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# Understanding Roe v. Wade

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## ABSTRACT

*Roe v. Wade has once again entered into the limelight over speculations about its judgement being overturned or its viability standard tossed out due to a case called Dobbs v. Jackson Women's Health Organization. In her confirmation hearing, Justice Amy Coney Barrett proclaimed that the landmark decision in Roe v. Wade is not a "super precedent" and hence not making it absolute and by extension, opening up the possibility of it being overturned. Justice Amy Coney Barrett was nominated by then U.S. President Donald Trump within eight days of the death of Ruth Bader Ginsburg – a pioneer of women's rights and a liberal icon. With her elevation to the Supreme Court, it was speculated that there will be profound consequences for health care and policy. This puts the future of Roe v. Wade, a cornerstone in women's reproductive rights, in a speculative state. This crisis arises as a Mississippi law banning abortions post fifteen weeks of pregnancy was to go under review by a conservative majority. As of now, there are at least ten states that have such legislation that abortion restrictions may get triggered if Roe v. Wade were to be overturned. In furtherance to this, many people believe that with a new case viz. Dobbs v. Jackson's Women's Health Organization being listed for hearing in the SCOTUS, the Court might try to utilise the case as a catalyst to significantly weaken, if not eliminate, the constitutional constraints on the state governments' ability to restrict the access to medical termination of pregnancy. This paper analyses the historic case of Roe v. Wade, from the life story of Norma McCorvey (a.k.a. Jane Roe) to the important legal arguments and interpretations of Amendments that strengthened the right of privacy and invariably led to the reasonable regulation of abortion.*

**Keywords:** Abortion, Right to Choose, Right of Privacy, Foetus.

## I. INTRODUCTION

### (A) History behind the Fight for Reproductive Rights

Traditionally, a woman has been considered as the property of a man – be it her father, brother, husband or son. This perception paved its way into the legal domain. For instance, there existed

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a torts law that compensated husbands who had ‘lost’ the servitude and sex of their wives under the loss of consortium cause of action. This law arose from a premise in law that a wife is the servant of her husband and that a husband is the master of his wife. Thus, a man was able to claim damages from a third party for the loss of sex, servitude and companionship from his wife if she was physically hurt. This notion severely affected Black women in the U.S. became direct recipients of this enterprise. They were physically assaulted, raped and tortured.<sup>3</sup>

Therefore, when women fight for their reproductive rights, they fight for the autonomy over their own bodies. It is more than just a fight for their health and safety. Its true purpose is to strike down male domination and ownership that has been traditionally practised. With striking down the power of a husband over his wife, the social norms and political purposes of man are also struck down thereby, liberating women from the clutches of their husbands, society and law.

### **(B) Quiet Rumblings that led to Roe v. Wade<sup>4</sup>**

In the nineteenth century, in order to preserve the traditional family structure and increase the genetic stock of the country by compelling Anglo-Saxon women to give birth to more babies, physicians across the U.S. demanded that abortion be outlawed. Though abortion was not legal, there were still abortions being carried out by physicians on the grounds that they were saving women’s lives. This justification became tougher to invoke in the 1950s and 1960s due to the improvement in obstetric care. Hence, in the 1960s, their arguments took on a new form when they stated that abortion could help ‘preserve scarce environmental sources’ and ‘prevent severely disabled children from being born’. Gradually, the concept of pro-choice and pro-life groups evolved and ultimately culminated in a grand finale case in 1973 called Roe v. Wade.<sup>5</sup> The lawsuit was initiated by the legal counsels, Sarah Weddington and Linda Coffee on behalf on Norma McCorvey a.k.a Jane Roe and other women who were pro-choice against Henry Wade who was the district attorney of Dallas County, Texas.<sup>6</sup>

### **(C) About Norma McCorvey a.k.a Jane Roe**

Norma McCorvey (born as Norma Leah Nelson) was born in Simmesport, Louisiana in 1947. Her parents were Olin “Jimmy” Nelson and Mary Mildred Gautreaux. Her father was a TV repairman. Her mother was an alcoholic and used to abuse her both physically and verbally.

