



A Comparative Study between US and India Abortion Laws

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ABSTRACT

The practice of abortion is a contentious freedom in developing nations like India. Some countries-imposed in the name of the "mother's right to health," restrictions on stated human right are made, whereas some restrict It is done in defense of an embryo's right to life. These two opinions are contradicting however genuine in its own sense. Judicial intervention plays an important role as it struggles to establish a balance between pregnant women's rights and other people's rights foetuses. Abortion and women's reproductive autonomy are incompatible with the personhood of the foetus, just as they are in India. Although the Indian judiciary is attempting to make legislation more consistent with facts of exceptional cases and more tolerant toward women who choose to undergo abortions. The purpose is to offer a wider perspective of abortion legislation and policies around India & USA.

Researchers have undertaken this topic to focus on the right that women when it comes to their reproductive rights. It will focus on the laws created in India and USA regarding abortion. It will be a comparison research and see the circumstance of women in (developing nation) as compared to women of USA (Developed nation). Taking the help of the prevalent laws and understanding the relevant changes that have taken place in it, researchers will conclude on the reproductive rights of the women.

Keywords: India, USA, Reproductive rights, Abortion & Autonomy

I. Introduction

When it comes to women's right and their freedom in community it is a highly debated topic. She is subject to a lot more scrutiny and cross questioning as compared to other members of a community. From the clothes she wears, to how she acts, with whom she is going out, women always have to be answerable for all this. All of these topics have been up for debates recently, with this project at hand, we will focus on the reproductive issues with the main agenda being abortion laws and whether India is being more progressive as compared to USA.

Abortion rights is an important topic as it is a choice between a mother's right to abortion or right of the child which is unborn. It can also be looked from a different angle. Abortion is a personal choice and a women should have the right to do whatever they want to as it is their body whereas a lot of people condemn abortion because it is considered as an act of killing and no human should have the right to take someone's life. However, when a woman is opting for that option, we should try understanding the women's perspective. There can be a lot of reasons why a woman is opting for an abortion. It can be because they want to limit the family size or want to have gap between their last pregnancy. In India, there is an added pressure on women to only bear sons and they get the women child aborted. Some people cannot afford to raise kids and there is a huge stigma around an unmarried woman to be pregnant before marriage. According to World Health Organization, just because there is restriction to abortion, it doesn't mean abortions are happening any less. Women having unintended pregnancies will go to unsafe areas to get abortions where they are restricted which can even lead to their death. Abortion rate is higher in countries where there is a restriction (30-60/1000 women) as compared to places where it is legal (14/1000). All in all, 25% of pregnancies leads to abortion.

1965: US Supreme Court asserted privacy being an essential right because of which a landmark judgement allowed women to have abortion within a certain stipulated time. In 1975, Roe v. Wade case, women could go for abortion before 24-28 mark. However, on 24th June, 2022 this judgement was overturned and women's right to their body is again up for debate. In India a significant decision in the case K. S. Puttuswamy v. Union of India said that a women's reproductive right is part of their right to privacy which forms part of our fundamental right. Abortion right in both countries is both granted on the basis of right to privacy which includes women's reproductive rights.

II. Review of Literature

USA and India on Abortion Rights: Falling on Opposite Ends of the Spectrum (Jurist-Gayatri Kondapalli and Akarshi Narain)

The articles start with giving us a view on USA's abortion states. The conservative states are introducing laws that could restrict abortion. The leakage of draft *Dobbs v. Jackson Women's Health Organization's* judgment by the US Supreme Court showed that if it got implemented the States will decide on a woman's right and basically force the country on a regressive path.

India on the other hand is on a progressive route because under the 2021 Medical Termination of Pregnancy Act. In India, women's rights are being held by the Indian courts. The latest amendments prove that India is definitely on the progressive route. In some instances, Indian courts have allowed abortion in cases after the stipulated time. You do require a medical practitioner's opinion in medical cases. In USA, even the non-medical cases are not being granted abortions. Texas Heartbeat Act restricts any abortion after 6 weeks. More and more regulations are being introduced to control a women's choice to get an abortion. There are 3 important factors that needs to be considered:

a. Right of the Fetus vs. Right of the Woman Debate

In this scenario Fetus Viability plays an important role. A foetus is viable when it in a womb gains the ability to survive outside of the womb. US was first restricting abortion once Fetus Viability is established. However, now they are planning to restrict abortion before it can be established. In India also it plays an important role, however, in some cases like rape, India has allowed abortion even after the said weeks.

