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The Legal Framework on Abortion Rights: A Comparative Perspective

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ABSTRACT

*This study undertakes a nuanced comparative exploration of abortion rights in the United States and France, focusing on how legal systems shape the lived experiences of women seeking reproductive autonomy. At a time when global attitudes toward abortion remain polarised, France's 2024 constitutional affirmation of abortion rights and the United States' 2022 reversal of *Roe v. Wade* through *Dobbs v. Jackson Women's Health Organization* reveal the profound impact of legal and political choices on bodily autonomy. The analysis traces the historical evolution and current legal frameworks in both countries, not only as legal texts but as reflections of broader ideological commitments to gender equality, privacy, and healthcare access. Through this lens, the study highlights how law can either affirm or undermine women's dignity and decision-making power. Importantly, the study brings these global developments into conversation with the Indian context, where, despite legal provisions under the Medical Termination of Pregnancy Act, access remains fraught with systemic barriers and moral gatekeeping. In bridging legal theory with human realities, the study argues for a reproductive rights framework that is constitutionally grounded, health-affirming, and fundamentally respectful of women lived experiences and agency. This model is legal and necessary for reproductive justice in principle and practice.*

Keywords: *Reproductive Rights, Abortion Law, Bodily Autonomy, Comparative Constitutionalism, Public Health.*

I. INTRODUCTION

The comparative legal framework governing abortion rights is examined, with particular focus on the contrasting approaches taken by the United States and France. The aim is to understand how access to and regulation of abortion services differ across jurisdictions, and how constitutional structures, judicial interpretations, policy decisions, and sociopolitical ideologies at the national level shape these differences. As a core component of reproductive rights, abortion is closely linked to broader concepts such as gender equality, access to healthcare, and bodily autonomy. Capability of making decisions regarding pregnancy and childbirth is central to a woman's autonomy, dignity, right to life, and right to privacy.

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Abortion is a topic much debated around the world. In the case of some rights, some countries have made steps forward in increasing and protecting these rights, yet some have taken a clear step back, often as a result of religious or political pressures. The consequences of these shifts in legal direction are equally serious, not only for women's rights, but also for public health, as well as for social and legal systems in each society.

Two conflicting legal developments in recent years have significantly influenced the global abortion debate: the French Constitution's 2024 enshrinement of abortion rights and the U.S. Supreme Court's (SC) 2022 overturning of *Roe v. Wade* in the *Dobbs v. Jackson Women's Health Organisation* case. The United States, which was once regarded as a pioneer in judicially recognised reproductive freedoms, has shifted towards state-level limitations and a fragmented legal system. France, on the other hand, offers one of the safest and most straightforward legal frameworks for abortion in the world today, after progressively expanding access to abortion rights through legislative changes.

The study traces the historical evolution, current legal positions and public health outcomes in both countries in order to provide a nuanced picture of how legal design impacts the realisation of reproductive rights. The lessons for India are also drawn with respect to the problems of implementation, access, and rights-based understanding of reproductive autonomy, as the country, after having the legal structure allowing abortion under prescribed circumstances, suffers from these problems.

The purpose of this study is to make a case for coherence, constitutional grounding and health orientation of reproductive legal systems that respect the agency of women. The first purpose of the study, before analysing the existing legal framework of abortion in both countries, is to briefly show the historical evolution of abortion law in France and U.S. This is then followed by an exploration of the public health implications of this legal position and closing with reflections on insights that can inform Indian legal debates on abortion rights.

II. HISTORICAL DEVELOPMENT OF ABORTION LAWS

The United States

The history of our law of abortion in the U.S has been shaped by judicial activism and constitutional interpretation. *Roe v. Wade's* historic Supreme Court ruling. A major turning point was laid down by *Wade* (1973), which finally ruled that the 14th Amendment gave a woman the right to enjoy her right to privacy to have an abortion. In striking this balance, the ruling created a trimester framework that made abortion permitted throughout the first trimester, subject to regulation for the second and prohibited afterwards based on the consideration that a

state's interest in maternal health and fetal life was significant enough to justify most restrictions on that right.²

The Court later upheld the core Roe decision in '*Planned Parenthood v. Casey* (1992)'³, substituting the "undue burden" standard for the trimester framework. This theory states that any state law that significantly impeded a woman's ability to obtain a pre-viability abortion would be unconstitutional.