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<sup>3</sup> Michele Goodwin, *Abortion Law, in Policing the Womb: Invisible Women and the Criminalization of Motherhood* 46–77 (2020).

<sup>4</sup> Roe, *supra* note 4

<sup>5</sup> Mary Ziegler, *Roe v. Wade and the Rise of Rights Arguments, in Abortion and the Law in America: Roe v. Wade to the Present* 11–26 (2020).

<sup>6</sup> History, <https://www.history.com/topics/womens-rights/roe-v-wade> (last visited June 7th, 2021)

When Norma was nine, her father abandoned the family. Soon after, her mother, her brother and her shifted to Houston, Texas. There she and her female friend stole cash from the register of a petrol bunk. Later, they were spotted kissing and were reported to the police.

Due to this incident, Norma was kept under the wardenship of the court and sent to a Catholic boarding school in Dallas. There she was sexually abused by a nun. From the age of eleven to the age of fifteen, she studied at the State School for Girls in Gainesville where she explored her sexuality with her girlfriends. Norma describes this as the happiest days of her childhood. When she surpassed the age to live at the State School, she stayed with her mother's distant relative. For three weeks, she suffered rape at the hands of her relative. This prompted her mother to bring her back home.

Norma found a job as a waitress at a drive-in burger joint. At the age of sixteen, she married Woody McCorvey, a metal sheet worker. Two years later, she had a baby girl with him. However, she left him citing abuse. After giving birth to her daughter Melissa, she turned to alcohol and frequented gay bars in Dallas. With the help of her friends, she discovered that she was a lesbian. Unhappy with this discovery, her mother charged her with abandonment and took Melissa away from Norma while Norma was on a weekend trip with her friends.

Norma got into her first serious relationship with a female while at a lesbian bar 'The Red Devil'. She also had an affair with her male colleague and gave birth again. This time, she gave her baby up for adoption. Following this episode, she turned to drugs and became addicted to them. She was impregnated by her friend in 1969. This pregnancy was unwanted and it caused her great psychological pain. While on the lookout for an abortion clinic, she was approached by two female lawyers, Sarah Weddington and Linda Coffee in February 1970 at a restaurant in Dallas. At this time, she was a drug addict, alcoholic and lesbian, apart from having a host of criminal records.

In her quest for a safe abortion, she unknowingly became Jane Roe in the famous American abortion case of *Roe v Wade* in which Sarah Weddington and Linda Coffee were advocates for 'Jane Roe'. It is pertinent to note that she was not looking to be a protagonist in a landmark case that would legalise abortion nor did she take part in the case due to social or political motives. She was just an economically poor, pregnant lesbian who wanted to abort under legal and safe conditions. The lawyers, Sarah Weddington and Linda Coffee had falsely promised her that the case would be over before her pregnancy term ended and that she would be allowed to abort safely and legally after that. However, the case did not get over and she never got a chance to abort thereby, ending up giving birth to her third baby – the Jane Roe baby. This

baby, like the second, was given up for adoption.

Whether she liked it or not, she became a heroine for pro-choice supporters after the judgement in Roe v Wade legalised abortion. She began to work in an abortion clinic in North Dallas called A Choice for Women. A couple years later, a pro-life organisation called ‘Operation Rescue’ moved into the empty office space right next to the abortion clinic where she worked. In a few months, Norma befriended the people at Operation Rescue and converted to Roman Catholicism. This prompted her to embrace the pro-life ideology. Soon, she was a staunch pro-life supporter and tried to appeal for a reversal of the Roe v Wade judgement but in vain. She passed away on the 18<sup>th</sup> of February in 2017 at the age of sixty-nine due to a heart ailment.

