

The Incongruity Between the Medical Termination of Pregnancy in India and United States: A Comparative Study

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Abstract

Abortion is a controversial right in developing countries such as India. Certain nations place limitations on human rights that are declared under the pretext of the "mother's right to health," while others restrict the act to protect the embryo's right to life. In the struggle to maintain the balance between the rights of the fetus and the rights of pregnant women, judicial intervention is crucial. Just as in India, the personhood of the fetus and abortion are incompatible with women's reproductive autonomy. Despite this, the Indian judiciary is working to change laws to make them more accepting of women who choose to have abortions and more in line with the circumstances of extraordinary instances.

The intention is to provide a more comprehensive understanding of abortion laws and policy in India and the United States. This subject has been studied by researchers with an emphasis on women's reproductive rights. It will concentrate on the abortion-related laws made in the USA and India. This research will compare the conditions of women in emerging nations to those of developed nations, specifically the United States. With the aid of existing legislation and knowledge of pertinent modifications made to it, scholars will draw conclusions on women's reproductive rights.

Keywords and phrases: Abortion, right to life, legislation, reproductive autonomy, India, USA.

INTRODUCTION

"The having of kids- the responsibility of rearing good, kind, ethical, responsible human beings- is the biggest job anyone can embark on."

-Maria Shriver

Before the landmark judgment of *Roe v. Wade*¹ was even in the picture, India in this context was a step ahead by introducing the Act dealing with the termination of pregnancy.² Pregnancy and abortion, the two significant and complimentary issues have always been a matter quite deeply in the consideration of human beings of all time. Regarding women's pregnancy, miscarriage, and abortion, religious scriptures and mythology have also provided a good number of standards and guidelines.

Here it becomes imperative to understand the fine line yet vivid difference between miscarriage³ and abortion. When talking generally, miscarriage is the what is used when talking about "spontaneous

¹ 410 U.S. 113

² MTP Act, 1971

³ Termination of pregnancy before 20th Week of Pregnancy.

abortion” and abortion⁴ *per se* is used when talking about “induced abortion”, even though both terms are used to refer to termination of pregnancy.⁵

Differences in the views of different religious groups, the, followers of liberalism and feminists regarding abortion have created divisions and conflicts that have led to violence and even loss of lives. In fact, abortion is the most problematic, the least understood and accepted aspect of family planning. However, it is the most important method used by people advocating about (whether in favour of or against) birth control and family planning.⁶

The matter of abortion has even been identified by the World Health Organization in 1967 in its general Assembly.⁷ The Supreme Court just reversed the historic conclusion in a contentious decision of *Roe v. Wade*⁸ and making abortion illegal.⁹

Women have historically employed a variety of birth control methods and abortion techniques. Not only is abortion a medical issue, but it's also a contentious one that raises questions about young women's sexuality and gives rise to moral, ethical, and legal disputes.¹⁰ Women have needed and resorted to abortion, whether it be overtly or covertly, but the access to the same have always been through various legal as well as social restrictions.¹¹ In this paper, an endeavor is made to bring about the comparative analysis of the laws related to abortion in India and in the United states.

ABORTION AND ISLAM

Islam considers procreation as an act of worship, provided that the procreation happens within the valid ties of marriage as considered by the Islamic law.¹² Abortion is prohibited (haram) in Islam¹³ as it is considered similar to that of killing an innocent or speechless being, and if done it will result in the payment of *Diyah*.¹⁴ which is the responsibility of the person who carries out the abortion. Even if it's the doctor who causes the termination of conception through any medicine or injection, the responsibility lies on him.¹⁵

ABORTION IN CHRISTIANITY

Christians basically of the Catholic Churches considers abortion as an unforgivable evil. The orthodox churches consider anything doing to abort an unborn child as that of taking a human life. Although, the

⁴ Termination of pregnancy by medical procedure *via* legal sanction.

⁵ Charu Srivastava, “Miscarriage vs. Abortion - What is the Difference between Them?” available at <https://www.hexahealth.com/blog/difference-between-miscarriage-and-abortion> (last visited on June 30, 2023)

⁶ Potts M, Diggory P, *Abortion*, 2nd edition. Cambridge University Press; 1983. Textbook of Contraceptive Practice; pp. 274–367.

⁷ Twentieth World Health Assembly Resolution 2014: Health aspects of population dynamics. Official records of the World Health Organization No. 160, WHO, Geneva, Switzerland (1967).

⁸ *Supra* note 1.

⁹ *Dobbs v. Jackson Womens Health Org.* 142 S. Ct. 2228 (2022)

¹⁰ Rosalind P. Petchesky, *Abortion and Women's Choice: The State, Sexuality and Reproductive Freedom* (North Eastern University Press, 1991).

