Page 142 - 159 **DOI:** *https://doij.org/10.10000/IJLSI.11151603*

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 5 | Issue 3

2023

Comparative Analysis of Pro-Choice Debate in India, US and UK

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ABSTRACT

Is a woman's right over her body subservient to the rights of an unborn she is carrying in her womb? This question has been in continuous debate for decades in various forms in every country around the world, and has led to the division of society in two halves. Apart from these perspectives of right to life and right to choice, there is another concern which has compelled the states to frame laws regulating the abortions; the right to life of women itself. Recently, the US Supreme Court has overruled its own judgement, which was delivered in the widely appreciated case of Roe vs Wade (1973) through which it had declared abortion as a constitutional right of women. Due to this, the states of the USA have started imposing laws against abortion which has led to widespread criticism by citizens from all around the world. In addition, it has raised the debate once again regarding women and their autonomy over their bodies, their right to privacy and dignified life. On the contrary, the Medical Termination of Pregnancy (Amendment) Act, 2021 in India has been enacted to expand the access to safe and legal abortion services on eugenic, therapeutic, social and humanitarian grounds to ensure comprehensive care to women. The urge to present this study emerged from the fact that India, which has been considered by the western world as primitive and unmodern till the late 19th century; is among the few foremost countries which had brought legislations to regulate the abortions and has given rights in regards to abortion, to its women and provided for various safeguard measures, as early as in the year 1971. While, on the other hand, women in the USA had to wait for the US Supreme Court's judgement of Roe vs Wade, 1976 for their rights to have legal abortions. In the United Kingdom, England, Scotland and Wales; the Abortion Act, 1967 made abortions legal as long as specific criteria are met. This paper aims to present a comparative study of the legal mechanism on abortion and rights available to women in this regard; in India, the United Kingdom and the USA.

Keywords: *Abortions, Pro-choice, Constitutional, Legislations, Medical Termination of Pregnancy.*

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 [ISSN 2581-9453]

I. INTRODUCTION

Zakiya Luna has, in a 2020 publication, argued that reproduction is both biological and political.[2] According to Luna, it is biological since physical bodies reproduce, and it is political since the decision on whether to reproduce or not is not solely a private matter. This decision is intimately linked to wider political, social, and economic structures. A woman's role and status in family, and society generally, is often tied to childbearing and ensuring the continuation of successive generations[3].

Many people regard the right to control one's own body as a key moral right. If women are not allowed to abort an unwanted fetus they are deprived of this right. The simplest form of the Pro-choice arguments goes like this: (a) a woman has the right to decide what she can and can't do with her body (b) the foetus exists inside a woman's body (c) a woman has the right to decide whether the foetus remains in her body; therefore, a pregnant woman has the right to abort the foetus. Moreover, the issue brings many ideas about human rights into brutally sharp focus; (a) every human being has the right to own their own body (b) a foetus is part of a woman's body, therefore, that woman has the right to abort a foetus they are carrying.

The important US Supreme Court decision in **Roe v. Wade**[4] (which has been overruled now by 6:3 ruling of US Supreme Court[5]) to some extent supported that view when it ruled that a woman's right to terminate her pregnancy came under the freedom of personal choice in family matters and was protected by the 14th Amendment of the US Constitution. This leads to claim that it is unethical to ban abortion because doing so denies freedom of choice to women and forces 'the unwilling to bear the unwanted'.

Opponents of this argument usually attack the idea that a foetus is a 'part' of a woman's body. They argue that a foetus is not the same sort of thing as a leg or a liver: it is not just a part of a woman's body, but is (to some extent) a separate living entity living, breathing and existing inside her womb! In addition, when we talk about rights, we should bear in mind that no right is absolute, they all exist to the extent they don't infringe others rights, in other words, they exist with reasonable restrictions. So, when we talk about the women's right of autonomy over her bodily freedom, we should also consider the fact that in case of pregnancy, once the life has entered into the fetus, it requires very serious observation and no such claim should be made blatantly. Furthermore, The women's liberation movement sees

[2] Luna, Zakiya. *Reproductive Rights as Human Rights: Women of Color and the Fight for Reproductive Justice*, New York University Press, 2020. https://doi.org/10.18574/nyu/9781479894369.001.0001.
[3] Ibid.
[4] Roe v. Wade 410 U.S. 113 (1973).
[5] Dobbs v. Jackson 597 U.S. 2022 WL 2276808; 2022 U.S. LEXIS 3057.