## II. LEGAL ARGUMENTS

### (A) Understanding Wade’s Arguments

Texas defended the restriction on abortion by citing that States have an interest in safeguarding health, maintaining medical standards and protecting prenatal life; that a foetus is a "person" protected by the Fourteenth Amendment; and that prenatal life from the time of conception is a compelling state interest.<sup>7</sup>

*“For Man to tell how human life began is hard; for who himself beginning knew?”*

**- John Milton**

Those on either end of the spectrum of views on legality of abortion often get into arguments, and try to find the answer to the question that when does the foetus become “alive”? In other words, what they are debating upon is when does the foetus become “sufficiently human” to be able to claim right to life. Generally, there is consensus around the globe that human beings have an uncontested right to life but some people would not go as far to confer similar rights upon a fertilized cell as a result of conception. It is unarguably true that one acquires their right to life between these two stages, but it is extremely difficult to point out a specific timestamp on this timeline. Therefore, it poses a very important question upon us, i.e., “When does life begin?”

The debate on this has been going on for ages, however, there seems to be no consensus on it. All concerned fields, be it medical, theology, or philosophy have varying views on this subject matter. In hindsight, it is also kind of unrealistic to try and associate a precise point of time in stages of foetal development with acquisition of right to life, which the foetus didn’t have a

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<sup>7</sup> Supreme Findlaw, <https://supreme.findlaw.com/supreme-court-insights/roe-v--wade-case-summary--what-you-need-to-know.html> (last visited June 7<sup>th</sup>, 2021)

few moments earlier.

Over the years, various people, groups of people, scholars, etc. have tried to answer this question that when does a foetus get right to life. These suggested point of time/stage of foetal development have been provided by persons from varied backgrounds, and heavily affected by ideologies of science, religion, theology, philosophy etc. Some of these stages have been enumerated as under.

**1. Aristotle's theory:** One of the greatest scholars to have ever existed, Aristotle himself, in that day and time, had an opinion on lives of an unborn children. He suggested an extremely arbitrary stages based on his three-stage theory of life, the three stages being – vegetable (at conception), animal ('animation' stage), and rational (post-live birth). Aristotle suggested forty days for males and ninety days for females as the ideal time to give right to life to unborn children.

**2. Conception:** Majorly suggested and accepted by the Catholics, it is stated that the embryo shall be treated as an individual entity right from the moment of its conception. However, this is not just supported by Catholics rather, various non-Catholics also support this ideology. Even scientifically, fertilization is a logical point to be deemed as commencement of human life. One of the biggest pros of this view is that this point isn't just some arbitrary point in time, rather a very specific stage of foetal development. At this stage, the fertilized egg has begun the process of developing into a separate human being and contains the full genetic code of a human being. However, it only marks the beginning of biological life and many people hold the belief that biological life by itself is not sufficient to confer right to life upon a foetus.

**3. Implantation:** Implantation refers to a specific point in time one week after the fertilization, wherein the fertilised egg gets implanted in the womb. Scientifically speaking, the point is easily identifiable, however, is again a very arbitrary point of time in foetal development.

**4. Quickening:** Another idea, emerging from a now abandoned Christian theory was the 'Quickening' theory, which is based on distinction between animate and inanimate objects. 'Quickening' is when the foetus first moves in the womb and hence is said to be 'animated'. This happens around sixteen weeks after the fertilization process. However, the time of quickening is influenced by various factors, such as number of previous pregnancies that the mother has had, etc. which have no relevance with the issue of right to life.

**5. Tissue separation:** This is a stage in foetal development, wherein, the foetus starts separating into different types and the foetus starts taking an increasingly human appearance. The prevalence of this theory is rooted in morality as one feels the need to protect the foetus

due to its human-like appearance in the womb. Since this stage covers a long period of time in stages of foetal development, it gives women ample time to decide on whether or not to continue with the pregnancy.

**6. Brain Activity:** One of the most logical point is this stage, i.e., where the foetus shows signs of brain activity and hence becomes capable to form its own thoughts. This is also a widely accepted stage as it marks an essential characteristic that some people believe a moral person must possess. However, it shall be noted that brain activity at this point of time is no more than a requisite. It doesn't actually confirm or demonstrate that the foetus has gained conscience.

