Page 340 - 351 **DOI:** *https://doij.org/10.10000/IJLMH.115384*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

Impact of the Historic Judicial Trends on the Women's Right to Abortion in India and USA

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ABSTRACT

In its landmark judgment, the Supreme Court of India, granted equal rights to bodily autonomy to unmarried women on par with married women in the case of X vs. The Principal Secretary Health, on 29th of September 2022. The judgment is highly applauded by the women rights activists since it upholds the 'reproductive autonomy' of women. Interestingly, this significant development in the Indian abortion laws happened soon after the US Supreme Court took a shocking regressive step of depriving the American women of their constitutional right to abortion, by overruling Roe vs. Wade, (1973). This historic ruling influenced the reproductive rights of women everywhere for almost half a century. These two directly opposing decisions, brought the perpetually debated 'the right to abortion' to the headlines once again. This article intends to analyze the impact of the historic judicial trends on the abortion rights of women as well as on the families and the society. At the outset, it presents some important phases in abortion regulation, and the development of the right to abortion in India, and USA. It also includes a discussion on the development of 'right to privacy'. The paper ends with some concluding remarks and suggestions.

Keywords: *women rights, reproductive autonomy, abortion laws, judicial trends, society, family.*

I. INTRODUCTION

The Supreme Court of India, in its most recent judgment, upheld the 'reproductive autonomy' of women declaring that abortion by an independent[2] decision of the pregnant woman is legal up to 24 weeks of pregnancy, irrespective of her marital status. The judgment, pronounced by Justice D.Y. Chandrachud on 29th of September 2022,[3] assumes its significance on two counts. First, it grants equal rights to bodily autonomy to unmarried women on par with married women holding that *'all women are equally entitled to safe and legal abortion and that the distinction*

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[2] Subject only to the advice of 2 registered medical practitioners.
[3] X vs. The Principal Secretary Health, SPECIAL LEAVE PETITION (CIVIL) No 12612 of 2022, on 21 July, 2022.

 [ISSN 2581-5369]

between women basing on their marital status is unconstitutional.' Second, the Supreme Court of India took this huge progressive step soon after the Supreme Court of USA took a shocking regressive step[4] depriving the American women of their constitutional right to abortion, by overruling ***Roe vs. Wade***,[5] the historic ruling that was in force for almost half a century. Because of this order of the Federal Supreme Court of America, the individual states are constrained to either ban, or severely, restrict women's right to access abortions, jeopardizing several under privileged pregnant women of the country.

These two directly opposing decisions, from the Supreme Courts of the two largest democracies of the world, once again brought to the headlines and triggered heated debates on *'the right to abortion'* that has always been contentious across the countries of the world. In this context, this article intends to analyze the impact of the historic judicial trends on the lives of women confronting the challenge of terminating their pregnancies. At the outset, it presents some important phases that the abortion regulation had gone through, and the development of the right to abortion in India, and USA. It also includes brief discussions on the development of right to privacy in both the countries and on the effects of the shifting trends of the judiciary in relation to the right to bodily autonomy of women is likely to have on the lives of women as well as on the society. The paper ends with some concluding remarks and suggestions.

II. ABORTION REGULATION IN INDIA AND USA-THE JOURNEY SO FAR

Historically, the practice of abortion existed universally, and at the same time almost, every social system had its own mechanisms to control and regulate abortions through moral codes, social taboos, religious norms and legislations. In fact, in western and southern Asia, moral codes and religious canons were more effective in regulating abortion before it was dealt with, by the expositions of the Christian era.[6] Almost all religions considered induced abortion a sin since, according to their beliefs it was against the 'sanctity of life.' Though the Hindu religion did not expressly prohibit abortion, the doctrine of ahimsa or non-violence contradicts abortion practice. In the Islamic law, abortion is prohibited after the fourth month of the pregnancy, as it is believed that the en-soulment of the fetus happens during this stage.[7] However, according to writers, the ideal code of behavior was relevant more to the saintly minority of the society, and