 [ISSN 2581-9453]

abortion rights as vital for gender equality. According to them, if a woman is not allowed to have an abortion, she is not only forced to continue the pregnancy to birth but also expected by society to support and look after the resulting child for many years to come (unless she can get someone else to do so). They argue that only women have the right to choose whether or not to have children so they can achieve equality with men: men don't get pregnant, and so aren't restricted in the same way. It is also claimed that women's freedom and life choices are limited by bearing children, and the stereotypes, social customs, and oppressive duties that went with it. They also regard the right to control one's own body as a key moral right, and one that women could only achieve if they were entitled to abort an unwanted fetus. In the words of Sarah Weddington,[6], *"A pregnancy to a woman is perhaps one of the most determinative aspects of her life. It disrupts her body. It disrupts her education. It disrupts her employment. And it often disrupts her entire family life*"[7].

Although this idea emanated from the USA, and then furthered its influence to the European countries; India was not much affected by it till lately. The abortion debate in India was never based on two extremes of pro-life and pro-choice instead, the legislature in India had itself enacted the law as early as in 1971, regulating the abortions and giving it legal status, while doing away with the colonial era law which had listed abortions as a criminal offence. Further, the Indian judiciary had also time and again granted allowance to women to abort their pregnancy based on various grounds even beyond the period prescribed in the law.

Moreover, it is quite interesting to note that in the recent past, the contrary developments took place in India and in the USA. The US supreme court, overruled its decision in **Roe's case** which had granted the American women right to abortion and on the other hand, the Indian Supreme Court, in case of **X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr**[8], gave widest possible interpretation to the Medical Termination of Pregnancy Act, 1971[9] and reiterated that abortion is the right of women, notwithstanding her marital status, as the *'Right to health and Reproductive autonomy under right'* to life and personal liberty granted by **Article 21** of the Constitution.

The article begins by laying down the brief account of how the pro-choice and pro-life debate started and its journey till present. Further, it proceeds to lay down the legal regime of abortion laws in India, UK and USA and then presents a comparative analysis of the same.

[6] In Roe v. Wade 410 U.S. 113.
[7] Supra.
[8] Petition(s) for Special Leave to Appeal (C) No(s).12612/2022; 21-07-2022.
[9] Medical termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971 (India).

II. HISTORICAL BACKGROUND OF PRO-CHOICE AND PRO-LIFE DEBATE

According to Kristin Luker (1985), there were two adversarial schools in ancient Greece when it came to abortion. The Pythagoreans held that abortion was wrong because they believed the embryo to be the moral equivalent of the child it would become, which meant abortion equated to murder. This school was the predecessor of the current pro-life ideology. The ancient Stoics, however, found embryos to be of a different moral order than already-born children and, consequently, considered abortion not to be equivalent to murder. This school formed the predecessor of the pro-choice ideology. In the Roman empire, abortion was widespread and occurred on a frequent basis. Legal regulation, however, was essentially non-existent[10].

Roman law holds that a child still inside its mother's womb is not a person, hence abortion is not regarded as murder. This is more in line with the pro-choice viewpoint than the pro-life viewpoint. Early Christians denounced abortion vehemently, but this rhetoric never translated into how it was viewed in law and morals (Luker, 1985). For instance, induced abortion is not mentioned in either the Jewish or Christian bibles. Early Christian scriptures denounce abortion, but church councils—tasked with establishing the rules for Christian communities—only punished women who had abortions after engaging in sexual offences like prostitution or adultery. As a result, Christians disagreed on whether abortion constituted murder after 200 A.D.[11]

Ivo of Chartres, a well-known church scholar, resolved this controversy in the Middle Ages, more notably in the year 1100 A.D. He condemned abortion but said that killing an "unformed" embryo was not murder. In a treatise that would serve as the foundation for law for the following 700 years, Gratian restated this position fifty years later. Because of Gratian's decisions, moral theology and Catholic canon law did not recognise first-trimester abortion as murder in practice. Abortion was not regarded as murder in Western nations because of the law and theology that served as the region's legal and moral framework[12].

