they wanted, they would not be financially burdened. The author of the paper analyzes the abortion legislation of India and the United States of America. It outlines where India stands now in compared to the United States of America and why other countries should accept India's abortion legislation. The opinion of Justice Alito was also addressed in the overruling decision of *Roe v. Wade*, and therefore the President of the United States of America's remarks. The article's initial take on abortion restrictions is that "what India believes now, other nations think tomorrow."

INTRODUCTION

For many years, the most divisive issue was abortion, which was debated around the world. Every state is divided on whether a woman has the right to terminate her pregnancy and, if so, when she has the right at what point in time. Abortion is the termination of a pregnancy by the removal of a fetus or embryo from the uterus, resulting in or causing its death. India has never had a landmark abortion case, or what is known as a "Roe Moment," which has had the same lasting impact on Indian abortion jurisprudence as *Roe v. Wade*, 1973 in the United States of America. That is not to say that India does not address the issue of abortion. In addition, India is still regarded barbaric in some instances because abortion is legal in India. In India, there are various statues that deal with the issues that will be dealing with later in regard and comparison to the laws listed in *Roe v. Wade*. After the *Roe v. Wade* decision was overturned, India's abortion law became more progressive and humane. The primary shortcoming is that the European Court of Human Rights has never issued a ruling on whether abortion should be legalized, but Ireland, a member of the European Council, just legalized abortion in 2018.

LANDMARK ROE v. WADE

India's action comes at a time when the Supreme Court of the United States is debating the landmark *Roe v. Wade* decision. Smriti Irani, the then Cabinet Minister for Textiles and Women and Child Development, stated that India is currently one of the few countries having very progressive women's laws on a wide variety of issues, particularly for rape victims. Similarly, the abortion laws in the United States of America changed in 1973, as did the abortion laws in the state. The Supreme Court has ruled by a 7-2 majority that the right to an abortion did, in fact, fall under the protection of the Constitution's Fourteenth Amendment, which included a woman's right to privacy about abortion, declaring the Texas Statute unconstitutional. The Supreme Court ruling granted the American woman the right to an abortion throughout the duration of her pregnancy and influenced modifications in the abortion legislation of 46 states governing abortions in the second and third trimesters of pregnancy. In other expressions, the ruling in *Roe vs. Wade* found that "a woman's claim to make her own medical decisions is strong in the first trimester of pregnancy, moderate in the second, and weak in the third, at which point the state gains a 'compelling' interest in the preservation of nascent life." The breadth of *Roe v. Wade*'s protection for women's right to choose abortion has been reduced in the years after its decision. Most notably, the Supreme Court's decision in *Planned Parenthood v. Casey* in 1992 made two profound changes: it reduced the level of

judicial scrutiny given to laws restricting abortion and eliminated Roe's "trimester system," which outlined the changing balance between a woman's right to choose abortion and the State's interest in regulating the procedure as a pregnancy progressed. Nonetheless, Roe's value should not be underestimated. The judgment of the High Court in this case remains a benchmark for those fighting to protect women's reproductive rights, and it should be understood by all those whose lives have been impacted by it. With *Roe v. Wade*, the United States made a significant contribution to an emerging worldwide trend of recognizing women's reproductive autonomy. Prior to 1973, umpteen countries throughout the world had already liberalized their draconian abortion laws, including China, India, the former Soviet Union, and the United Kingdom. The 30 years following *Roe* have witnessed the greatest global relaxation of abortion legislation in history. During the same time span, the United States, via court judgments and legislation, has worked to make abortion laws more restrictive. Some in the legal world, including those who favor abortion rights, argued that *Roe* achieved the proper conclusion but got at it in the incorrect method. A few of them also described the ruling as judicial activism.

OVERTURN OF ROE

The Supreme Court's decision to overturn *Roe v. Wade* is universally perceived as a violation of women's rights. Individual states will now determine abortion rights. Some 20 states have laws regulating or prohibiting abortions, while 13 states have laws prohibiting the practice of abortion. The overturning of the judgment, according to President of the United States of America Joe Biden, is a grave error and a sad day for the court and the country. The 1973 verdict that granted a fundamental privilege was "taken away," and the decision was attributed to "extreme ideology."

The judgement primarily came in the case *Thomas E Dobbs v. Jackson Women's Health Organization*, in which the court by a 6:3 majority affirmed a Mississippi legislation (Gestational Age Act) that declared illegal abortion of a foetus older than 15 weeks unless there was a medical emergency. The majority, led by Justice Samuel Alito, noted that the "Constitution does not establish a right to abortion," and left it up to federal states to determine whether to authorize or limit abortion. In a vehement dissent from the majority, three liberal judges stated that removing abortion rights undermines "women's standing as equal and free citizens" and "diminishes women's abilities to participate freely and equitably in the Nation's political, social, and economic life."