¹¹ Malini Karkal, “Abortion Laws and the Abortion Situation in India” 4(3) *Issues in Reproductive and Genetic Engineering: Journal of International Feminist* 223-30 (1991)

¹² Hathout H. *Islamic Perspectives in obstetrics & Gynecology*. Kuwait: Islamic Medicine organization; 1986. pp. 61–89.

¹³ “Kill not your children for fear of want. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin.” Al Quran 17:31.

¹⁴ Blood money/ransom

¹⁵ Dr. Bahram Dilawar, “Islamic Edicts on Family Planning” available at <https://www.al-islam.org/islamic-edicts-family-planning/abortions> (last visited on July 03, 2023).

churches do not condone the same in cases of rare and exceptional situations where extraordinary actions are required to shift the mother to a safer pedestal. The churches continue to reject any form of abortion and does not relate to the concept of mentality that links ones free will to right to abort.¹⁶

ORIGIN OF ABORTION IN THE UNITED STATES

Laws and regulations regarding abortion date back to colonial times. In the UK, abortion is legal until the “kick”, that is, when a woman feels the fetus move, usually around four or five months of age. Abortion restrictions were not enshrined in state law until the 1820s, and early laws were vague and loosely enforced. Some laws are anti-toxic drugs designed to prevent the sale of chemical mixtures used in abortion.

The history of abortion rights is entwined with racism; Slaves were ruled by masters who wanted their slaves imprisoned in order to have as many children as possible. To date, black women and other non-white women often face more problems getting an abortion.¹⁷

At the end of the 19th century, most states had laws against abortion. It is part of the struggle against the development of the feminist who advocates “voluntary parenting”. While the movement does not support abortion, the need for contraception is seen as a threat to male domination; Banning abortion is part of efforts to control women and limit them to childbearing activities.¹⁸

Although some people offer abortion even though abortion is illegal, the availability of abortion often depends on your finances, race, and where you live. Women with money can sometimes find a doctor willing to perform expensive surgeries in the United States. Until the middle of the 20th century, some women went abroad to have an abortion. The poor, especially women of color, suffered disproportionately. They are often at the mercy of malicious incompetent doctors or have to take the risk at their own risk.¹⁹ Before *Roe. v. Wade*²⁰ many doctors and surgeons were ready to take risks to provide facilities of abortion and those risks involved not just fines, but also going to jails and cancellation of medical license. Subsequently after the very same case aforementioned, the constitutional rights of abortion were recognized in relation to women’s right to choice and bodily autonomy. Abortion was considered not just very vital when talking about the safety of women’s life, but also her place in society by giving the right to choose to be a mother.²¹

Recently, the legislation was passed by 13 states in the US which related to “foetal heartbeat”.²² The Texas Heartbeat Act²³, which was into effect since 2021, was the first ever act after the rules laid down in *Roe*.

¹⁶ St. Nicholas Serbian Orthodox Church, “The Position on Abortion in Orthodox Christianity”, available at <https://www.stnicholasmonroeville.org/abortion-in-the-orthodox-church/> (last visited on July 03, 2023).

¹⁷ Carrie N. Baker, “The History of Abortion Law in the United States” available at <https://www.ourbodiesourselves.org/health-info/u-s-abortion-history/> (last visited on July 04, 2023).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Supra* note 1.

²¹ Tracy A. Weitz, “Rethinking the Mantra that Abortion Should be “Safe, Legal, and Rare”, 22, *Journal of Women’s History*, 161, 161, 162 (2010), available at https://wp.aleteia.org/wpcontent/uploads/sites/2/2014/08/weitz_jwh10-2010.pdf (last visited on July 4, 2023).

²² A different six-week abortion ban, HB 59, was previously introduced in Texas by Representative Phil King on July 18, 2013. The bill did not pass. On March 11, 2021, the Texas Heartbeat Bill (Senate Bill 8 or SB 8 for short) was introduced by Senator Bryan Hughes.

²³ TARA CULP-RESSLER, “Texas Legislators File Radical ‘Fetal Heartbeat’ Bill To Ban Abortion After Just Six Weeks”, available at <https://web.archive.org/web/20210602214540/https://archive.thinkprogress.org/texas-legislators-file-radical-fetal-heartbeat-bill-to-ban-abortion-after-just-six-weeks-e641c8c7cbd1/> (last visited on July 4, 2023).

v. *Wade* to ban abortion after the cardiac activity is seen in the embryo, which is generally in or after the 6th week. This act requires the doctors to check the heartbeat of the foetus before causing an abortion. If the cardiac activity has started in the child inside the womb, then it is totally impermissible to cause the abortion of the child. The exceptions to this case were none, not even pregnancies in cases of rape and incest.