According to Luker and Mohr, due to the above mentioned reasons, the USA had no state laws prohibiting abortion before or during the Victorian era. Prior to *'quickening'* which was the moment a woman feels her baby move for the first time[13], the common law held that abortion was not a crime. After "quickening," most women believed life had genuinely begun

[10] Planned Parenthood, *Roe v. Wade: Its history and impact,* (2014) https://www.diggitmagazine.com/articles/pro-choice-movement-brief-ideological-history-abortion.
[11] Ibid.
[12] Luker, K., *Abortion & the politics of motherhood* (1st ed.). University of California Press, (1985).
[13] Luker, 1985; see also Weingarten, 2014; Mohr, 1979.

(Reagan, 1997). Therefore, only late-term abortions might be charged, but even then, it was never considered a crime of murder (Mohr, 1979; Luker, 1985). In fact, there was a lot of abortion-related advertising up until the second half of the nineteenth century, which contributed to a rise in the procedure's use[14].

A fascinating change from a society that views abortion as not murder and therefore should be legal to the one that views it as immoral and wishes to ban it can be seen in the second half of the 19th century. As we have previously stated, there was no anti-abortion sentiment in nineteenth-century America. On the contrary, the pro-choice philosophy was dominant at this time, and it would eventually come to be recognised as that ideology. whatever took place in 1850s, drastically altered the environment for abortion.[15]

According to Kristin Luker in ***Abortion and the Politics of Motherhood*** **(1985)**[16], Surprisingly, doctors were the most prominent group to modify the status of abortion; they actively petitioned state legislatures to establish anti-abortion laws. The American Medical Society's membership adopted the stance of Horatio R. Storer, a physician and outspoken AMA member whose goal was to reform the country's abortion laws. According to Storer, who wrote on Criminal Abortion in America, *"by the moral law, the wilful killing of a human being at any stage is murder" and "if there is life, then also there is the existence, however undeveloped, of an intellectual, moral, and spiritual nature, the inalienable attribute of humanity*". This work introduced a new form of biopolitics (Foucault, 2010) that would privilege the protection of the fetus over the protection of the pregnant woman.

American doctors of the 19th century succeeded in turning the abortion debate of their day into a political battle in the name of medicine and morality through their construction of women as outsiders and their categorization of abortion as a completely medical concern. In doing so, they were able to criminalise a practise that had previously been considered normal and exclude women from the discussion about their own bodies[17].

III. LEGAL FRAMEWORK OF ABORTION LAWS IN INDIA, UK AND USA

(A) Law in India

a. Legislative framework

Before the MTP, 1971 act was passed, the IPC governed the law on abortions. **Sections 312** to 318 make up the section of Chapter XVI of the IPC headed "**Of the Causing of**

[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Assendelft, L. V., Schultz, J. D., & Assendelft, V. L., *Encyclopaedia of Women in American Politics* (1st ed.), Greenwood, (1998).

Miscarriage, of Injuries to Unborn Children, of the Exposure of Infants, and of the Concealing of Births". Unless the procedure is carried out in good faith to save the woman's life, **Section 312** criminalises abortion, making anyone (including the pregnant woman herself) liable for causing the miscarriage of a woman with an unborn fetus. When the crime of "causing miscarriage" is committed without the woman's consent, **Section 313** stipulates a penalty of life in prison or a term of imprisonment that may extend to ten years. **Sections 312 to 316** of the IPC omitted a distinction between desired and undesired pregnancies. Due to unintended pregnancies, it was incredibly difficult for women to have safe abortions. Prior to 1971, the IPC regularly compelled women to seek out hazardous, dirty, and uncontrolled abortions, which boosted maternal morbidity and death. In light of this, on November 17, 1969, the Medical Termination of Pregnancy Bill was tabled to the Rajya Sabha. On August 2, 1971, the MTP Bill was introduced in the Lok Sabha with the intention of "liberalising certain of the prohibitions under section 312 of the IPC". Parliament enacted the MTP Act as a "health" measure, "humanitarian" measure, and "eugenic" measure. The overall objective of the MTP Act was to provide women with access to legal, safe medical abortions. The MTP Act's primary objective is to make it simpler for women to utilize RMP services for medical pregnancy termination. The **Medical Termination of Pregnancy (Amendment) Act, 2021**[18], a recent amendment to the law, sought to extend its protections to all women, married and unmarried.