b. When does a life begin: A religious conception

A lot of people in US are Catholics and for them life begins the minute something is conceived so abortion is basically taking someone's life. In India, majority of the population follow Hinduism and there is single belief some people believe life begins when conceived whereas some believe when they are in the seventh month. Again, India has more liberal take than USA.

c. Demographics Steering the Abortion Debate

In US the debate is all about whether abortion should be legalized or not, however, in India the debate is all about to what extent should abortion be legalized. In USA a lot of restrictions are happening because of religious basis whereas in India the population is already so much that to control it India doesn't want to interfere if a person wants to opt for such an option. In 1970's USA was pro-choice but now it is going the opposite way.

India is on a progressive path because it is considering unmarried women and medical reasons also into consideration. US is going on a backward spiral and trying to take a women's right to privacy.

III. Right to Abortion in India and the US (The India Forum- Esther Moraes)

The American government is going backward with its abortion rights and this will have a huge impact in their country as well as other countries. Abortion right basically gave women the right to decide when they want to conceive and be given the same freedom as men when it comes to their sexual lives and no one will be allowed to interfere in that. The law in US is taking a women's right to make this decision whereas, in India women still have the right. A lot of third world countries survive on the aid sent by US for abortion but this is not purely the case for India.

Any funds the third world countries will receive will not be allowed to use any of these funds in anything related to abortion even if they receive it from non-US beneficiaries, they will still have restrictions on abortion activities. In India aid is available through variety of services such as governments, private parties, donors etc and is also accessible freely. The basis of abortion comes from the right to privacy and India considered abortion as part of maternal services whereas in USA there always has been big debate regarding abortion rights that women have.

IV. Abortion Rights- A Comparative Study India, USA and South Africa (International Journal of Law Management and Humanities- Vinod Parmar)

The practice of abortion is a contentious freedom in developing nations like India. Some countries-imposed limits on claimed human right are justified by the "right to health of the mother," whereas some restrict It is done in defense of an embryo's right to life. Judicial intervention plays an important role as it struggles to establish a balance between pregnant women's rights and other people's rights foetuses. Abortion and women's reproductive autonomy are incompatible with the personhood of the foetus, just as they are in India. Even Nevertheless, the Indian judiciary is working to make abortion more acceptable for women and to align the letter and spirit of the law with exceptional circumstances. The purpose is to offer a wider perspective of abortion legislation and policies around India and USA.

The illegality pregnancy termination directly affects the constitutionally guaranteed right to gender equality. Adopting legislation on second-trimester abortions presents unique challenges. Second trimester abortion laws are often vaguely written or ignored with proscriptive consequences. Abortions during the second trimester (14 to 23 weeks) account for 10% to 15% of all abortions worldwide, with 25% occurring in India due to the country's limited

access to abortion facilities. High abortion costs, a dearth of healthcare facilities in remote areas, and a lack of secrecy in social stigmatisation of unmarried women are the main contributors to the deaths of women from unsafe abortions.

According to HMIS reports in India 2016-2017, there were 970436 induced abortions performed overall, with 10 women dying as a result of unsafe abortion procedures every day. According to The Lancet Global Health medical journal, there were 1.56 crore abortions performed in India in 2015, compared to the federal government of India's estimate of 7 lakh. There are 5.4 million women of reproductive age in the United States. In Texas, more than 5.4 million. In the US, 2 million women reside more than 50 miles from the closest accessible abortion facility. Any interpretation that would serve as a foundation for the assertion of an international right to abortion is expressly prohibited under the International Criminal Court Statute.

In the definition of crimes against humanity, "forced pregnancy" is defined as the illegal confinement of a woman who has been made pregnant under duress with the intention of changing the racial makeup of any community or committing other serious transgressions of international law. In the last 50 years, the judiciary's perspective on reproductive rights has experienced a significant development. The constrictive viewpoint in *Buck* was dropped in favour of a more liberal position in a series of rulings, starting with *Roe*. Legislators' attempts to differentiate between the two causes or to identify whether there has been contraceptive failure would be fruitless. It is debatable whether or not a woman should ever have to defend her requirements in court.