[4] Dobbs v. Jackson Women's Health Organization, 597 U.S. 2022 WL 2276808; 2022 U.S. LEXIS 3057 (24-6-2022)
[5] 410 U.S. 113 (1973)
[6] Raj Pal Mohan and Raj Pa Mohan, "Abortion in India", Social Science, SUMMER 1975, Vol. 50, No. 3, pp. 141-143
[7] Cook, Rebecca, *The Abortion Provision of the 1837 Draft of the Indian Penal Code (1982),* https://repository.library.georgetown.edu/handle/10822/1051125

the millions of common people were left to their own permissible ways.[8]

In India, during the 1800s, epidemic diseases were common occurrences, and due to high infant mortality rate families readily welcomed pregnancies. However, male children were considered as economic assets to the family in the context of the Indian agrarian society giving rise to the cultural practice of 'son preference' which in turn, resulted in wide acceptance of the detestable practice of female foeticide and infanticide.[9]

In British India, sanctions against abortion were not uniform throughout the three provinces of Madras, Bombay and Bengal. While the Bengal Code applied Muslim Criminal Law to all subjects, the Madras and the Bombay code had no abortion provisions at all.[10] The English Common law penalized abortions based on the 'quickening doctrine'.[11] Abortion was punishable offence only as a misdemeanor and that too only after quickening of the child has started in the womb. Abortion laws became stricter in India after the Indian Penal Code came into force in 1862, which made abortion a serious offence under Sections 312-314 by the name 'causing miscarriage'.

The offence as defined by the Indian Penal Code makes both the abortion provider and the pregnant woman punishable unless the life of the woman is in danger if the pregnancy continues to its full term.

According to observers, abortions were very frequent in India, but they became known only when the pregnant woman died.[12] In the villages, most of the women seeking abortion were widows and to maintain the secrecy of the matter they took the help of older women, most probably who were mid-wives. According to the Indian Medical Gazette, these women were not punished, as the police did not investigate such cases unless the death of the woman procuring abortion occurred.[13]

Thus, the British Indian authorities focused on the life or, rather the death of the woman even during the time when other British Colonies recognized that the interests of the unborn child

[8] Chandrasekhar S., *Abortion in a Crowded World*, (Seattle: University of Washington Press, 1974) p. 44
[9] Cook, *supra* note 6.
[10] *Id.*,
[11] 'Quickening' is when a pregnant person starts to feel their baby's movement in their uterus (womb). It feels like flutters, bubbles or tiny pulses. Quickening happens around 16 to 20 weeks in pregnancy, but some people may feel it sooner or later. 'Quickening in Pregnancy', Cleveland Clinic, https://my.clevelandclinic.org/health/symptoms/22829-quickening-in-pregnancy
[12] Parry, L. A., *Criminal Abortion* (London: John Bale, Sons and Danielsson, 1932), p. 18. (Google Scholar)
[13] Dulip Singh, 'Modes of Inducing Criminal Abortion in the Punjab', IMG (Jan. 1885), p. 9.

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were competing with the interests of the mother.[14] However, the law in India rarely prosecuted the women who survived illegal abortions, [14] and many pregnant women preferred to take the help of unauthorized medical practitioners risking their health and lives.

Consequently, liberalization of abortion laws began in India in 1964 when they realized that maternal mortality rates were increasing due to unsafe abortions in the hands of unskilled medical practitioners. Meanwhile, the qualified physicians found that the women seeking abortions were married women and were not under any social or cultural pressures to keep their pregnancies confidential. Therefore, it was necessary to decriminalize abortions, which would encourage women to go for terminating their unwanted pregnancies within legal and safe settings.[15] In addition, the Central Family Planning Board recommended the Ministry of Health to constitute a committee to study the need of legislation on abortion.[16] In this context, the government of India undertook a comprehensive review of the social, cultural, medical and legal aspects of abortion by appointment of 'the Shah Committee.'[17] The committee came up with its recommendations in 1966,[18] to legalize abortion on compassionate and medical grounds to protect the health and lives of women. Many criticized the legislation proposed to legalize abortion as a strategy to combat the population growth. [19] The Shah Committee categorically denied such allegations made by some states, and in 1971, they framed the Medical Termination of Pregnancy Act (The MTP Act), which came into force in 1972. This law created legal grounds for exemption from criminal liability under the Indian Penal Code for voluntarily causing miscarriage.