**7. Viability:** This is the most widely accepted and the most common criterion used in drafting statutes regarding regulation of abortion. 'Viability' refers to the condition of the foetus, i.e., whether the foetus is viable enough to survive outside the womb. Therefore, it is believed that life begins at the stage from where the foetus could survive outside the womb. The viability of a foetus differs in all cases and relies on too many variables such as state of technology and medical science availed, the race and gender of the foetus, the competence of the mother, etc. Determining the rights of an individual based off of its gender, race, or state of medical facility, can be considered rather distasteful and is one the biggest criticism of this theory.

**8. Birth:** The clearest and least ambiguous response to the question that when does life begin is to simply say "at Birth". Although this theory is supposedly the least ambiguous, there is disagreement among scholars as to when is a baby actually born. Is it when part of the baby is outside the mother's body or only when the baby is wholly out of the mother's body or when the placenta and womb are separated and the foetus is expected to rely on its own to keep alive? The criticism to this theory is that an individual's right to life should not depend on whether they are inside or outside the womb. This criticism is quite baseless as what is ignored in this criticism is the idea that birth refers to a stage where the baby starts to exist independently of the mother.

The defendant, the State of Texas by Henry Wade, contended that aside from the Fourteenth Amendment, it shall be noted that life begins at conception and is present throughout the pregnancy, and hence making protection of foetus' right to life a compelling state interest. Therefore, Texas State's arguments could be summarised as under:

- A foetus is a "person" and therefore warrants protection under the Fourteenth Amendment
- States have an interest in safeguarding health and protecting prenatal life

- Protection of prenatal life from the date of conception is a compelling state interest.

The learned counsel on behalf of Wade, the representative for the state of Texas, in a similar fashion to most “pro-life”/anti-abortion lobby, contended that the embryo, at the moment of conception becomes a moral person. The idea that at the moment of conception a new human being has already been created is immensely exaggerated.<sup>8</sup> Further, the defendants put strong emphasis on the contention that even the unborn are just as much people as any other citizen, thereby making them entitled to protection under the Equal Protection Clause under the Fourteenth Amendment to the United States Constitution. An abortion would therefore deprive the “person” of their right to life.

The counsel further argued that the United States Constitution anywhere does not provide explicit right to abortion. The counsel further urged that there was nothing in the precedent of *Griswold v. Connecticut*<sup>9</sup> (cited by the plaintiff) which could be extended to give rise to women’s right to choose abortions. Further, coming on the topic of right to privacy, the contention was made that abortion was not a private matter as it took place in hospitals and clinics and not in a private space like private homes of such women seeking abortion.

As the opening arguments came to an end, Justices Rehnquist and Powell joined the coram, however were eschewed from voting on this matter since they had missed the opening arguments. As a result of this conferencing, the justices voted in a 4-3 majority that the Texas statutes were to be deemed unconstitutional. Due to the first draft of the majority opinion being faulty in its own ways, Justice Blackmun proposed for the case to be reargued. Finally, the case was reargued in October 1972, much later than when the case was originally argued. Hence, the counsel for defendant claimed that the entire case had become moot as the aggrieved plaintiff Roe was no longer pregnant as she had already given birth.

After the case had been reargued, and all arguments had been heard, Justice Blackmun, writing for a seven-justice majority, in response to the defendant’s arguments only stated “We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.”<sup>10</sup>

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<sup>8</sup> GLANVILLE WILLIAMS, *The Fetus and the "Right to Life"*, Vol. 53, No. 1, The Cambridge Law Journal 71, 76 (1994)

<sup>9</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965)

<sup>10</sup> *Roe*, *supra* note 4

## (B) Understanding Roe's Arguments

Jane Roe and the pro-choice supporters claimed absolute privacy rights for women by claiming that Texas law invaded an individual's right to "liberty" under the Fourteenth Amendment; that Texas law infringed on women's rights to marital, familial, and sexual privacy guaranteed by the Bill of Rights; and that right to an abortion is absolute – women are entitled to end a pregnancy at any time, for any reason, in any way they choose.<sup>11</sup>