V. *Roe v. Wade* overturned: Comparative analysis of Indian and American abortion laws (Wion News- Nikhil Pandey)

Protests spread across the country when the US Supreme Court overturned its 50-year-old *Roe v. Wade* decision, which now denies women the constitutional right to an abortion. President Joe Biden described the choice as a "tragic error" that had caused the country to go back 150 years. 36 million Women in USA has lost right of safe abortion.

The choice was made in response to early May leaks suggesting that the US Supreme Court would reverse *Roe v. Wade*. The decision on Friday has put light on abortion legislation in other countries, particularly India, where abortion has been legal for the past 50 years under specific circumstances.

Comparative Study of Abortion Law in India and USA (Gyanmy- Shivanjali Bhoite)

Women in general have to go through a lot of difficulties. They are constantly monitored and have to face criticism no matter what they do. In case a woman does not receive proper facilities then a woman will have to resort to illegal ways to get an abortion and that can even lead to her death. Abortion rights are based on a person's right to privacy and both Indian and US laws are based on that.

In US the topic has recently gained a lot of fractions because of overturning of *Roe vs. Wade* case. It took the liberty of women taking decision on their own body. Most of the states are planning to restrict abortion whereas in India abortion is allowed and, in some cases, they even allow abortion in special cases where the stipulated time has passed. US is not realizing but if they continue on the same path they are going backwards and questioning one of the basic fundamental rights. Women will have to resort to other ways to abort either migrating to states which allows or even going for illegal ways.

VI. Comparative Study of abortion laws in India and the USA (IPleaders-Nandini Biswas)

The articles take us through the meaning of abortion and what is current scenario pertaining to it. It lists down all the Indian as well as USA laws and compares them to show how regressive and progressive it is. It even talks about the landmark judgements that made these laws and gave women the right to their own bodies. It even talked about special cases where women have been allowed abortion even after the stipulated time. At the end it concluded that India is way more progressive though USA started the trend but right now it is taking a step back when it should be moving forward.

VII. Our Analysis

1. Introduction

Abortion in medical terms means the medical or the surgical procedure that is carried out to end a pregnancy before the embryo or the fetus is born. Unwanted pregnancies can occur due to a lot of reasons: -

Failure of contraceptives

Rape

Incest

At times due to financial crunch couples would like to go for abortion or a pregnancy termination. In all these cases the couples should have the right to abort child.

Or even in planned pregnancy there may be serious complications which might lead to life and death situation for the mother or the child, at times the development of a child inside of a mother might be abnormal hence the child needs to be aborted.

It has been also noticed that due to family pressure the couple wants to abort a female fetus. In rare cases the couple or the mother wants a female foetus is aborted. Abortion laws have long struggled to strike a balance between being useful or required and not being ethically, morally, or religiously acceptable. Though time and again it has been re-iterated that abortion isn't a sacred act, the supporters on the other hand have tried to make people understand why is abortion needed by mentioning the effects on one's health as well as other mental and physical effects of having an unintended pregnancy result in birth. The right of the unborn foetus and the prevention of female foeticide are the legal arguments cited against abortion.

2. Sociological view on abortion: -

Pro-choice and pro-life viewpoints on abortion can be roughly classified into two groups in society.

Pro-choice supporters	Pro-life believers
They are of the belief that or determine whether they wish to keep the pregnancy going or not.	They oppose abortions because their fundamental justification is that life begins at conception, hence the moment the female conceives, the zygote is seen as a live being. Abortion is regarded as a crime that is equally serious to murdering a human being.
view this decision as theirs.	View the choice as wrong.
Link abortion to financial hardship. Since the family will have to care for more children and the income, they earn will not be sufficient to support that lifestyle, poverty will rise in a society that forbids abortion.	Arguments are also made in relation to teen pregnancies because pro-lifers contend that legalizing abortion will encourage premarital sex, which is viewed negatively by society.
<ul style="list-style-type: none"> consider abortion from the perspective of rape victims, as it would be unfair to prevent a rape victim from having an abortion. From the POV of Incest has the potential to cause serious defects in the foetus that would negatively affect the baby's quality of life. Aborting under such circumstances is a wise decision. In typical circumstances, the foetus may have significant defects that may limit the age at which it will live after birth or jeopardize the foetus's quality of life. Some pregnancies are complex, and continuing with them puts both the foetus and the mother's life in danger. In some circumstances, abortion is also essential and life-saving. 	They feel that if there is an option of abortion then usage of contraceptives and condoms will reduce, this could raise the chance of STD transmission.
Knowing and understanding how society views an issue and how its surrounding concerns are perceived is crucial to understanding that issue. It aids legislators in reaching a compromise and a just legal resolution to ensure that the law is equitable for all parties involved in the matter.	