Rules and Regulations under the Medical Termination of Pregnancy Act were passed in 1975, which were later repealed, and replaced by the Medical Termination of Pregnancy Rules, 2003. Later, in 2021 in a historic move India amended the Medical Termination of Pregnancy (MTP) Act of 1971 to empower women by providing comprehensive abortion care to all. The amended law expanded the access to safe and legal abortion services on therapeutic, eugenic,

[14] Mitra Sharafi, "Abortion in South Asia, 1860-1947: A Medico-Legal History", 04 May, 2020, Cambridge University Press. https://www.cambridge.org/core/journals/modern-asian-studies/article/abortion-in-south-asia-18601947-a-medicolegal-history/54A4A3ACCEA05FC87F993449E2FBAC0D

[15] Chhabra R., SC Nuna. *Abortion in India: An Overview* (Veerendra Printers: New Delhi. 1994)

[16] Bhavish Gupta and Meenu Gupta, "The Socio-Cultural Aspect Of Abortion In India: Law, Ethics and Practise" 2016 ILI Law Review, Winter Issue, pp. 140-150. https://ili.ac.in/pdf/p10_bhavish.pdf

[17] Siddhivinayak S Hirve, "Abortion Law, Policy and Services in India: A Critical Review", An international journal on sexual and reproductive health and rights' Volume 12, 2004 - Issue sup24: Abortion law, policy and practice in transition, https://www.tandfonline.com/doi/full/10.1016/S0968-8080%2804%2924017-4

[18] Government of India. Report of the Shah Committee to study the question of legalization of abortion. 1966; Ministry of Health and Family Planning: New Delhi.

[19] S Phadke. Pro-choice or population control: a study of the Medical Termination of Pregnancy Act, Government of India, 1971. 1998. At: www.hsph.harvard.edu/Organizations/healthnet/SAsia/repro/MTPact.html; Siddhivinayak S. Hirve, "Abortion Law, Policy and Services in India: A Critical Review", Abortion Law, Policy and Practice in Transition, Vol. 12 Issue Sup 24 (2004).

humanitarian and social grounds to contribute towards ending preventable maternal mortality. Most importantly, the upper gestation limit increased from 20 to 24 weeks for special categories of women, including survivors of rape, victims of incest and other vulnerable women (differently abled women, minors, among others). The next major development in abortion law of India happened last September when the Supreme Court of India extended the right to abortion to unmarried women in the case of ***X vs. The Principal Secretary Health.***[20]

In America, abortion was widespread as there was no stigma attached to the practice before 1840. The American legal system adopted the same British "quickening doctrine" to decide questions on the legality of abortion.[20] Post-quickening abortions were punishable[21] in order to protect women from unsafe abortion methods. Therefore, the intention of the law restricting abortions was mainly to protect the health and life of the pregnant women and not of any concern for the life of the unborn.[22]

The 'right to life of the unborn' appeared only in the mid-nineteenth century for the first time. Interestingly, the human rights activists did not initiate this movement. On the other hand, the physicians took up the initiative in order to protect their professional status against the lay healers who were performing the unregulated business of assisting pregnant women to have their abortions. Hence, the physicians demanded governmental licensing and regulation of abortions through anti-abortion laws.[23] However, the common belief was that the 'pro-life' campaign was a result of superior medical knowledge based on which physicians could determine when life began in the embryo. Nevertheless, this is not true according to some American historians.[24]

The pro-life movement largely succeeded by 1900. Consequently, all American states brought in laws prohibiting abortions at any stage of the pregnancy. Almost all abortion laws of this period included an exception that licensed physicians could perform abortion procedures at their own discretion primarily, to preserve the life of the mother. This exception became a loophole allowing many women to get their abortions done by doctors who were the ultimate decision makers on the morality and legality of abortions. Eventually, this created a huge black market for women who could not get access to abortion procedures through medical channels.[25] However, the police and the courts were very harsh towards those who provided such alternative

[20] SPECIAL LEAVE PETITION (CIVIL) No 12612 of 2022, on 21 July, 2022.
[21] However, it was only a misdemeanor not a serious crime.
[22] Jennifer, *Id., supra* note 21.
[23] James C. Mohr, *Abortion in America: The Origins and Evolutions of National Policy*, 1800–1900 (1978).
[24] Kristen Luker, *Abortion and the Politics of Motherhood* (Berkeley: University of California Press, 1984).
[25] Jennifer, *Id., supra* note 21.

