

ABORTION LAWS: WORLDVIEW- Meghna Tyagi¹**I. ABSTRACT**

Abortion has different statuses regarding its rate, legal position, and restrictions worldwide. In recent years, many countries have done major changes in their abortion laws yet it didn't culminate in the practice of safe abortion in these countries. On one hand, there are countries where abortion is permitted without restrictions and is majorly conducted by trained practitioners in a safe medical environment. On the other hand, in the countries where it is restricted, most of its cases are considered unsafe and thus result in a high mortality rate. This article will discuss the approach of different countries in the world regarding the laws of abortion. It will also discuss how a developing country like India is embracing major changes in its law to make the practice of abortion safer whereas how a developed country like the United States of America overturned its historic judgment of Roe v Wade and made the practice of abortion restrictive.

II. INTRODUCTION

Termination of pregnancy by the removal of the embryo or fetus is called Abortion. When this termination is caused by without intervention it is called a miscarriage. When this termination is caused by medical intervention it is called an induced abortion. About 73 million induced abortions take place each year all over the world. 61% of all unintended pregnancies, and 29% of all pregnancies, result in induced abortions.² WHO (World Health Organisation) 2020 published a list of essential healthcare services which included Comprehensive abortion care as well. As per the data, around 97% of all unsafe abortions occur in developing countries. More than half of all unsafe abortions take place in Asia,

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² 'Abortion Fact sheet', World Health Organization, November 25, 2021, <https://www.who.int/news-room/fact-sheets/detail/abortion>. (Accessed October 12, 2022).

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mostly in South and Central Asia. The majority of all abortions are unsafe in Latin America and Africa.

Unsafe abortions are one of the major causes of maternal deaths. It can result in various physical and mental health issues and social and financial hardship for women, health systems, and communities. Lack of access to safe and affordable abortion care is scathing public health and human right issue. That's why there is a growing need for laws that are aimed at providing safe and respectful methods for abortion worldwide. In this article we are going to dive into the brief history of abortion laws, why there is a need to make laws regulating abortions, and what is the approach of various countries regarding the legal position of abortion.

III. HISTORY

Towards the end of the nineteenth century, abortion was legally restricted all over the world. A major part of this kind of law was to be found in the European imperial countries i.e., Britain, France, Portugal, and Spain, they imposed these restrictions in their colonies also.

There are three kinds of legal systems under which abortion is restricted, and its growth was mainly set in the period of colonialism which started during the sixteenth century. These legal systems are-

- 1) Common Law- It includes the United Kingdom and its former colonies i.e., India, Pakistan, the United States of America, New Zealand, and Ireland.
- 2) Civil Law- It covers the area of the rest of Europe i.e., France, Portugal, Belgium, Spain, and their former colonies.
- 3) Islamic Law- It is the region where the Muslim population predominates and bears the influence of personal law and also North Africa and Western Asia.

The above discussion leads us to a significant question why there was a need to legally restrict the practice of abortion? Historically, there were some reasons, it was a dangerous practice so it was restricted to protect the health of women, in some parts it was considered a sin, and lastly, it was restricted to protect the fetal life.³

³Marge Berer, 'Abortion Law and Policy Around the World', Health and Human Rights Journal, June 19, 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/>. (Accessed October 16, 2022).

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If we look at these reasons, we can say that in the present time as the practice of abortion has become safer due to the development in the field of medicine, restrictions on abortion can only be imposed on the second or third reason mentioned above.

IV. PRESENT MOMENT

With this, we came to another significant question why there is a need to legalize the practice of abortion in today's time? We will try to find out the answers to this question in our discussion onwards.

In October 1920, the Soviet Union became the first country to reform its abortion laws. It was the result of the efforts of feminist Alexandra Kollantai which was carried through a decree on women's health care. Progressive abortion law reforms (the one which is beneficial to women) has been justified on grounds of public health and human rights.

World Health Organization (WHO) suggests that abortion is one of the safest medical procedures if it is done by someone with appropriate skills and during the appropriate time of pregnancy duration. But legally imposed restrictions on abortion put people in a position to take the path of unsafe abortion. Unsafe abortion can affect a woman's life so much that it is the third leading cause of maternal deaths worldwide. WHO defined unsafe abortions as termination of pregnancy carried out by a person lacking the necessary skills or in an unsafe medical environment or both. Deaths resulting from abortion can be prevented but in countries where abortion is legally restricted, the number of maternal deaths keeps growing because women dealing with unwanted pregnancies have to take up the path of unsafe abortion due to the lack of legal access.

A wide range of human rights for women gets violated when they are denied access to quality abortion care i.e., the right to seek benefit from scientific progress, the right to be free from cruel, inhuman, and degrading treatment, the right to the highest attainable standards of physical and mental health. It also violates the right to non-discrimination and equality and the right to privacy. Restrictive abortion regulation leads to stigma and distress and also imposes financial burdens on women and girls.

Access to safe and legal abortion is a matter of human rights. Human rights expressly suggest that decisions regarding your body are yours only, it is called bodily autonomy. Compelling someone to carry an unwanted pregnancy and imposing the restrictions on abortion is a

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violation of this bodily autonomy. There is a fundamental connection between the legalization of abortion and the protection of human rights for women to achieve gender and social justice. Laws relating to abortion must adhere to the standards of human rights.⁴

Hence from the above discussion, it is evident that to curb the consequences of unsafe abortion, protect the dignity and human rights of women, and remove the stigma related to abortion, the legalization of abortion is much needed in the present times.