Additionally, the law permits private parties to bring civil claims against anyone who knowingly participates in an activity that facilitates or aids in the performing or inducing of an abortion. The wording is so broad that it might apply to a friend, pastor, or even a driver who gives a lady advice or drives her to an abortion facility. Any citizen may bring a civil lawsuit, and if it is successful, the offending party must pay damages equal to \$10,000 or more for each abortion, in addition to costs and legal fees. This specific provision gives private parties the authority to enforce the law.²⁴

Before 2022, that is, before the *Dobbs* case, **Florida** allowed women to have abortions up to the 24th week of pregnancy. However, the situation changed after 2022. With the passage of the Fetal Heartbeat Act, abortion became illegal after the 15th week of pregnancy.

Before this decision, abortions were performed in approximately 28 clinics in **Hawaii**. However, after 2022, abortion procedures are banned and women can only terminate a pregnancy if there is evidence that continuing the pregnancy would pose a risk to health or life.²⁵

The situation with abortion rights in **New York** is a bit different. In 1970, even before *Roe*, abortion was legal in New York. In New York, abortion is allowed up to the 24th week of pregnancy. In 2019, New York passed the Reproductive Health Act of 2019, which allows abortion even after 24 weeks if the woman's life is at risk or the baby's survival rate is very low.²⁶

Indiana, the state controls the abortion procedure and abortion in general doing it is illegal. Abortion is permissible only if the woman becomes pregnant as a result of violence or sexual intercourse, within 10 weeks after the birth of the egg, to save the health or life of the fetus, or if the fetus is in a bad condition. Additionally, if the patient is a child, parental permission is required for abortion.

Here is a state in the United States that is somewhat liberal regarding abortion laws. Abortion is allowed in **Virginia** and is legal until the 25th week of pregnancy. Even if there are some restrictions on having sex or serious health.

ABORTION LAWS IN INDIA

Abortion laws in India are governed by the Indian Penal Code, 1862, and the Penal Code, 1898 to 1971, and date back to 19th-century British legislation that made abortion illegal. Unless it is done to save the woman's life, it will be punished.²⁷ Abortion rights were introduced in Europe and the United States in the 1960s and 1970s, and in the 1980s abortion rights spread to many countries around the world. Currently, approximately 5 million abortions are performed in India every year, of which 3 million are illegal. The *Shantilal Shah* Committee²⁸ therefore examined the concept of abortion from different cultural, legal and

²⁴ Glenn Cohen, Eli Y. Adashi and Lawrence O. Gostin, *The Supreme Court, the Texas Abortion Law (SB8), and the Beginning of the End of Roe v. Wade?*, *The Journal of the American Medical Association Health Forum* (2021), available at <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3431&context=facpub>

²⁵ Guttmacher Institute, "State Facts About Abortion: Hawaii", (June, 2022), available at <https://www.guttmacher.org/factsheet/state-facts-about-abortion-hawaii.html>

²⁶ The Reproductive Health Act, 2019.

²⁷ Asit K. Bose, "Abortion in India: A Legal Study", 16 *JILI*, 535 (1974).

²⁸ Shri Shantilal H. Shah, "Report of The Committee to Study the Question of Legalization of Abortion, 1967", 51-53 (1967).

medical perspectives, including worldwide legal developments regarding permitting medical termination of pregnancy.

The committee agreed that abortion should be considered for compassionate and medical reasons to prevent maternal morbidity and death. As a result of this humanitarian demand, the 1971 Act, essentially the United Kingdom's 1967 Abortion Act, was introduced to Parliament in 1970 and finally passed in August 1971 and from 1 April 1972.²⁹ Instead, he added, the legalization of abortion for public reasons could affect the development and effectiveness of family planning. Liberalizing abortion laws would not only save pregnant women, but also prevent serious harm to their bodies and minds.³⁰

The Indian Penal Code places severe penalties on abortions that are carried out against the will of the pregnant woman or against her permission. Furthermore, miscarriages are mentioned rather than abortions. The legal termination of unwanted pregnancies or those resulting from heinous crimes such as rape is not included in the Code. Sections 316, 312, and 313 deal with abortion.

This section shows how many weeks of pregnancy must pass before an abortion can be performed. The doctor will terminate the child fairly only if the continuation of the pregnancy would harm the woman's life, body or mind. This article explains why the mental health of women who go on to become pregnant as a result of abuse can have a serious impact. Failure by a married man or woman to take precautions during pregnancy can result in physical and emotional harm to the woman. If the doctor feels the need for an abortion, he or she can perform an abortion starting from the 12th week of pregnancy. According to this law, the child's pregnancy cannot be terminated without the permission of the guardian. Even if the girl is an adult and over 18 years of age, parental consent is still required.³¹

POSITION OF INDIA AND THE USA

After a long and legal struggle, new laws in the field of abortion were seen in the country. The IPC first used the term rich in 1860. Neither rape nor birth control failure caused abortion. She also doesn't think abortion is linked to mental illness. The country eventually achieved peace and relaxed such restrictions. The MTP Bill takes into account the psychological effects of unwanted children. Additionally, the 2020 amendment aims to increase the maximum pregnancy length to 24 weeks, while respecting women's privacy rights and incorporating advances in abortion. This shows how far the law has come and summarizes all the changes that have been made to provide better abortion opportunities.