The case of "*Dobbs v. Jackson Women's Health Organization*" significantly changed this legal equilibrium (2022)⁴, where the SC overruled '*Roe and Casey*', "declaring that the Constitution does not grant a right to abortion. The Dobbs ruling fundamentally reestablished the legal power of individual states to regulate abortion, resulting in a fragmented legal landscape characterized by significant differences in access.

France

By contrast, France's legal evolution on abortion has moved gradually away from prohibition and toward a liberalisation informed as much by public health needs and feminist activism. France legalised abortion in 1975 through the enactment of the Veil Law (*Loi Veil*), so named after Simone Veil, then Minister of Health and a Holocaust survivor. Under the law, abortion was lawful to 10 weeks of gestation, provided that the woman was experiencing 'distress', waited, and was counselled. It was the first step in France's joining the ranks of countries adopting safe, legal abortion.

Subsequent reforms expanded access to abortion incrementally. In 1982, abortion services were made free in public hospitals, covered by national health insurance. In 2001, the time limit for accessing abortion has been delayed to twelve weeks, and minors were permitted to undergo the procedure without parental consent if accompanied by an adult. In 2014, the "distress" requirement was eliminated, affirming the woman's autonomy without the need for justification. Finally, in 2022, the time limit was further extended to fourteen weeks, reflecting evolving public health data and social consensus.

III. CONTEMPORARY LEGAL FRAMEWORK

United States: Post-Dobbs Landscape

Following the *Dobbs* decision, the U.S. now lacks a uniform federal standard governing abortion right. In the absence of constitutional protection, individual states have emerged as the

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

⁴ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. ____ (2022).

primary authorities responsible for determining the legality, accessibility, and scope of abortion services. As a result of this legal decentralisation, there has also been a wide divide in reproductive rights across the country, with states taking very different approaches. More broadly, the post-*Dobbs* landscape has been divided into three camps: those that are essentially banning abortion with almost no exceptions; those instituting a six-week gestation limit before many women even know they're pregnant; and those who have found a state constitutional right to abortion and are actively protecting it and guaranteeing it within their borders. Furthermore, this legal fragmentation creates disparate access to reproductive care because of geography, complicates medical practice, undermines the uniformity of constitutional protections and contributes to the politicisation of reproductive rights in U.S.

For instance, the state of Texas imposes a near-total ban on abortion, permitting the procedure only in narrowly defined circumstances such as life-threatening emergencies. However, the lack of clarity surrounding what legally constitutes a "medical emergency" has resulted in significant delays in providing critical care to pregnant women. In response to these concerns, on April 29, 2025, the Texas Senate unanimously passed Senate Bill 31, titled "*The Life of the Mother Act*"⁵. This legislative measure aims to provide clearer legal guidance by explicitly defining the conditions under which physicians may lawfully perform abortion in saving life of pregnant woman or to prevent serious, irreversible harm to her health.

President Donald Trump signed Executive Order 14182 in January 2025, affecting government policy. This directive reaffirms the Hyde Amendment, which restricts the utilization of federal funds for elective abortions—namely, those that are not required for saving women's life or that do not involve case of rape or incest. The executive order represents a continuation of restrictive federal policy on abortion funding, further limiting access for women who rely on government-supported healthcare programs.⁶

France: Constitutional and Statutory Protections

In stark contrast to the fragmented and politically contested legal framework observed in the United States, France presents a comprehensive, centralized, and progressively evolving approach to abortion rights. An important step in this direction was taken in 2024 when French Parliament approved a constitutional amendment that formally in right to abortion in nation's founding legislation. This amendment transforms right to abortion from matter of legislative

⁵ Tex. S.B. 31, 89th Leg., Reg. Sess. (2025).

