

A Comparative Study of Abortion Laws in India and Usa: With Special Reference to Women's Rights and Reproductive Autonomy

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ABSTRACT:

The changes in the laws regarding abortion in India and the USA have a relation with societal attitudes toward women's rights and reproductive autonomy. India's Medical Termination of Pregnancy Act has evolved over time, allowing abortions under specific circumstances. However, the challenges persist due to centric and socio-economic factors. The USA established a constitutional right to abortion in the case of Roe-vWade decision in 1973 and Dobbs-vs-Jackson Women's Health Organization decision in 2022 which overturned federal protections leading to growing factors on rights over women's autonomy. Historical, cultural, and political factors determine the nature of the abortion laws in India and the USA. The Medical termination of Pregnancy Act empowers Indians-all women, irrespective of her being married or single-to undergo abortions before the completion of 24 weeks of gestation; however, this only recognises sovereignty as in all matters related to the female's reproductive health and life. The United States rolled back a century's worth of legal abortions in the decision case that led to the overturning of Dobbs -vs- Jackson Women's Health Organization after years of Roe -vs- Wade. It's going to increase the barriers coming under geographical location, socio-economic, and political consideration, which results in a problem in accessing the abortion service, which is provided both safely and legally, the amendment in India's Medical Termination of Pregnancy Act of giving importance to women autonomy related to abortion and US the Dobbs -vs- Jackson decision overturns the Roe -vs- Wade leading to restrictions for gaining access. Both countries in the present fight for reproductive justice and women's rights under the abortion laws have placed high emphasis on the aspect of fair access to reproductive health care.

KEYWORDS: Specific circumstances, Abortion laws, Increased obstacles, Restrictions on access, Reproductive healthcare.

INTRODUCTION:

Indian abortion law and the ever-changing scenery of women's rights and reproductive autonomy in the USA: The Indian Medical Termination of Pregnancy Act 1971 becomes the major legislation in India regarding abortion through the latest amendments that notch away some access to safe legal abortions. Reproductive rights are being gradually and steadily placed at par with personal rights in India under Article 21 of the Indian Constitution. The USA has a significant legal landscape on abortion rights with reference to the landmark case Roe -vs- Wade decision in 1973, which leads to a fractured legal environment. Cultural attitudes toward abortion affect women's access to reproductive healthcare in both countries. Reproductive autonomy refers to the right of a woman to make choices regarding her

reproductive health without any form of coercion or discrimination. Understanding these dynamics is important because many are still fighting for women's rights regarding equitable access to reproductive health care around the world¹.

I. HISTORICAL EVOLUTION OF ABORTION LAWS (INDIA AND USA):

- 1. Pre-Legalization Era: Unsafe Abortions and Public Health Concerns:** Through public health concerns, unsafe abortions took place in India and the USA before legalization. Societies facing stigma and with strict laws have increased unsafe abortions incidents as likely to be highly affected with severe complications and maternal mortality disadvantages. The Indian Government established the Shantilal Shah Committee in 1964 and legalized abortion through the Medical Termination of Pregnancy Act in 1971. In the USA, the landmark decision in *Roe vs Wade* reduced unsafe procedures
- 2. Introduction of legal abortion frameworks:** The introduction of legal abortion frameworks in India and the USA has evolved women's rights and reproductive autonomy. India's Medical Termination of Pregnancy Act (MTP Act) legalized abortion under specific conditions to ensure safe procedures and judicial interpretations of reproductive rights. In USA constitutional right to abortion and reduction of unsafe procedures in post-*Roe* developments have led to restrictive laws prioritizing fetal rights over women's autonomy.
- 3. Amendments and expansions in Abortion laws:** This comparative study analyses the abortion laws in India and the USA since recent amendments. In India, the 1971 Medical Termination of Pregnancy Act allows abortions to be performed under specific conditions, but the country's practice contradicts its law with societal attitudes and health care disparities. In the USA, federal protections have been rolled back with the recent *Dobbs* decision as increasing restrictions affect vulnerable populations. Both countries should fight for the rights of women to access reproductive measures and achieve equality in safe abortions at last.
- 4. Judicial and legislative frameworks in Abortion laws:** India and the USA faced judicial and legislative challenges of abortion laws that would legalize abortions for vulnerable groups, which are judicial challenges in granting reproductive rights against societal norms and giving access for every woman to make choices. The changing USA from federal protection towards state control results in the level of access that is unequally distributed and proved limited for marginalized communities. This is why the challenges have to be addressed so that there could be equality in reproductive rights in both countries.²