The Fourteenth Amendment is at the very soul of the Roe v Wade judgement.<sup>12</sup> The Congress passed this amendment on the 13<sup>th</sup> of June in 1866. It was ratified two years later on the 9<sup>th</sup> of July in 1868.<sup>13</sup> This amendment contains five sections. The first section consists of important provisions such as state action, privileges & immunities, citizenship, due process, and equal protection. The second section deals with the apportionment of representatives to Congress. The third section forbids anyone from holding federal office if they participate in “insurrection or rebellion” against the United States. The fourth section repudiates debts accrued by the Confederacy and addresses federal debt. The fifth section expressly authorises Congress to enforce the Fourteenth Amendment “by appropriate legislation.”<sup>14</sup>

Out of all these sections, Section 1 is the most relevant section to the case of Roe v Wade. Section 1 reads “All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>15</sup>

The Fourteenth Amendment consists of three categories of rights – procedural due process, substantive due process and individual rights that are listed in the Bill of Rights.<sup>16</sup> Before diving into the nitty-gritty of the Amendment and its clauses, it is essential to understand a few terms that will give a clear understanding of the clauses.

- **Due Process Clause:** it is guaranteed by the Fourteenth Amendment that no state shall “deprive any person of life, liberty, or property, without due process of law.” This

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<sup>11</sup> Supreme, *supra* note 16

<sup>12</sup> Time, <https://time.com/5333372/fourteenth-14th-amendment-roe-v-wade-supreme-court/> (last visited June 7<sup>th</sup>, 2021)

<sup>13</sup> Constitution center, <https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiv> (last visited June 7<sup>th</sup>, 2021)

<sup>14</sup> Cornell Law School, <https://www.law.cornell.edu/constitution/amendmentxiv> (last visited June 7<sup>th</sup>, 2021)

<sup>15</sup> Constitution, *supra* note 21

<sup>16</sup> *Ibid.*

Amendment provides for a Due Process Clause to selectively incorporate changes in the Amendment so that individual liberties enshrined in the U.S. Constitution are not denied by the state.

- **“Penumbra” of Privacy:** the term “penumbra” means “partial shadow” in Latin. The U.S. Supreme Court has observed that the right of privacy is partially shadowed by some aspects of the Bill of Rights even though it is not explicitly mentioned as a right.
- **Right of Privacy:** it the right of the individual to be free of the scrutiny of the government into personal behaviour and beliefs.<sup>17</sup>

The Due Process clause in the Fourteenth Amendment states, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>18</sup> It derives its essence from various controversial as well as cherished constitutional rights. This clause ensures that fundamental rights that are not explicitly mentioned in the U.S. Constitution such as the right to abort is guaranteed against the State.

Substantive due process has often been used by the U.S. Supreme Court to bring about rights that are not listed and have no explicit mention in the U.S. Constitution. It stems from the basic need to protect those rights that are so vital that they cannot be transgressed without a compelling reason. The endorsement of the right of privacy in the case of *Griswold v. Connecticut*<sup>19</sup> is one such example. This case proved that the right of privacy emanated from certain guarantees in the Bill of Rights.<sup>20</sup>

This right of privacy was relied upon in *Roe v. Wade*, among others. Thus, *Griswold v. Connecticut*<sup>21</sup> was an important precedent for *Roe v. Wade*.<sup>22</sup> While endorsing the right of privacy, the U. S. Supreme Court ruled that the due process clause of the Fourteenth Amendment prevented the government from denying individuals their right of privacy. Only a compelling interest on the part of the government can justify the encroachment of a statute on the liberties of individuals. The right of privacy is explicitly stated in the constitutions of many

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<sup>17</sup> Khan Academy, <https://www.khanacademy.org/humanities/us-government-and-civics/us-gov-civil-liberties-and-civil-rights/us-gov-due-process-and-the-right-to-privacy/a/lesson-summary-due-process-and-the-right-to-privacy> (last visited June 7<sup>th</sup>, 2021)