In writing for the majority, Justice Alito said unequivocally that abortion is a matter for states and their voters to determine. "We believe that the Constitution does not grant a right to abortion," he wrote. Concerning the standard to be applied by the courts in the event that a state regulation of abortion is challenged, Alito stated that any state regulation of abortion is presumptively valid and "must be sustained if there is a rational basis on which the legislature could have thought" it was serving "legitimate state interests," such as "respect for and preservation of prenatal life at all stages of development." Several states, including Mississippi, North Carolina, and Wisconsin, still have decades-old abortion laws in place; if Roe is overturned, those states might revert to pre-Roe conditions. Officials in such states may strive to enforce existing laws or petition the courts to reestablish them. A 1931 Michigan bill, for example, would make abortion a crime. Democratic Gov. Gretchen Whitmer has been seeking to overturn the law.

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Abortion has always been a social v. legal debate. It is still dealing with this issue. Nonetheless, even in the midst of such a contentious confrontation, the country is experiencing progressively progressive abortion legislation. With each modification or decision, abortion regulations are being relaxed in order to actively consider the female position and right to abortion. To begin, the Indian Penal Code (IPC) chose a punitive inherent strategy in 1860. The parts of the IPC dealing with abortion penalize purposeful abortion, with the sole exemption given for such an abortion not being criminally liable being when the mother's life is in danger. There is no inclusion of an abortion induced by rape or contraceptive failure. It also does not recognize mental health to be an exemption for performing abortions. But, placed above a white time, the country became wise enough to relax such prohibitions. The Medical Termination of Pregnancy Act (MTP) takes into account the emotional component of carrying an undesired child. Furthermore, the 2020 Amendment focuses on women's privacy and proposes to extend the gestation term to 24 weeks in light of technical advancements in abortion. This demonstrates that the rules are progressive and take into consideration any advances that occur in order to give better abortion facilities. Though the laws evolve throughout time, regulations should be updated as well. The way the MTP Act has been modified from time to time, similarly, the IPC provisions dealing with abortion should be amended in wake of contemporary social and technical advances. This will help bolster abortion legislation. This is

India's position on abortion laws, which the author believes every state or nation should adopt or at least consider for the protection of women's abortion rights.

Prior to the landmark *Roe vs. Wade* judgement, states in the United States had highly tight abortion laws that did not enable women to terminate a pregnancy unless the continuation of the pregnancy constituted a substantial health danger to the pregnant woman. The *Roe vs. Wade* decision helped to alleviate this. By confining the right to abortion within the 'zone of private,' females gained more rights to terminate their pregnancies. However, it is vital to highlight that the regulations do not cover abortions caused by rape or incest. Even in this day and age, the United States, one of the most progressive nations in the world, does not allow females to legally abort if they become pregnant as a result of rape or incest. Furthermore, very few states in the United States recognize pregnant women's mental condition as grounds for abortion. The physical or psychological consequences of sustaining an unplanned pregnancy are also ignored. One positive aspect of Georgia's abortion law is that it protects doctors from criminal culpability for unplanned or accidental abortions, as well as any injury inflicted to an unborn child inadvertently or accidentally. Such a clause is essential because actual accidents can occur, and doctors should not be legally punished as a result. As a result of the overruling of *Roe v. Wade* decision, individual states now have the authority to restrict or enable citizens to practice abortion.

CONCLUSION

This analysis proves that Indian abortion laws are so much more progressive than those in the United States. Though the United States was the first to declare abortion to be a part of a woman's "zone of privacy" with the *Roe vs Wade* decision, India recognized females' right to abortion as a right guaranteed under Article 21. 21 years later, India was quick to consider the position of the females to give birth and raise the child out of an unwanted pregnancy coupled with the life of the prenatal child. Abortion regulations in the United States are tight and limited because the government prioritizes the rights of the unborn child while ignoring mental health issues and other bodily integrity. Abortion laws are needed to combat a threat such as female foeticide, so appropriate laws that do not violate women's rights were drafted. To mitigate the negative impact of abortion on the pregnant woman, restrictions prohibiting abortion after a particular period of time might be adopted. This must be in line with the country's medical and technological proficiency and must be updated as and when progress is made in this field.

Indian laws are a good illustration of this. Because abortion can be hazardous, current Indian laws prohibit it after 20 weeks of pregnancy.

Most nations permit abortion if the physical health or life of the pregnant woman is jeopardized if the pregnancy is not terminated. Furthermore, abortion on the basis of fetal anomalies or medical futility of the unborn is considered while examining the rights of the pregnant child. However, in delicate and emotionally upsetting situations, such as pregnancy resulting from rape or incest, abortion should be permitted since it has a negative influence on the mental health of the carrying female. It would be unfair and unjust to the rape/incest victim if this were not done. As a result, all governments should consider the rights of the female, the rights and health of the prenatal child, and the physical and mental state of the women if she is not permitted to terminate her pregnancy while creating abortion legislation. The legislation will be fair and just as a result.