II. CURRENT LEGAL FRAMEWORK GOVERNING ABORTION

1. Legal framework for access to abortion:

Legal restrictions and access to abortion impact on women's reproductive rights during the "motherhood penalty" stage. Even within India, there is such a thing as the Medical Termination of Pregnancy Act, 1971 but societal stigma, poor health structure, and lack of education limit access. In USA, the *Dobbs v*

¹ A COMPARATIVE STUDY OF ABORTION LAWS AND THEIR SOCIETAL IMPACT, THE AMIKUS QRIAE (Oct. 16, 2023), <https://theamikusqriae.com/a-comparative-study-of-abortion-laws-and-their-societal-impact/> (last visited Nov 4, 2024).

² Satvik N. Pai & Krithi S. Chandra, *Medical Termination of Pregnancy Act of India: Treading the Path between Practical and Ethical Reproductive Justice*, 48 INDIAN JOURNAL OF COMMUNITY MEDICINE: OFFICIAL PUBLICATION OF INDIAN ASSOCIATION OF PREVENTIVE & SOCIAL MEDICINE 510 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10470576/> (last visited Nov 4, 2024).

Jackson Women's Health Organisation decision overruled precedent *Roe v Wade* of the year 1973 which also brought in state level variability and inequality in accessibility of the reproductive health care facility.

2. Gestational limits and Exceptions:

The legal framework of abortion adversely affects the rights and autonomy of women in their reproductive process. MTP Act, 1971, permits abortion under certain conditions, which is up to 20 weeks for certain categories and up to 24 weeks for vulnerable women; however, such accesses remain very limited because of societal stigma, lack of proper healthcare infrastructure, and a lack of knowledge about the abortion rights of women. The fractured legal environment of gestational limits and restrictions promulgated by the permitting states in the USA discriminates against the marginalized communities, leading to inequality in reproductive health services³.

3. Medical and legal authorization requirements :

India and the USA are quite far apart in influencing the availability of services and the reproductive choice of women. India's Medical Termination of Pregnancy Act, 1971 provides medical personnel, informed consent, and gestational limits. However, these remain an issue due to lack of awareness about legal rights. In the USA, it has created a patchwork legal environment, which makes access complicated based on geography. This is what calls for attention in order to enable women to make choices about their reproductive health analysis⁴.

4. Constitutional and state level protections :

Abortion in India and the USA is at the level of constitution, as well as state levels. State-wise, gestational limits on abortion are also different for India. Contrary to this, abortion federal rights in the USA allow individual states to decide on some regulations on the abortion for themselves. As far as the MTP Act granted women the rights of producing, but culturally it stands with the weak infrastructure. Gross inequalities have resulted from the overturning of *Roe vs Wade*, and such equal access to reproductive healthcare is quite essential in terms of access to abortion services.

5. Criminal and civil penalties for violations :

Under the Indian and USA legal system, abortion is accompanied by criminal as well as civil sanctions for violation. States that prohibit or limit abortion may subject healthcare providers to criminal penalties for performing illegal abortions outside of the law, and healthcare providers will face fines and imprisonment. Some states have established statutes penalizing women for her decision to abort against her will, and provisions such are controversial to be judicially litigated. Some of civil penalties includes malpractice liability, medical board disciplinary action, licensure sanctioning, and the suit of state authorities to maintain healthcare in women. Criminal and civil penalties associated with violation of abortion law in India and the USA illustrate the two approaches toward reproductive rights regulation and measures ensure there is fair access to reproductive health care and the protection of women's choices over their reproduction.

III. REPRODUCTIVE AUTONOMY AND WOMEN'S RIGHTS

Reproductive autonomy is the right of women to make informed decisions about their reproductive health

³ Skye Wheeler, *Reproductive Rights in the US Wildfire Crisis*, HUMAN RIGHTS WATCH (2024), <https://www.hrw.org/report/2024/08/21/reproductive-rights-us-wildfire-crisis/insights-health-workers-oregon-state> (last visited Nov 4, 2024).