The purpose of the Amendment Act is positioned within the context of reproductive rights in the Statement of Objects and Reasons for the Amendment Act, which states: *"With the passage of time and advancement of medical technology for safe abortion, there is a scope for increasing upper gestational limit for terminating pregnancies especially for vulnerable women and for pregnancies with substantial foetal anomalies detected late in pregnancy."*[19] In order to decrease maternal mortality and morbidity brought on by unsafe abortion and its complications, it is also necessary to increase women's access to safe and legal abortion services. The Bill (now act) sought to increase women's access to safe and legal abortions without leaving them to compromise their safety or the standard of care, which is a step toward their safety and wellbeing. Additionally, it also guaranteed respect, autonomy, privacy, and justice for women who wants to end their pregnancies due to several listed reasons.

Moreover, the unamended MTP Act of 1971 was largely concerned with "married women"

[18] Medical Termination of Pregnancy (Amendment) Act, NO. 8, Acts of Parliament (2021).
[19] Statement of Objects and Reasons, Medical Termination of Pregnancy (Amendment) Act, NO. 8, Acts of Parliament (2021).

but the present amendment extended it's ambit to the unmarried women seeking termination of their pregnancies too. in consonance, a reply of the Ministry of Health & Family Welfare to the Report on **'Women's Healthcare: Policy Options' by the Committee on Empowerment of Women (2020-2021)**[20] was that the act is being amended *"to increase the access of safe abortion services to all women, the provision of abortion services is proposed for all women irrespective of their marital status"*[21] which was also based on the recommendation by Committee on Empowerment of Women which suggested to "raise [in] the permissible period of abortions to 24 weeks" and the deletion of the word "married" in the legislation, so that "anyone can get an abortion without having to depend on sham clinics as a last recourse."[22] Explaining the object behind this amendment, the Minister observed that taking into consideration an ever-changing society, rights of single women, widows, and sex workers must be considered.[23] The Amendment Bill was termed as a "progressive legislation" introduced to uphold women's right to live with dignity.

b. Judicial approach

The Supreme Court of India, in the case of **X v. NCT Delhi**[24] observed that the "*ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health"*[25]. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.[26]

The judges also opined that the intricate ideas of family, society, religion, and caste frequently ensnare women. Such external societal influences have an impact on how a woman exercises autonomy and control over her body, particularly when it comes to decisions regarding reproduction. Legal restrictions that limit a woman's access to abortion frequently reinforce societal issues. Only the lady can decide independently, free from other

[20] 'Women's Healthcare: Policy Options', Committee On Empowerment Of Women (17th Lok Sabha), (2020-21).
[21] X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr, Petition(s) for Special Leave to Appeal (C) No(s).12612/2022; 21-07-2022.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Supra.
[26] Ibid.

pressure or influence, whether to have an abortion or not given her complex life circumstances. Every pregnant woman must have the inherent right to decide whether to have an abortion or not, without the approval or consent of a third party, in order to practise reproductive autonomy.[27]

The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one's body. The consequences of an unwanted pregnancy on a woman's body as well as her mind cannot be understated. The foetus relies on the pregnant woman's body for sustenance and nourishment until it is born[28].

Puttaswamy case[29] also deals with facets of reproductive autonomy. **Justice Chelameshwar** had held in that case that a "*woman's freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy*". In that judgement, the Court also recognized the right to bodily integrity as an important facet of the right to privacy. Puttaswamy[30] considered the case of **Suchita Srivastava v. Chandigarh Administration**[31] to reiterate that *the statutory right of a woman to undergo termination of pregnancy under the MTP Act is relatable to the constitutional right to make reproductive choices under Article 21 of the Constitution.*

Not only this, it was also recognised that **the right to reproductive choice also includes the right not to procreate**. In doing so, it situated the reproductive rights of women within the core of constitutional rights.

Courts in the country have permitted women to terminate their pregnancies where the length of the pregnancy exceeded twenty weeks (the outer limit for the termination of the pregnancy in the unamended MTP Act) by expansively interpreting **Section 5**, which permitted RMPs to terminate pregnancies beyond the twenty-week limit when it was necessary to save the life of the woman. In **X v. Union of India [32]**, **Mamta Verma v. Union of India**[33], **Meera Santosh Pal v. Union of India**[34], **Sharmishtha Chakraborty v. Union of India[35]** The Court permitted the termination of post twenty-week pregnancies after taking into account the risk of grave injury to the mental health of a pregnant woman by carrying the pregnancy to term.

[27] Ibid.
[28] (supra).
[29] (supra).
[30] (supra).
[31] 2009) 9 SCC 1.
[32] (2017) 3 SCC 458.
[33] (2018) 14 SCC 289.
[34] (2017) 3 SCC 462.
[35] (2018) 13 SCC 339.