<sup>18</sup> Time, *supra* note 22

<sup>19</sup> *Griswold*, *supra* note 18

<sup>20</sup> State of Connecticut Judicial Branch, <https://www.jud.ct.gov/lawlib/history/privacy.htm> (last visited June 7<sup>th</sup>, 2021)

<sup>21</sup> *Griswold*, *supra* note 18

<sup>22</sup> *Ibid.*

states in the U.S. (Hawaii Constitution, 2010).<sup>23</sup>

According to U. S. Supreme Court precedents, the Amendments that protect an individual's right of privacy from an intrusive government are the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments. The First Amendment ensures that individuals get freedom of speech, freedom to assemble peacefully and freedom to worship anyone/anything of their choice. The Third Amendment prevents the State from mandating feeding or housing soldiers. The Fourth Amendment prevents the State from the unreasonable seizure of an individual or their property. The Fifth and Fourteenth Amendments guarantee 'due process of law' to provide strict scrutiny and protection to individuals' lives, properties or liberty. The Ninth Amendment reiterates that rights not explicitly listed in the U. S. Constitution may exist.<sup>24</sup>

In *Roe v. Wade*, the Supreme Court legalised abortion based on the right of privacy which is implied constitutionally and a liberty provision which is constitutionally explicit. Furthermore, the right of privacy is implied in the Ninth Amendment in the Bill of Rights.<sup>25</sup> "Privacy was not absent from public discourse about abortion prior to *Roe*, but it looked nothing like the conception of privacy familiar to us in contemporary abortion politics," Vincent Vecera wrote in the 2014 article, "The Supreme Court and the Social Conception of Abortion." "Where reform advocates talked about privacy before *Roe*, they almost always talked about the privacy afforded any medical decision... The transformation of traditional medical privacy into novel legal conceptions of privacy—personal privacy, personal choice, and personal autonomy—began prior to and partially alongside the broader trend toward the de-medicalisation of abortion." Vecera observes, "The justices of the Supreme Court influence politics beyond their ability to execute policy."<sup>26</sup> The *Roe v. Wade* judgement prompted conversation and views from all over the world.

### III. VERDICT

One of the most debated yet landmark judgment in the history of abortion regulation, *Roe v. Wade* was a fight of rights, i.e., a fight where the mother's right to choose were pitted against the foetus' right to life. The case involved a Texas law which restricted abortion access to women except in cases where abortion was to be carried out to save the mother's life. In addition to that, the *Roe v. Wade* had a companion case namely *Doe v. Bolton*<sup>27</sup> which involved

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<sup>23</sup> Open Lib, <https://open.lib.umn.edu/criminallaw/chapter/3-4-the-right-to-privacy/> (last visited June 7<sup>th</sup>, 2021)

<sup>24</sup> *Ibid.*

<sup>25</sup> Des moines Register, <https://www.desmoinesregister.com/story/opinion/columnists/2019/06/25/other-privacy-rights-could-danger-if-roe-v-wade-reversed-abortion-supreme-court/1561115001/> (last visited June 7<sup>th</sup>, 2021)

<sup>26</sup> JSTOR, <https://daily.jstor.org/what-roe-v-wade-means-for-internet-privacy/> (last visited June 7<sup>th</sup>, 2021)

<sup>27</sup> *Doe v. Bolton*, 410 U.S. 179. 1972

a Georgia law which stated a woman was permitted have an abortion only if her doctor found that there was a danger to her life, or if the foetus was likely to be born with a serious defect, or if the pregnancy originated from a rape.

When the seven justices in the coram first conferenced the two cases together, a majority had already formed a consensus that the Texas law at hand was to be deemed unconstitutional. However, the conference seemed to be in more of a split on the validity of the Georgia statute. In this regard, the concerns of the court did not pertain to the any rights-based arguments. Rather, the concern addressed by the Justices were that the Georgia statute might lead to rise in equal-protection issues.