⁴ L. Purdy, *Women's Reproductive Autonomy: Medicalisation and Beyond*, 32 JOURNAL OF MEDICAL ETHICS 287 (2006), <https://pmc.ncbi.nlm.nih.gov/articles/PMC2579416/> (last visited Nov 4, 2024).

without coercion or discrimination because it is deeply concerned with women's rights in accessing contraception, abortion and comprehensive reproductive healthcare choices. Factors like gender norms, economic factors, legal frameworks and cultural concepts about abortion has an impact on women's reproductive decision-making authority. Access to services, laws and empowerment through education are essential for women's rights for advancing reproductive rights globally⁵. Major concepts which addresses abortion laws and reproductive autonomy in healthcare sector between India and USA.

CONCEPTS	INDIA	USA
REPRODUCTIVE AUTONOMY	India's Medical Termination of Pregnancy Act of 1971 allows legal abortion under certain conditions which are traditional gender norms, cultural stigma and inadequate healthcare infrastructure often hinder women's reproductive rights ⁶ . Economic pressures and societal expectations which is called as the "motherhood penalty" also contribute to the challenges faced in enforcing these rights despite of having legal provisions.	The USA's reproductive autonomy is protected under leading patchwork of laws across states. This variability creates disparities in access of reproductive healthcare and disproportionately affecting marginalized communities. Political polarization and economic barriers are also factors which complicate women's decision-making. Recent legal changes raise concerns about women's rights in healthcare sector.
LEGAL RECOGNITION OF WOMEN TO CHOOSE	India's Medical Termination of Pregnancy Act, 1971, recognizes women's right to choose abortion. Amendments in 2021 expanded allowing 20 weeks for minors and survivors of rape and 24 weeks for vulnerable groups. Abortion must be performed by qualified practitioners legally and women must give informed consent. However, societal norms and traditional gender norms hinder women's ability to perform their rights.	The USA's legal recognition of women's right to choose abortions was based on the Roe vs Wade case decision in 1973, which granted women's the right to make decisions without government interference. However the Dobbs v. Jackson case allowed states to regulate and ban abortions which created a legal landscape with varying access affecting marginalized communities and complicating women's autonomy.
IMPACT OF ABORTION LAWS	India's abortion laws are governed by the Medical Termination of Pregnancy Act of 1971 which was	The USA has experienced regression in abortion rights following the Dobbs vs Jackson Women's Health

⁵ Andrea M. Wojnar, *Women's Reproductive Autonomy as the New Catchword*, THE HINDU, Jul. 10, 2023, <https://www.thehindu.com/opinion/op-ed/womens-reproductive-autonomy-as-the-new-catchword/article67064795.ece> (last visited Nov 4, 2024).

⁶ Women's reproductive autonomy as the new catchword - Civildaily, (Jul. 11, 2023), <https://www.civildaily.com/news/womens-reproductive-autonomy/> (last visited Nov 4, 2024).

<p>ON GENDER EQUALITY</p>	<p>amended in 2021. The Indian Supreme Court upheld this amendment, addressing historical discrimination and events against unmarried women and promoted gender equality⁷. These amendments empower women by recognizing their autonomy over reproductive choices. However the barriers to access remain due to a medical approval for abortions.</p>	<p>Organization and Roe vs Wade. This led to states enacting laws that severely limit access to abortion and fetal rights over women's autonomy. This has implications for women's autonomy in access to safe and legal abortion services, economic hardship, and political polarization. This creates a patchwork of affecting low-income women.</p>
<p>BARRIERS TO REPRODUCTIVE AUTONOMY</p>	<p>India faces barriers to reproductive autonomy due to legal constraints and healthcare access. Traditional gender roles which is the "motherhood penalty" and limited access to healthcare and decision-making power. Legal constraints such as Medical Termination of Pregnancy Act can be deterred by social circumstances. Cultural stigma also contributes to unsafe practices and adverse health outcomes of women's.</p>	<p>The USA faces numerous barriers to reproductive autonomy in accessing abortion and other reproductive health services. These barriers are affecting marginalized communities like women of colour, low-income individuals and those with disabilities. Legal restrictions, financial challenges, logistical difficulties, social factors, and provider discrimination contributes to these disparities. The intersection of race, income level, and disability status is crucial for promoting individual autonomy and advancing broader gender equality goals to equitable access to of reproductive healthcare which is essential for empowering women and fostering a society where all individuals can fully perform their rights and duties.</p>
<p>ROLE OF STATE AND SOCIETY IN REPRODUCTIVE DECISIONS</p>	<p>The role of state policies and societal attitudes in India's reproductive decisions is crucial because it provides legal protections for abortion. The Indian judiciary has a positive approach towards reproductive healthcare and protect</p>	<p>The USA reproductive decisions are influenced by state policies particularly in the context of abortion rights. The legal framework and constitutional protections for abortion vary widely across the country and some states enacting laws that protect and expand access to abortion</p>