The grounds for approaching courts differ and include various reasons such as a change in the circumstances of a woman's environment during an ongoing pregnancy, including risk to life,[36] risk to mental health,[37] discovery of foetal anomalies.[38]

In **Z's case**[39] facet of unmarried pregnant women and their right to abortion was also questioned. To which the court observed that regardless of her marital status, a woman can choose to become pregnant. If the pregnancy is desired, both parties share the responsibility equally. However, the burden generally falls on the pregnant woman whether it is an unintended or incidental pregnancy, hurting both her physical and mental health. **Article 21** of the Constitution[40] recognises and defends a woman's right to have a pregnancy terminated if her mental or physical health is in jeopardy. It's important to note that the woman alone has the authority over her body and makes the ultimate decision as to whether or not she wants to have an abortion[41].

(B) Law in UK

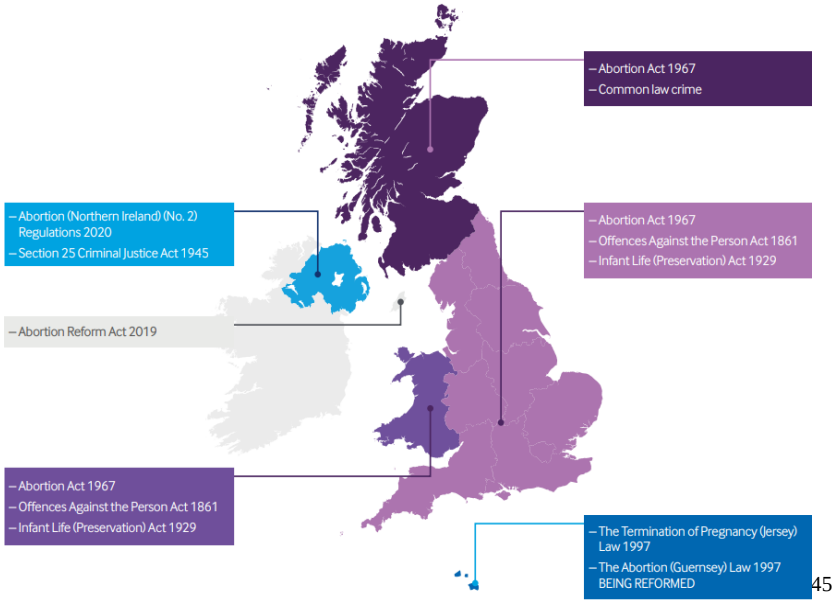
In England, Scotland and Wales, abortion is governed by the **Abortion Act 1967**[42] which was amended by **the Human Fertilisation and Embryology Act 1990**[43]. The Abortion Act provides exceptions to the crime of administering or procuring an abortion. Under the Abortion Act, a pregnancy can be lawfully terminated by a registered medical practitioner in an NHS hospital or premises approved for this purpose, if two medical practitioners are of the opinion, formed in good faith: "(a) that the pregnancy has **not exceeded its twenty-fourth week** and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or (b) that the **termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman**; or (c) that the continuance of the pregnancy **would involve risk to the life of the pregnant woman**, greater than if the pregnancy were terminated; or (d) that there is a **substantial risk that if the child were born** it would suffer from such physical or mental abnormalities as to be seriously handicapped."

[36] A v. Union of India, (2018) 14 SCC 75; X v. Union of India, (2017) 3 SCC 458; Meera Santosh Pal v. Union of India, (2017) 3 SCC 462; Tapasya Umesh Pisal v. Union of India, (2018) 12 SCC 57; Mamta Verma v. Union of India, (2018) 14 SCC 289.
[37] X v. Union of India, (2017) 3 SCC 458
[38] A v. Union of India, (2018) 14 SCC 75; Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339.
[39] (supra).
[40] INDIA CONST. art. 21, 1950.
[41] (supra).
[42] Abortion Act, 1967 c. 87.
[43] Human Fertilisation and Embryology Act 1990 c. 37.