⁶ "Fact Sheet: President Donald J. Trump Enforces Overwhelmingly Popular Demand to Stop Taxpayer Funding of Abortion, The White House (Jan. 25, 2025), <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-enforces-overwhelmingly-popular-demand-to-stop-taxpayer-funding-of-abortion/>.

discretion to a constitutionally guaranteed freedom by explicitly stating that "the law guarantees the right of women to voluntarily terminate a pregnancy." By securing right to abortion in Constitution, France has shielded reproductive autonomy from unpredictable fluctuations of political changes and judicial reinterpretations.

With these reforms, France's reproductive rights discourse reaches the culmination, decades in the making, with these new reforms superseding into the Constitution. This legislative change means that abortion is now regularly permissible statewide for women up to 14 weeks of pregnancy. The procedure is also fully covered by France's national health insurance programme. Anyone with financial constraints should not be prevented from getting it; it simply shouldn't be a problem. This centralised administration of abortion services both removes individual differences in access as well as ends disparities throughout the regions, which together allows for reproductive healthcare as both equitable and dependable. Thus, the French model is, therefore, a rights-based reproductive justice platform that does not see abortion so much as an issue of medical need and legal allowance, but as a central component of gender equality, human dignity and personal autonomy.

IV. PUBLIC HEALTH AND SOCIETAL IMPLICATIONS

The United States

Abortion laws in the US are very different, with real-life consequences for public health. Under tight laws, many women, particularly those who come from marginalised and low-income communities, have insurmountable barriers to accessing abortion services. The end result has been delaying, forced travel across state lines and the threat of prosecution, all of which have been causing immense stress for women and healthcare providers alike.

Both these barriers have contributed to the creation of worse maternal health outcomes. From 1985 to 2023⁷, U.S. 11 to 17 maternal deaths per 100,000 live births increase, says World Health Organisation, that indicates a trend for inequity and insecurity in healthcare.

France

France, for one, has seen better outcomes because France integrated abortion services into its public healthcare system. The thing is not stigmatised or criminalised, and abortion is thought of as a routine medical service. Taken together, these primary prevention strategies — comprehensive sex education, widely available contraception, public funding of abortion, and

⁷ World Health Organization, Maternal Mortality Ratio (Per 100,000 Live Births), WHO Data (Apr. 10, 2025), <https://data.who.int/indicators/i/C071DCB/AC597B1>.

of maternal health — all helped lower abortion rates and reduce women’s maternal deaths.

Importantly, France offers robust post-abortion care, including psychological counselling and support services. These systems affirm the state’s responsibility not only in enabling choice but also in supporting women’s health and well-being. Maternal mortality rate in France declined from 20 to 7 per 100,000 live births between 1985 and 2023⁸, underscoring the efficacy of its reproductive health model.

V. COMPARATIVE INSIGHTS AND LESSONS FOR INDIA

India's legal framework concerning abortion has primarily been governed by the Medical Termination of Pregnancy (MTP) Act of 1971, as amended in 2021, which has expanded access in important ways. However, implementation gaps, lack of awareness, and regional disparities persist. A comparative analysis with the United States and France reveals critical lessons.

From France, India can draw inspiration in recognizing abortion as a constitutional right. Enshrining reproductive rights at the constitutional level would provide a durable safeguard against political and cultural regression. Moreover, the conversion of abortion services into an equitable, affordable and universal good through integration into the national healthcare system, as performed in France, should be pursued.

The dangers of legal fragmentation should be learnt by Indians from the United States. The women would have to be ensured that uniformity is maintained across states as well as union territories to avoid differences at different places, and they are being provided with the same level of care and legal protection. Also, reproductive rights should be depoliticized and taken as a healthy public matter, individual autonomy, rather than moral or ideological debate.