⁷ Ayush Kumar, *Reproductive Rights Under Indian Constitution*, TSCLD (2020), <https://www.tscl.com/reproductive-rights-under-the-indian-constitution> (last visited Nov 4, 2024).

	<p>women from coercion⁸. Cultural norms, education, and community support systems can also impact women's choices. The challenges include access to healthcare, socio-economic disparities, and judicial inconsistencies. Addressing these challenges requires legal protections, cultural shifts and a holistic approach in fostering women's autonomy as a fundamental human right.</p>	<p>meanwhile other states have stringent restrictions or bans. State constitutions and courts play a critical role in protecting reproductive rights while public funding for abortion services varies by state to state. Cultural norms and stigmas, education and awareness, and community support systems in shaping reproductive decisions. Challenges in USA addresses the efforts and difficulties faced in civil society⁹.</p>
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IV. SOCIETAL ATTITUDE AND CULTURAL INFLUENCES:



VII.CASE ANALYSIS

1. ROE VS WADE, 1973

1.One of the most famous USA Supreme Court decisions is released in 1973 on the issue of whether an abortion should be legal. This suit began when Jane Roe was a very young woman and she appealed the decision in the local district court with Henry Wade. The Dallas County Texas District Attorney who had

⁸ Rights to Sexual and Reproductive Health, <https://www.un.org/womenwatch/daw/csw/shalev.htm> (last visited Nov 4, 2024).

⁹ Reproductive Rights - an overview | ScienceDirect Topics, <https://www.sciencedirect.com/topics/social-sciences/reproductive-rights> (last visited Nov 4, 2024).

taken an aggressive posture against this alleged illegal procedure gone through Texas law at that time which only permitted abortions to save a woman's life otherwise obtaining or attempting an abortion was forbidden. McCorvey reasoned that the Texas law denied her constitutional right to privacy¹⁰. A physician from Texas then joined the case and further argued that the law in question was vague. Hence infringed on the exercise of medicine. The case was not just in legal terms but was also social because it revolved around the issues regarding women's rights and issues of reproduction.

2. Whether the Texas statute criminalizing most abortions violated a woman's constitutional right to privacy under the **Fourteenth Amendment**. The questions are about the balance between a woman's right to choose and the state's interests in regulating abortions for protecting potential life.

3. The Supreme Court based its judgment on:

Fourteenth Amendment: The Court defined Due Process Clause which says the right of privacy that bars a woman from being denied her right to choose an abortion.

Precedents: The judgment is on prior opinions of the Supreme Court that allows privacy rights establishing that right to privacy is not absolute but extends to decisions on pregnancy¹¹.

4. Right of Privacy: The Court established that the constitutional right to privacy is a woman's decision to terminate her pregnancy. The state have an interest in regulating abortion and the Court has raised certain guidelines for reconciling those interests with women's rights. The states cannot regulate an abortion except it can be performed by a duly licensed physician. The state may also determine regulations related to the healthcare of the woman upon a fetus viability, a state could prohibit a procedure of abortion but can allow performance if the abortion is deemed necessary to save the life of women and maintain her health.