A pregnancy may only be terminated under **Section 1(1)(a)** of the Abortion Act if it has not exceeded 24 weeks. The majority of abortions carried out in England, Scotland and Wales take place within this time, over 90 per cent of which are carried out at 13 weeks or earlier.5 This percentage has remained relatively constant over the past decade. Early abortion is generally seen as medically preferable due to the lower risk of complications. Amendments made in 1990 to the Abortion Act replaced a pre-existing link to the Infant Life (Preservation) Act 1929 which made it illegal to "*destroy the life of a child capable of being born alive*", with an assumption that a child was capable of being born alive after 28 weeks' gestation. Accordingly, terminations carried out under the remaining grounds may be performed at any gestational age [section 1(1)(b) to 1(1)(d) of the Abortion Act]. Moreover, Under the Abortion Act, a pregnancy may be terminated at any gestation if there is a "*substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped*."

This Abortion Act does not apply to Northern Ireland. A new legal framework for abortion was established in 2020 under the **Abortion (Northern Ireland) Regulations[44] 2021**. The provisions in this regulation regarding the termination of pregnancy are quite similar to the law in England however, it introduced new criminal sanctions for abortions that are not administered in accordance with the said regulation. The following map can be used to understand the current legal framework on abortion, in the United Kingdom:

Figure 1. Legal framework on abortion in the United Kingdom.



[45]

[44] Abortion (Northern Ireland) Regulations 2021 (S.I. 2021/365).
[45] Figure map taken from: The Law and Ethics of Abortion: BMA view, (Sep. 2020).

(C) Law in USA

a. Before Roe's Case:

States did not control abortion before '**foetal quickening**' or when movement inside the womb could be felt, throughout a significant portion of American legal history. Abortion was a growing industry by the middle of the 19th century, and many of the women who chose to abort their children were middle-class, white, and married. The then newly established American Medical Association (the AMA) launched a successful campaign to outlaw abortion in all circumstances other than when a woman's life was in danger in 1857. The AMA sought to alter abortion legislation for ethical, practical, and scientific reasons. Medical professionals felt that quickening was mostly scientifically irrelevant because a new human life would naturally develop after fertilisation if no one interfered with it.[46]

By the mid-1960s, a movement had begun to loosen American abortion laws. During the 1930s and 1940s, improvements in obstetric and gynaecological care had made it hard for physicians to justify abortion as a means of saving a woman's life. Convinced of the wrongful nature of abortion laws that made the procedure illegal even when women would suffer adverse health consequences by continuing with the pregnancy, some doctors demanded reform. In 1959, the American Law Institute (ALI), a group of legal experts, released a draft proposal that would make abortion legal in cases of foetal abnormality, rape or incest, or when there was a threat to the woman's health. States from California to Georgia began passing the ALI model law in the mid-1960s. Constitutional changes fuelled the clamour for repeal.

A Connecticut law that forbade married couples from taking birth control was overturned by the Supreme Court in **Griswold v. Connecticut**[47]. The Court's judgement was based on a right to privacy that the majority of the justices considered was implied in the text of the Constitution. Griswold's argument was that the American Constitution's text contained 'penumbras' or rights that were implied by the protections outlined in the instrument. A Massachusetts legislation that allowed married persons to obtain contraceptives but no single people was declared unconstitutional by the Supreme Court in **Eisenstadt v. Baird**[48]. The ruling in Roe's which was handed down in January 1973, confirmed that it was a constitutional right to have access to safe and legal abortion. It established a precedent and

[46] Mary Ziegler, *A Brief History of US Abortion Law: Before and after Roe v. Wade*, HISTORY EXTRA, https://www.historyextra.com/period/20th-century/history-abortion-law-america-us-debate-what-roe-v-wade/ (accessed on July 5, 2022 at 3:45 pm).
[47] 381 U.S. 479.
[48] 405 U.S. 438.

effectively made abortion lawful in the entire United States. The judgment held that the right to privacy described in Griswold's case also protected a woman's right to choose abortion.

b. Development after Roe's Case:

Pro-lifers sought to modify the Constitution in the years following Roe to outlaw abortion and recognise the right to life. Anti-abortion activists, however, also fought for kinder laws that they claimed would conform with Roe, such as rules forcing women to wait 24 or 48 hours after visiting a clinic or talk with their husbands, in order to keep the number of abortions low.