abortion services and even towards the women who resorted to such procedures. Finally, the anti-abortion movement slowed down between 1900 and 1965,[26] and the movement for liberalizing abortions gradually drew its strength from the concerns of increasing women's education, and women's right to autonomy.[27]

In 1959, the American Law Institute initiated the advocacy for the liberalization of abortion laws, and suggested that there should be exceptions when the pregnancy was the result of rape, fetal abnormalities, and where there was a threat to the mental or physical health of pregnant women.[28] Gradually, there was a cultural shift in the American society about reproduction and abortion, which naturally gave impetus to the arguments of the feminist movement, during the late 1960s, that women could not be complete citizens unless they had the power to control their reproduction. All these changes culminated in the reform of abortion laws in several states of America.[29]

Even while the states were seriously making their efforts at abortion reform, the modern anti-abortion political movement began. Groups of Catholic doctors, nurses, lawyers and homemakers opposed the Liberalization of abortion. Their efforts produced limited success only in certain states in the early 1970s.[30] Finally, it was in 1973 that abortion all fifty states of America legalized the decision of the famous ***Roe vs. Wade,***[31] which declared that,

> "*A person may choose to have an abortion until a fetus becomes viable, based on the right to privacy contained in the Due Process Clause of the Fourteenth Amendment".*

Towards the end of the 19th Century, almost all countries across the world imposed legal restrictions on abortions for several significant reasons. Firstly, due to public health demands since unsafe abortions resulted in maternal mortality, secondly, public conscience believed that abortion was against morality or was a sin, and thirdly, to protect the life of the unborn

[26] Leslie Reagan, *When Abortion Was A Crime: Women, Medicine, and the Law, 1867-1973* (Berkeley: University of California Press, 1996).
[27] Brian Stormer, *Articulating Life's Memory: U.S. Medical Rhetoric about Abortion in the Nineteenth Century* (Lanham: Lexington Books, 2002).
[28] Leslie Reagan, *Dangerous Pregnancies: Mothers, Disabilities, and Abortion in Modern America (*Berkeley: University of California Press, 2010). In the 1960s Americans had experienced the tragedy of serious infant mortality and extreme fetal deformity. Use of a sleeping pill called Thalidomide caused thousands of birth defects in Europe and the United States. In addition, an outbreak of German measles resulted in thousands of stillbirths and cases of children born with major abnormalities. Images of white middle-class women and their deformed babies appeared in American media that made many American parents fear that their babies too would be born with such abnormalities.
[29] Colorado was the first to amend its law in 1967, followed by other states, California in 1967 and New York in 1970.
[30] Gillian Frank, "The Colour of the Unborn: Anti-Abortion and Anti-Bussing Politics in Michigan, United States, 1967-1973," *Gender & History* 26, no. 2 (August 2014): 351-78.
[31] 410 U.S. 113 (1973)

children.[32] There was an immediate response of the Pro-life movement to ***Roe's decision***. The President of the National Conference of Catholic Bishops commented on the decision saying that,

> "*It is an unspeakable tragedy…No decision in the 200 years of our history has done more disastrous implications for our stability as a civilized society."*

Reversing ***Roe*** and passing Human Life Amendment[33] were the primary goals of the pro-life movement and it continued to be so for a half a century as it struggled with identity and perception.[34]The Pro-choice regarded the Pro-life movement as religious, but in fact, it is also part of the tradition of civil rights movement. The Vice-Chairman of 'Americans United for Life', Victor Rosenblum observed that, the decision was,

> *". . . replete with factual extravagancies and misconceptions…and that the decision would be repudiated by history, just as history repudiated its decision of a century ago that black people were not persons within the meaning of the Constitution."*[35]

Proving the veracity of this statement, the US Supreme court reversed ***Roe's*** judgment in the case of ***Dobbs v. Jackson Women's Health Organization***, on 24-6-2022. The court stated that the Constitution does not confer a right to abortion, and the authority to regulate abortion is *"returned to the people and their elected representatives."*[36]