5. The Court was with the contention that life exists at conception. The Court believed that the term "person" does not have a definition found in the Constitution and during its interpretation over time it has never defined a fetus as a person and it has certain rights under law. The justices came to the conclusion that states should not make such decisions regarding the pregnancy of women by pointing out that forcefully to continue will risk their health and burdensome financially also¹².

Roe v. Wade is a landmark case which established abortion as a constitutional right protecting privacy laws. It limited states ability to impose restrictive laws on access to abortion of a women which impacts **women's rights and reproductive autonomy**. This decision had implications that influenced the legal battles and public knowledge on reproductive health¹³. However, in June 2022, the Dobbs -vs- Jackson Women's Health Organization overturned Roe -vs- Wade in returning regulatory power to individual states and enforcing debates over reproductive rights. Roe -vs- Wade established abortion as a constitutional right which has to be protected by privacy laws in political point of view on women's rights and reproductive health. Precedents like Planned Parenthood -vs- Casey and Whole Woman's Health -vs- Hellerstedt established women's rights in abortion and reproductive autonomy.

¹⁰ Roe v. Wade | Summary, Origins, Right to Privacy, & Overturning | Britannica, (2024), <https://www.britannica.com/event/Roe-v-Wade> (last visited Nov 4, 2024).

¹¹ The Constitutional Right to Reproductive Autonomy: Realizing the Promise of the 14th Amendment, CENTER FOR REPRODUCTIVE RIGHTS, <https://reproductiverights.org/constitutional-right-reproductive-autonomy-14th-amendment/> (last visited Nov 4, 2024).

¹² Nina Totenberg, *Supreme Court Overturns Roe v. Wade, Ending Right to Abortion Upheld for Decades*, NPR, Jun. 24, 2022, <https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn> (last visited Nov 4, 2024).

¹³ Roe v. Wade, CENTER FOR REPRODUCTIVE RIGHTS, <https://reproductiverights.org/roe-v-wade/> (last visited Nov 4, 2024).

2. DOBBS -VS- JACKSON WOMEN'S HEALTH ORGANIZATION, 2022

The landmark case decided by U.S. Supreme Court from June 2022 reversed the abortion rights in the United States and started legal challenges to Mississippi's Gestational Age Act, which was prohibited after 15 weeks of gestation before the viability standard established in *Roe -vs- Wade* (1973). The question raised was: Could the state of Mississippi enforce this law opposing the rulings of the landmark case *Roe -vs- Wade* and *Planned Parenthood v. Casey* (1992)? These protected the woman's right to choose an abortion before it was viable.

The Supreme Court affirmed that Mississippi's law overturned *Roe -vs-Wade* case declaring that the constitution does not provide a right to abortion and the regulation of abortion upto individual states. This results in the extreme differences of abortion laws from state to state, imposing more restrictive regulations and even bans¹⁴.

The women's reproductive rights and autonomy since the decision strips away the federal protection assured the accessibility of abortion services which leads to more than half of the states have enacted legislation to ban or limit abortions. The present additional barriers to access is depending on one lives, one's socio-economic status which prevails political landscape. The decision has significantly deepened the cultural and political issues of abortion in the USA concerning women's rights and the women's control over their bodies, and access to health care.

CONCLUSION:

Therefore the differences in societal attitudes towards women's rights and reproductive autonomy paved way for the development of abortion laws in India and the USA. India's Medical Termination of Pregnancy Act was based in 1971 is the most common source of abortion when performed in specific circumstances with duty practitioner. Current and recent amendments have made the gestational limits up to 24 weeks for aborting in certain cases recognising the importance of greater freedom within reproductive rights. The current legal provisions in the United States have gone through tremendous evolution after the Supreme Court judgment held in *Roe -vs- Wade* (1973) and in *Dobbs -vs- Jackson Women's Health Organization* resulted in state-level restrictions that violates women's rights. It is almost impossible for most women to access safe legal abortion services though there are guidelines and frameworks interpreted in both countries. And it is a sad truth that both the countries are still fighting for reproductive justice and women's rights through legal frameworks.

¹⁴ Dobbs V. Jackson Women's Health Organization | 2022, Supreme Court, & Explanation | Britannica, (2024), <https://www.britannica.com/topic/Dobbs-v-Jackson-Womens-Health-Organization> (last visited Nov 4, 2024).