Abortion has grown to be a significant political issue since the last decades of the 20th century. Politicians from both parties were once found in the pro-life and pro-choice movements, but by 1980, their stances had changed. Republicans, who typically oppose abortion, and Democrats, who typically support the right to choose abortion, have contributed to the polarisation of American discourse. In the 1992 case of **Planned Parenthood v. Casey**[49] the Supreme Court upheld the right to an abortion and argued that it was related to both autonomy and gender equality for women. But Casey did not spare Roe from harm. In place of the trimester-based framework, the Court held that states might lawfully control abortion as long as they did not unreasonably restrict a woman's freedom to make her own decisions.

c. The Present Status:

The overturning of Roe v. Wade ushers in a new era for both constitutional law and the provision of reproductive health care in the United States.

The Supreme Court first consented in **Dobbs v. Jackson Women's Health Organization**[50] to decide the fate of a Mississippi legislation that forbade abortions after 15 weeks. Then, in 2020, one of the court's most vocal proponents of abortion rights, Ruth Bader Ginsburg, passed away, and Mississippi pushed the justices to overturn Roe and the 1992 ruling, **Planned Parenthood v. Casey**[51], which upheld it. The Supreme Court did just that on June 30, 2022, in an opinion written by Samuel Alito for a ***five-justice majority***. Alito argued that because abortion was always treated as a crime, it could not be a fundamental right, and no one who wrote the relevant constitutional amendment would have thought otherwise.[52] With this, it is clear that this judgement will not stop the debate, instead, it has refuelled the debate

[49] 505 U.S. 833 (1992)
[50] No. 19-1392, 597 U.S. (2022).
[51] Ibid.
[52] (Supra).

and is met with wide protest all throughout the 50 states.

IV. CONCLUSION

While abortion is a practice which cannot be departed from a human society, it has been in question, morally, ethically, religiously and legally for a long time now. The pro-life and pro-choice debate has a long history in the US which dates back to centuries, and has been able to influence the world, in shaping their ideas as per the demands and issues raised in this debate. The contenders of the views have created two extremes, in which there is no common stand to arrive at. One wants complete freedom and autonomy of women establishing that women should be the sole decision makers in relation to pregnancy. An unborn is nothing but a part of a woman's body. On the other hand, there are those who claim that the unborn who are breathing inside the mother's womb should be protected by the states, because they are living beings who cannot speak up for their rights. In addition, the morality aspect is also added to this contention and to be precise, the American Pro-Life movement started on the moral grounds of killing a fetus proposed and supported by the Churches.

The debate has now traced a long way, but the question still remains the same, whose rights are supreme? The American views and their debate travelled a long way to Supreme Court's decision in Roe v. Wade in 1973 and then got zeroed down by the recent overturning judgement in Dobbs', which has led Americans to widespread protests amidst the changing laws criminalising abortions in various states.

In the United Kingdom, the debate is prominently based on religion. The pro-life contenders have opposed the abortion because it's a '**sin**'. However, the legal mechanism, though not completely, has given women rights to terminate their pregnancies within a particular time period and in certain complexities/conditions enumerated in the law. Increasingly, human rights law is being used to expand access to abortion.[53] Human rights bodies have successfully used arguments regarding women's equality and the rights to non-discrimination, health, autonomy, and liberty when advocating for the legalization of abortion, and many of these arguments have been upheld in national courtrooms and have contributed to progressive law reform.[54] The adoption of a human rights framing by anti-abortion groups builds on historic claims concerning the fetal right to life. While the first criminal statute was not passed in the UK until 1803, prior to this there were common law

[53] Rebouché R. "*Abortion rights as human rights*," *Social and Legal Studies.* 2016;25(6):765–782.
[54] Lowe P., Hayes G. "*Anti-abortion clinic activism, civil inattention and the problem of gendered harassment*," *Sociology.* 2019;53(2):330–346.

prohibitions and legal cases involving prosecutions for abortion.[55] The right to life of the fetus was a significant issue in the debates during the passing of the 1967 Abortion Act, and it has continued to be an important point for those opposed to abortion. While anti-abortion activists have not been successful in changing the law or reducing services, their constant attempts to restrict access and demonize service providers contribute to the ongoing stigmatization of abortion.[56]

Many of the activists in the UK attempted to minimize their religious reasons, claiming that their opposition to abortion is based on understandings of human rights and equality rather than on religious teachings despite their heavy reliance on religious iconography and customs.

In contrast to both, India has not embraced the pro-life/pro-choice divide. This is remarkable because, despite Indian society being promoted as beholder of philosophical position in principal, the pro-life viewpoint frequently has religious underpinnings. Hinduism, Christianity, Sikhism, Jainism, Buddhism, Islam, Zoroastrianism, and Judaism are all practised in India, and religion plays a significant role in public life of Indians, but this debate has not echoed through the country, neither on the basis of religion, nor on any other grounds, which surprises many.