VI. CONCLUSION

The comparative analysis of abortion laws in U.S. or France demonstrates two fundamentally divergent legal trajectories. Formerly a nation with constitutionally protected abortion rights, the United States is now characterised by decentralisation, judicial reversal, and heightened political rivalry. Overturning ‘*Roe v. Wade*’ in ‘*Dobbs v. Jackson*’ Women's Health Organisation (2022) has disrupted access to abortion, increased regional inequalities, and endangered the health and autonomy of millions of women. On the other hand, France is a great example of a right based, centralised legal system. Reproductive rights find their place within its fundamental human rights commitments through progressive legislative reform and a constitutional amendment which guarantees the freedom to freely terminate a pregnancy.

⁸ *Ibid.*

Although the US is experiencing rising access disparities and maternal mortality, France has experienced improvements in public health and reproductive justice indicators through easily accessible, state-supported abortion care. The consequence of these legal systems is quite different.

This paper examines the development of India's jurisprudence on reproductive rights at a decisive temporal point in its evolution. The MTP (Amendment) Act, 2021, is an important step in legal accessibility of abortion services. Other important clauses such as raising gestational limit for some classes of women and allowing an unmarried woman to get an abortion on the same grounds as a married woman are worthy actions. While this is the case, the Indian legal system still does not provide for strong institutional safeguards for reproductive health, has no consistent accessibility across states and is not constitutionally entrenched reproductive autonomy.

Crucially, through several significant rulings, Indian constitutional jurisprudence have established a solid basis for the advancement of reproductive rights. The right to privacy was acknowledged SC in the decision in '*K.S. Puttaswamy v. Union of India 2017*'⁹ as a fundamental right guaranteed by Article 21 of Constitution. By ruling that decisional privacy and bodily autonomy are fundamental elements of this right, the Court subtly upholds the constitutional protection of reproductive autonomy, including choices about abortion and contraception.

Building on this, in '*Suchita Srivastava v. Chandigarh Administration (2009)*'¹⁰, as part of Article 21's definition of personal liberty, the SC specifically acknowledged a woman's right to make procreative decisions. The Court stressed that right to privacy and dignity are irreconcilably connected to reproductive autonomy. In case of a mentally challenged woman who became pregnant after being raped, Court ruled in favour of woman's right to make an informed decision about whether or not to bring pregnancy to term end it. This ruling played vital role in reaffirming that autonomy and consent, not just medical wisdom, should be the primary considerations when making abortion decisions.

More recently, in '*X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr. (2022)*'¹¹, "SC ruled that Rule 3B of MTP Rules, which had previously granted some rights exclusively to married women, may not be used to deny unmarried women"

⁹ K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

¹⁰ Suchita Srivastava v. Chandigarh Administration, (2009) 9 S.C.C. 1 (India).

¹¹ X v. Principal Secretary, Health & Family Welfare Dep't, Govt. of NCT of Delhi & Anr., (2022) 7 S.C.R. 686 (India).

access to abortion. Court established that all women, regardless of marital status, have the right to reproductive choice, bodily integrity, and decisional autonomy after reading the MTP Act in the context of constitutional guarantees. This was a major affirmation of freedom for making reproductive decisions and of gender equality.

These court rulings all support the idea that reproductive autonomy is not just a statutory entitlement granted under the MTP Act, but is constitutionally protected under substantive Article 21 protections of privacy and dignity and personal liberty. However, without a clause in constitutional and in a universally available healthcare system, these rights are prone to social barriers and definitely, unequal application in jurisdictions.

Thus, going forward, India needs to give the highest priority to fortification of its institutional and legal frameworks to ensure reproductive justice. Social and legal reform has to de stigmatise abortion, integrating abortion services into public health care with the goal of universal access and recognising reproductive autonomy in the constitution. In addition, a single national policy that bridges regional disparities is necessary, to ensure that abortion services are safe and legal and equally accessible to all women, irrespective of their socioeconomic status, location or marital status.

Instead of documenting international practices, this comparative study favours the adoption of a rights-based, health-centred approach to a legal environment in India. That one grounds the promise of constitutional equality and justice in the legally affirmed fact that women's autonomy, dignity and health are inalienable.