III. RIGHT TO PRIVACY AND ABORTION IN INDIA AND USA

The Indian Constitution did not expressly incorporate the Right to Privacy. However, for the first time, the Supreme Court, in the case of ***Kharak Singh vs. the state of UP*** (**1962**) recognized the right to privacy as a part of the right to protect life and personal liberty under Article 21 of the Indian Constitution. Right to privacy means *'the right to be left alone'*. Ever since, Kharak Singh's case, there have been many cases in which the court has had occasion to deal with right privacy in its different dimensions. There were cases where the right was denied and in others

[32] Marge Berer, Abortion Law and Policy around the World, Health and Human Rights Journal, v.19 (1); 2017 June, National Library of Medicine, National Center for Biotechnology Information. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/

[33] The pro-lifers proposed Human Life Amendments to the U.S. Constitution that would reverse Roe and Doe and enshrine the right to life in the Constitution.

[34] Robert N. Karrer, "The Pro-Life Movement and Its First Years under "Roe", American Catholic Studies, Winter 2011, Vol. 122, No. 4 (Winter 2011), pp. 47-72. Published by: American Catholic Historical Society, https://www.jstor.org/stable/44195373

[35] John Krol, 'Statement on Roe decision', New York Times (January 23, 1973) A-20; Americans United for Life, statement by Victor Rosenblum to AUL officers, directors, and members, February 1, 1973, binder 22, Kincaid Papers.

[36] Legal Information Institute, Cornell Law School https://www.law.cornell.edu/wex/dobbs_v._jackson_women%27s_health_organization_%282022%29

accepted. Recently, in the case of ***Justice K.S. Puttaswamy vs. Union of India***, the right to privacy was recognized as a fundamental right subject to reasonable restrictions. The Court observed that, human existence is not mere animal existence, every person deserves to live a dignified life and privacy is of utmost significance for enjoyment of life. A nine –judge Supreme Court bench agreed on the holding that "*right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 as part of freedoms guaranteed by Part III of the Constitution."* This judgment dwelt upon the right to privacy in relation to abortion issue and relied much on the US reproductive rights cases.

It is interesting to note that Justice Chandrachud traces the right to privacy from the US case ***Griswold vs. Connecticut,***[37] in which the US Supreme Court struck down the prohibition on possession, sale and distribution of contraceptives to a married couple. This decision clearly stated that the right to access abortion and contraception do form part of a woman's right to privacy and liberty as included in the Due Process Clause of the Fourteenth amendment to the Constitution of US.[38] ***Griswold's case*** laid down that the constitutional guarantees create 'zones of privacy' within marital relationships that have to be protected from any interferences of the Government. Thus, this judgment marked the emergence of the 'doctrine of reproductive rights', which enables the individuals to exercise their liberty and autonomy over their reproductive health. ***Roe vs. Wade's*** case that legalized abortion in US further emphasized and extended personal privacy to include the right to autonomy to access abortion. Thus, the US jurisprudence had become foundational and persuasive for many legal systems of the world including the one in India, on the right to privacy and reproductive autonomy of women.

IV. THE IMPACT OF SHIFTING TRENDS IN THE JUDICIAL APPROACH TO RIGHT TO ABORTION

Two recent judgments from the Indian and US Supreme courts ***X vs. The Principal Secretary Health,*** and ***Dobbs vs. Jackson Women's Health Organization*** respectively brought about historic changes in the realm of reproductive autonomy of women in these two countries. In both these countries, the abortion law has gradually moved from the women's health concern to women's right to autonomy. Fetal right to life being highly controversial lost its battle in between.

We need to appreciate the Supreme Court's progressive step in bringing the unmarried woman's right to abortion on par with that of a married woman. This is essential to offer justice to the

[37] Griswold v Connecticut 381 US 479 (1965) (US Supreme Court)
[38] Puttaswamy judgment (n 2), [134 ii], 149.

right to equality. However, it is praiseworthy to remember that the same right had already been granted by the legislature when the MTP Act Amendment Act 2021 included the phrase "***any woman and her partner"*** in the explanation to Section 3 (2) (b) of the Act. The intention of the legislature that all women, irrespective of their marital status, have equal access to safe abortion is already mentioned in the said amendment, and additionally, the same amendment increased the upper gestation limit for abortion to 24 weeks.