After the cases were reheard and re-conferenced, the Court, in a 7-2 majority, resorted to striking down both the Texas and the Georgia statutes, and struck them down, not on the basis of the Equal Protection Clause. Instead, the justices relied on the Due process clause. Writing for a seven-justice majority, Justice Blackmun glanced through the history of law and medical opinions regarding abortion. Relying on these opinions and information, Justice Blackmun listed various important interests of the State in regulating abortion. These interests included protection of women's health and safety, right of personal privacy rooted in the Fourteenth Amendment.

To quote Justice Blackmun, "This right of privacy... is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Finally, after coming to a much debatable conclusion that a foetus was not a "person" as defined under Fourteenth Amendment, the majority designed a trimester framework, i.e., dividing the stages of foetal development/pregnancy into three trimesters. Now, only after attaining viability stage, the State could restrict abortion except when mandated due to health concerns of the mother.

Initially the verdict was appraised by many and the media coverage regarding the decision too tended to be neutral. However, in no time the judgment started igniting controversies, the earliest one being in June of 1974 where it was debated whether *Roe v. Wade* was right on the merits. Many people had started questioning whether the Justices in *Roe v. Wade* had rightly determined the "personhood" of a foetus.

Thus, in a nutshell, the U.S. Supreme Court decided on two very important aspects in the case of *Roe v. Wade*:

1. A women is entitled to choose whether to have an abortion as this decision is personal and falls under the gambit of the right of privacy.
2. A woman's decision to abort is not without conditions because the State too has an interest

in safeguarding the health of the woman and protecting prenatal life.

Aware that the interests of pregnant women and the State may clash, the justices in *Roe v. Wade* formed a timeline of trimesters that outlines the rights of the woman, the foetus and the state.

- **First trimester:** The State cannot regulate abortion except to an extent that it should be performed by a medically qualified practitioner under sanitary conditions.
- **Second trimester:** The State may regulate abortion depending on the health of the woman.
- **Third trimester:** The State's interest in protecting the foetus outweighs the pregnant woman's right of privacy. Hence, abortions may be allowed only if it is a threat to the health and safety of the pregnant woman.<sup>28</sup>

#### IV. IMPACT AND SIGNIFICANCE

While many believe that abortion has been legalised because of *Roe v. Wade*, the truth is, it can be 'regulated'. It is now clear that abortion falls under the constitutional, fundamental right of privacy. It may surprise one to know that the rate of abortion did not drastically increase or decrease after the *Roe v. Wade* decision. The only thing that changed was its legality status.

The Guttmacher Institute described it as 'over one million illegal abortions every year in the U.S. before *Roe v. Wade*' and 'around one million legal abortions after *Roe v. Wade*'. It was also noted that there was a drastic drop in the death rate of women who underwent abortions after the decision of *Roe v. Wade*. Due to the urging of pro-life supporters, States have placed restrictions on abortions such as 'parental notification requirements', 'compulsory disclosure of information on risks of abortion' and 'restrictions on late-term abortions.'<sup>29</sup>

#### V. CONCLUSION

To conclude, it is unlikely that *Roe v. Wade* will be overturned as it has the support of around 77% people surveyed in a 2019 poll by the NPR in the U.S.<sup>30</sup> At the most, it might be modified. It is important to note that, in the past, *Roe v. Wade* has been upheld in two famous cases – *Planned Parenthood v. Casey* and *Whole Women's Health v. Hellerstedt*. In 2020, *Roe v. Wade* was upheld in a Louisiana case quite similar to that of *Whole Women's Health v. Hellerstedt* called *June Medical Services v. Gee*. To decide whether to overturn *Roe v. Wade* or not

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<sup>28</sup> Supreme, *supra* note 17

<sup>29</sup> *Ibid.*

<sup>30</sup> NPR Org, <https://www.npr.org/2019/06/07/730183531/poll-majority-want-to-keep-abortion-legal-but-they-also-want-restrictions> (last visited June 7<sup>th</sup>, 2021)

requires a deep understanding of the case itself. With this knowledge, one can make an informed choice about the hotly debated issue of abortion.

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