There could be many possible reasons for this abeyance. Firstly, Indian society, prior to the invasions, was based on *Sanatan dharma* principles and considered the unborn as the living person. The *Garbhopanishad*, an ancient text on the foetal science, had laid down the complete details as to how life takes form, at what stage an embryo is imbibed with the life[57], when the foetus can hear and respond to the outside world from the womb[58] and so on. Not only this, the philosophy of *Garbh Sanskar* was also prominently practiced and it was established centuries ago that a fetus inside a mother's womb has stimuli to what is happening in the outer world. Owing to all these reasons, it is no surprise then that in Hindu Dharmic texts, we continuously find how abortion is an Adharmic action. *Krishna Yajurveda* (6.5.10), for example, calls a person who kills an embryo, which has not been discriminated against as a slayer of Brahmana. *Kausitaki Upanishad* (3.1) lists abortion among a number of Adharmic actions, including stealing and killing of one's parents. *Apastamba Dharmasutra*

[55] Keown J. *Abortion, doctors and the law: Some aspects of the legal regulation of abortion in England from 1803 to 1982*. Cambridge: Cambridge University Press; 1988.
[56] Ibid.
[57] सप्तमे मासे जीवेन संयुक्तो भवति । अष्टमे मासे सर्वसम्पूर्णो भवति । In the seventh month, [the embryo] comes to have the jīva (conscious self), and in the eighth month, it becomes complete in every sense.
[58] पञ्चात्मकः समर्थः पञ्चात्मकतेजसेद्धरसश्च सम्यग्ज्ञानात् ध्यानात् अक्षरमोङ्कारं चिन्तयति । तदेतदेकाक्षरं ज्ञात्वाऽष्टौ प्रकृतयः षोडश विकाराः शरीरे तस्यैवे देहिनाम् ।

(1.7.21.7) lists abortion among the Adharmic actions which make a person lose his/her Varna. *Manu Smriti* (5.90) says that a woman who commits abortion is not worthy of receiving libations upon her death. *Gautama Dharmasutra* (21.9) says that women who carry out abortion fall from Varna. Likewise, *Vashishta Dharmasutra* (28.7) lists abortion as being one among the three Adharmic actions, which makes a woman lose her Varna, the other two being murdering her husband and killing a Brahmana.

From the above discussion, it is evident that abortion in general is considered as an adharmic action, which must be avoided. Perhaps, the only exception to this is the case wherein there is a complication in the pregnancy, which necessitates abortion in order to save the life of the mother. Thus, *Sushruta Samhita*, an Ayurvedic text in a chapter titled ***Chikitsa-sthana****, says that 'during the time of delivery, if the foetus is alive but it is not possible in any way to safely retrieve it without hurting the mother, then surgical methods may be used for saving the mother, though it would cause the death of the foetus. It stresses that a mother's life must be saved at any cost'.*

But, post-independence, the Indian legislature with the Constitution as the guiding law, enacted the laws which were quite liberal in that era and also were as per right-based approach. Therefore, analysing the situation of unsafe abortions, which were carried on widely in those days (also because of one preferred sex of the child) they enacted the MTP Act, 1971 for regulating the situation while giving freedom to abort the pregnancy unconditionally for 12 weeks and post that up to 20 weeks on conditional grounds.

Secondly, the Supreme Court of India, upholds the rights of women and has granted permissions to abortion, whenever the parties have sought its help in case of emergencies, as and when required, based on case-to-case basis, giving wider interpretation to the existing laws.

Thirdly, the majority of women living in the villages and small cities of India, don't themselves think it as their right to abort their unborn child and consider this, only if it's necessary or when they are forced to do so.

Nevertheless, with the globalising world, when the communication of ideas is just a click away and every individual has an opinion on any issues happening in any corner of the world, the educated and informed citizens of India have now started taking part in the debate. Moreover, the Indian legislature has brought amendments to the pre-existing law, making it more concerned and inclusive of women's rights. Adding to it, the judiciary, in recent years, has adopted a very liberal approach and has given various judgements by golden

interpretation of the statutes to uphold the rights of individuals. In the same line, they have upheld the reproductive rights of women as part of their fundamental rights.

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 [ISSN 2581-9453]

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