The next point is about the right to take independent decision to have an abortion. Now, the legal requirement for the recommendation by one registered medical practitioner if the pregnancy is less than 12 weeks, and advice of two doctors if it is above 12 weeks is still in place. The Supreme Court observed that this condition might prove to be an obstacle specially, in case of an unmarried woman since the physicians would hesitate to make such a recommendation in view of the social stigma attached to premarital-sex. Therefore, the medical practitioners might require consent of the family members, or the like to give their recommendation, which in fact is not a legal requirement. It is but natural that the medical practitioners become extra cautious because in case the abortion becomes complicated it might be dangerous to the woman's health or life and her parents would prosecute them. Regarding this, the Supreme Court stated that 'the pregnant woman's decision is final and the medical practitioners are simply directed by the court not to create any such hurdles. However, the court neither indicated any alternative way, in case, she could not secure a medical practitioners' recommendation, nor did the court suggest any requirement to be removed from the legal provision. However, the medical advice requirement is not unreasonable as it intends to rule out the possibility of potential harm to the health or life of the pregnant person. Therefore, there is no substantial change in the abortion law, even after the judgment. Nevertheless, it recognizes that absolute autonomy of the woman is of crucial importance in view of the impact that pregnancies could have on both the body and mind of the pregnant person. Now that the laws and the courts are clear about the autonomous right to abortion, the burden is upon the government to see that the beneficiaries have safe access to abortion.

The judgment touches upon another important aspect of sexual autonomy of women i.e. 'marital rape,' which is an exception to the rape law under the Indian Penal Code. Many appeals are pending before the apex and other courts challenging that Section 375 of the Indian Penal Code is unconstitutional as the section discriminates married women by not protecting them from sexual assaults of their husbands. The present judgment on the abortion autonomy expands the definition of rape while referring to 'termination of pregnancy that was a result of rape' includes marital rape. The judgment, clearly states that it is easy to understand that married women

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become pregnant by being raped by their husbands. The court observed that, *"the institution of marriage does not influence the answer to the question of whether a woman has consented to sexual relations."* Undoubtedly, this is a progressive stand against the general belief that marriage automatically includes a blanket consent by the wife to all sexual demands of her husband. Hopefully, this prepares ground for the proscription of marital rape.

On the other hand, in US, the two landmark cases namely, ***Roe vs. Wade (1973)*** and ***Planned Parenthood vs. Casey (1992)***[39] were overturned by the US Supreme Court's verdict in ***Dobbs vs. Jackson Women's Health Organization (2022).*** These popular cases that established the foundation for constitutional interpretation that the right to abortion forms part of right to privacy became the guiding principles for courts all over the world. Ironically, as discussed above, these were the same cases that formed the basis for the judgments of the Indian courts too. Many women as well as women's rights activists panicked over this judgment, which shocked the legal world. The UN human rights chief Michelle Bachelet commented that the Court's ruling to strike down the ***Roe vs. Wade*** was "a huge blow to women's human rights and gender equality.[40] The UN women's rights committee said that, *"the US is one of only seven countries throughout the world that is not party to the international convention that protects women's human rights, including their right to sexual and reproductive health."*[41]

The Committee on the Elimination of Discrimination against Women (CEDAW) urged the United States of America to adhere to the Convention on the Elimination of All Forms of Discrimination against Women in order to respect, protect, fulfil and promote the human rights of women and girls.[42]

With regard, to the impact of this decision, it is important to note that, though Roe vs. Wade conferred the right to abortion throughout all the states of America, overturning of the same does not automatically mean that it creates a nationwide ban on abortions. Technically, it is giving back the jurisdiction to the individual states to decide whether to allow or not to allow the practice of abortion in their respective territories.