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The 1971 MTP Act allows abortion in medical settings and in cases where the woman's life, limbs or health are at risk, as well as in cases where human health is at risk when pregnancy occurs as a result of

²⁹ Siddhivinayak S. Hirve, 'Abortion Law, Policy and Services in India: A Critical Review of Abortion Law, Policy and Practice in Transition', Vol. 12 Issue Supp 24 *International Journal on Sexual and Reproductive Health and Rights*, 114-121 (2004).

³⁰ M. Berer, Making Abortions Safe: *A Matter of Good Public Health Policy and Practice*, *Bulletin of the World Health Organization*, 580-592 (2000).

³¹ Debleena Pal, Pami Sutradhar, Saumya Neelu Jain, Vidish Mishra, "A Comparative Study between US and India Abortion Laws", *International Journal of Research Publication and Reviews*, pp. 2242, ISSN 2582-7421.

³² *Ibid.*

illicit sexual intercourse, such as rape or sex with an insane woman. To be clear, pregnant women who want to have an abortion must explain themselves. It is inexplicable to say that you wanted to be pregnant when you were pregnant but now you don't want to be pregnant. The bill requires an interpretation that meets its mostly liberal but strict standards. This shows that abortion is still associated with state sanctions rather than women's rights. The woman's agency is pushed into the background due to serious damage to her physical or mental health or severe physical or mental illness in the fetus, and at every step there must be legal evidence that restricts her personal freedom, privacy and choice of children. To give real context to this debate, it is necessary to mention a few important decisions supporting women's freedom.

In the bench consisting of three judges³³, it was decided that the woman's right to decide on pregnancy is an important part of personal freedom, as seen in Article 21 of the Constitution of India. The court immediately argued that obtaining the consent of the pregnant woman is a prerequisite for terminating the pregnancy. Similarly, Justice Chandrachud³⁴ observed that Article 21 of the Indian Constitution guarantees the right of minors to vote. In this regard, it is imperative to uphold the rights of women to privacy, dignity, and bodily integrity. To be honest, in spite of robust legal precedents protecting women's privacy and reproductive rights, doctors no longer have the majority of the authority; instead, women seeking abortions now do. As you may expect, it appears that the legal system could readily be utilized to restrict abortion services in the future. The law solely applies to doctors and abortion facilities because it does not support women's right to an abortion. As such, abortion remains associated with non-feminine rights imposed by the state.

CONCLUSION

With all of the facts provided above, it is clear how India and the United States differ from each other in terms of abortion rights. Although residents of the United States prior to 2022, or before the Dobb ruling, were entitled to an abortion under Article 21 of the Indian Constitution, Indian citizens are not entitled to one under the Dobb judgment. However, that was altered by the Dobb decision of 2022, wherein the court held that states were permitted to place reasonable restrictions on the abortion procedure and that the right to an abortion is not a constitutional right. Since the US is a federal nation, many states may have different legal systems. States began enacting various abortion restrictions after 2022; some of these limitations were also listed in the text. A national legislation in India acknowledges the right to an abortion as a component of the right to life. The Constitution clearly recognizes women's right to an abortion, as demonstrated by the rulings of Indian courts. If a woman requests an abortion and meets the legal requirements, the court will grant her request. the constitution.

The court ruling states that as a woman has the freedom to choose, she may be able to have an abortion even after the maximum time frame allowed by law has elapsed, if the medical board grants approval. She is unable to decline an abortion. Thus, the information above illustrates the differences in the legislation pertaining to abortion between the two nations and contrasts how one sees abortion as legal while another does not. If social culture is a set of overlapping patterns, then bringing these patterns together requires a multitude of actions. Try to be normal every day, even in the worst of circumstances.

Every story about pregnant women including those involving victims, emphasizes the awful notion that those who are aware of the pregnancy, particularly the state, are the ones who are concerned about the living, not the mothers. Best interests of mother and fetus, in that the state, not the woman, is the rightful

³³ Suchita Srivastava & Anr vs Chandigarh Administration, AIR 2010 SUPREME COURT 235.

³⁴ *K.S. Puttaswamy (Retd.) v. UOI* (2017) 10 SCC 1.



owner of the mother's bodily autonomy. The model never happily closes when we all try to assess "normal" culture from a "common sense" standpoint. Its social norms are brittle, its borders are porous, and when put to the test by the law, all norms become unstable. Consider this: these cultures wouldn't require a vast network to oversee them if they were naturally occurring.