V. GLOBAL PERSPECTIVE

Global trends suggest that in the last 50 years, there has been a move toward the liberalization of abortion laws specifically in the industrialized world. Since 1990, there has been a considerable decline of 43% in the average rate of abortion in the countries where it is legally permitted. On the other hand, the countries which have imposed restrictions on abortion have witnessed a marked increase of 12% in their average abortion rate.⁵

The safety of abortion procedures widely differs in the countries where the laws related to it are liberal compared to those countries where it is legally restricted. Where abortion is legal, 90% of it is considered to be safe as compared to 25% of abortions occurring where it is banned.

Despite the trend of this liberalization, there still exists strong opposition to the legalization of abortion in various nations. Recently, this opposition won a major victory in the United States of America when the US Supreme court overturned its judgment delivered in the case of Roe v Wade which had guaranteed the constitutional right to abortion.

There exists a wide range of differences in the status of abortion throughout the world. A large number of countries permit abortion legally under at least some specific conditions whereas two dozen of countries ban abortion. Since 2000, thirty-eight countries have made considerable changes in their abortion laws. On one hand, there are countries like Argentina, Thailand, Mexico, South Korea, and New Zealand which ceased their abortion restrictions. On the other hand, countries like Honduras and the United States of America have taken steps to tighten restrictions on abortion.

⁴ 'Key Facts on Abortion', Amnesty International, <https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/>. (Accessed October 16, 2022).

⁵Women and Foreign Policy Program Staff, 'Abortion Laws: Global Comparisons', Council on Foreign Relations, June 24, 2022, <https://www.cfr.org/article/abortion-law-global-comparisons>. (Accessed October 12, 2022).

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Now we will discuss a handful of countries about their laws on abortion to get a clear picture of the global approach to abortion laws.

V.I. UNITED STATES OF AMERICA

In 1973 when the US Supreme court pronounced its judgment in the case of Roe v Wade which guarantees a constitutional right to abortion, the US became one of the first countries with liberalized abortion laws. Since then, various states have implemented different laws, some states passed laws to protect the practice of abortion while others put more strict regulations on it. But recently, in June 2022 the US Supreme court overturned the judgment of Roe v Wade. This reversal allows those states who have stringent laws on abortion to either ban it automatically or within thirty days. UN human rights chief described the overturning of Roe v Wade as a huge blow to women's human rights and gender equality.⁶

V.ii. EL SALVADOR

El Salvador is among those countries that have the most stringent laws on abortion. The law in El Salvador completely bans abortion in all circumstances. The ban is so broad that even miscarriages and stillbirths are considered an aggravated form of homicide. In the past 25 years, hundreds of women have been prosecuted for either abortion or aggravated homicide. This total abortion ban has led to serious violations of a wide range of human rights.

V.III. IRELAND

Abortion was banned in Ireland by the constitutional amendment of 1993. But in the year of 2012, a woman named Savita Halappanavar died because of the denial of emergency abortion. Her death led to widespread public debate and protest which resulted in a countrywide referendum to overturn the constitutional amendment. In 2018, Ireland's parliament legalized the termination of pregnancy before 12 weeks as well as in cases where the mother's life is in danger.

V.IV. INDIA

Abortion is legally permitted in India in cases where the pregnancy involved risk to the life of a pregnant woman or grave physical or mental injury to her. The passing of the Medical

⁶UN News, 'Overturning of Roe v Wade', United Nations, June 24, 2022, <https://news.un.org/en/story/2022/06/1121312>. (Accessed October 14, 2022).

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Termination of Pregnancy Act in 1971 made the practice of abortion legal with certain conditions for protecting the health of the mother.⁷ In a recent judgment, the Supreme court of India declared that all women have the right to safe and legal abortion up to 24 weeks of pregnancy irrespective of their marital status. The bench said that an abortion law that made a distinction between married and unmarried women is artificial and unconstitutional. This judgment is important because it protects the human right of bodily autonomy.

The above discussion presents an ironic picture that how a developed country like the US is moving towards snatching basic human rights from women by making abortion laws more and more stringent while on the other hand a developing country like India is inclined towards making its abortion laws more liberal to provide women safer medical environment which is a basic human right.

VI. THE STANCE of INTERNATIONAL FRAMEWORKS

Several international bodies like the UN Human Rights Committee and regional human rights courts including the European Court of Human Rights, Inter- American Court of Human Rights, and the African Commission on Human and People's Rights recognize access to safe abortion as a human right. An International Conference on Population and Development was held in Cairo in 1994, where 179 governments signed a program of action to prevent unsafe abortion. It was in 1967 when WHO recognized unsafe abortion as a public health problem for the first time. In 2003 WHO passed policy and technical guidelines which suggest that states should pass abortion laws to safeguard women's health.⁸

VII. CONCLUSION

From the above discussion, it is clear that there is no uniformity regarding the laws of abortion around the world despite the active role played by international organizations to make it safe and legally accessible. But modern times demand to make abortion legal all over the world because it is connected with the human rights of women and safe and legal abortion is a fundamental right of a woman. Depriving women seeking access to legal abortion is

⁷Manisha Garg, 'Right to Abortion in India', Legal Service India, https://www.legalserviceindia.com/articles/adp_tion.htm. (Accessed October 10, 2022).

⁸ Women and Foreign Policy Program Staff, 'Abortion Laws: Global Comparisons', Council on Foreign Relations, June 24, 2022, <https://www.cfr.org/article/abortion-law-global-comparisons>. (Accessed October 12, 2022).

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depriving them of their right to their own bodies which is against the spirit of modern and progressive times.



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