The American women gave their opinion in a recent poll and 82 percent of them think that laws should protect both the health of the woman and the life of her unborn child.[43] Around 69

[39] 505 U.S. 833 (1992)
[40] US abortion debate: Rights experts urge lawmakers to adhere to women's convention https://news.un.org/en/story/2022/07/1121862
[41] US signed the convention in 1980, it has yet to ratify it.
[42] US abortion debate
[43] 'Explainer: US Supreme Court decision to overturn Roe vs. Wade', *Right to life News*, 29 June, 2022 https://righttolife.org.uk/news/explainer-us-supreme-court-decision-to-overturn-roe-v-wade?gclid=EAIaIQobChMI2-DO_8Tu-gIVyZTVCh2JIAOLEAAYBCAAEgLdWvD_BwE

percent of women believe that abortion should be available, at most, during the first three months of pregnancy, and allowed only in cases of rape, incest, or to save the life of the mother, or never permitted. The polling showed that 37% of women believed that abortion should only be legally permitted in cases of rape, incest, or to save the life of the mother. A further 21% of women believed that abortion should not be legal after the third month of pregnancy. But, a majority of those who called themselves pro-choice (52%) believed that abortion should be available, at most, during the first three months of pregnancy, and allowed only in cases of rape, incest, or to save the life of the mother, or never permitted.[44]

However, the concerns of the Civil Rights groups and feminist groups are that the shift in the law is a regressive step and will endanger all American women in general, particularly, Black women and women with low incomes.[45] People in ostracized societies are compelled to face challenging circumstances that have surging influence on their physical health, financial status and position in society when abortion is forbidden. Access to abortion is racial and economic justice issue and an important part of civil rights. The freedom to reproduce is not just a matter of bodily autonomy, but it is the ability to determine the course of action through the exercise of one's own will. When men and women are able to decide on how many children to have and when, then they possess the ability to decide on their own and such conscious decisions will help them decide on other matters of their lives that include education, work, etc,.[45]

A lack of state reproductive health policies, which included limited sex education, negligible level of health insurance, access to contraception and other services forced black women to use abortion care in an unbalanced manner. Despite the above situation, studies indicate that freedom to undergo an abortion is connected to economic and educational advancement. Thus, the ban against availing this right leads to extreme financial constraints, especially, to those women who need to undergo an abortion.[45] In turn, this need compels them to travel to other states to have an abortion as it is prohibited in their own native states, resulting in unequal barriers to undergo abortions, particularly, for coloured people. [45] Hence, the freedom to exercise their right to abortion is in danger in, America specifically, for the under-privileged women.

V. CONCLUSION

Abortion laws in India and the USA have developed based on the women's health and maternal mortality concerns. In India, the idea of the demographic concerns for liberalization of these

[44] *Id.,*

[45] Abortion and Reproductive Health Care Are Civil Rights, Lawyers' Committee on Civil Rights under the Law, 4 May, 2022. https://www.lawyerscommittee.org/abortion-and-reproductive-health-care-are-civil-rights/

laws cannot be set aside. In spite of the pro-lifers' arguments and efforts, and findings of the embryonic studies, religious and moral arguments, these legal systems do not focus and fight for the right to life for the unborn child. But, that raises an important question that, if there cannot be a consensus on the sanctity of life and the right to life of the unborn, why is it illegal to execute a pregnant woman in almost every country in the world?[46]

To prevent maternal mortality due to unsafe abortion methods, abortion is essential for women's healthcare. The present ruling of the Supreme Court of India marks a positive shift where unsafe abortion practices have always been a serious concern. With this development, there is a hope that morbidity and mortality associated with unsafe abortion practices will decrease. A sound health policy with personal choice is necessary along with legalization of abortion. Awareness on contraceptive measures and safe sexual practices need to be a sustained and continued practice.

It is crucial to view bodily autonomy and reproductive rights from three dimensions, namely, legal, medical and social. The abortion rights given to the unmarried carry a harmful message to the youth in the society, which can contaminate the moral values leading to promiscuous behaviors. Married women's autonomous right to abortion can lead to serious misunderstandings in the families and becomes a threat to the subsistence of the institution of marriage. Therefore, as Betty Friedan[47] rightly puts it…

"The right to have an abortion is a matter of individual conscience and conscious choice for the woman concerned."

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[46] The exclusion of the death penalty on pregnant women or mothers of young children is recognized and protected by international law. Article 6 (5) of the International Covenant on Civil and Political Rights, 1966.

[47] Betty Friedan, *Abortion: A Woman's Civil Right,* (reprinted in Linda Greenhouse and Reva B. Siegel, 1st edition 1999) p. 39.