3. THE ABORTION LAWS AND PROVISIONS: -

3.1. INDIA

Indian Penal Code (IPC), 1860

IPC views wrongful abortions and abortions performed without the consent of the pregnant woman from a punishment-heavy standpoint. Additionally, it refers to miscarriages rather than abortions. The Code makes no reference to legally terminating pregnancies that are unintended or that result from terrible crimes like rape. Abortion is covered under sections 316, 312, and 313.

Section 312

The punishment for intentionally causing a pregnant woman to become pregnant is up to three years in prison, a fine, or both. A person who intentionally causes a female to miscarry while she is fast with child (defined as when the foetus has demonstrated movement) may face a sentence of up to 7 years in prison, a fine, or both. If a mother chooses to miscarry voluntarily, she will likewise face the same level of punishment as described in this section. A miscarriage that is performed in good faith in order to save the carrying female is not considered to be an unlawful act for the purposes of this section. This section's offences are thought to be non-cognizable, bailable, and non-compoundable.

Section 313

Focuses on punishing those who terminate females without getting their consent. Any individual determined to be responsible under this section shall be punished with life imprisonment or imprisonment that may be prolonged to 10 years, regardless of whether such a girl is quick with a child or not. Crimes committed in violation of this clause are punishable by a fine, but not by bail or compounding.

Section 316

A person is subject to punishment under this Section regardless of whether the bearing mother dies or not if he or she does an act knowing that it could result in the death of a pregnant woman for which he or she would be prosecuted for culpable homicide. Any person found to be in violation of this section faces a punishment of up to 10 years in jail and a fine. These crimes are classified as cognizable, non-bailable, and non-compoundable offences.

The Medical Termination of Pregnancy Act, 1971

This act describes the physical and mental anguish a woman will experience if she must give birth to a kid from an unintended pregnancy.

Section 3

This Section effectively specifies how many weeks of pregnancy must pass before an abortion can be performed. Only in cases where the woman's life or physical or mental health would be in danger if the pregnancy were to be continued may the doctor terminate the child in good faith. This section emphasizes why a woman's mental health will be seriously harmed by carrying on with a pregnancy that was started because of rape. The failure of any preventative measure performed by a married man or married woman during pregnancy might harm the women physically and psychologically. If a doctor feels that an abortion is necessary, she or he may perform one up to 12 weeks into the pregnancy. According to the clause, a minor girl's pregnancy cannot be ended without her guardian's approval. Even if the girl is an adult and older than 18, her parents' permission is still required.

Section 4

The location of the legal pregnancy termination is mentioned in this Section. The hospitals that are established or maintained by the government are the locations mentioned in this section.

Section 5

This section details the act's exclusions to Sections 3 and 4, as well as some penalties for disobeying those provisions. Additionally, the IPC is somewhat modified by this part.

The Medical Termination of Pregnancy (Amendment) Bill, 2020

The Medical Termination of Pregnancy (Amendment) Bill, 2020, which amends the act, was passed by the cabinet in January 2020. The amendment bill suggests extending the legal window for abortions from 20 to 24 weeks of gestation. The bill also aims to broaden the grounds for abortion when preventative measures don't work. The proposed amendment also protects women's privacy by fining a doctor who divulges a patient's name and other personal information. The bill also establishes a Medical Board in each state and union territory, made up of radiologists, gynaecologists, and other medical professionals as determined by the government.

Pre-Conception and Pre-Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act, 1994

By monitoring and limiting the abuse of prenatal diagnostic methods used to detect the sex of the foetus, this Act seeks to reduce female foeticide. Thus, this law restricts the ability to abort a foetus based only on its gender. This means that the act has two goals. First, control prenatal diagnostic methods and restrict their use to spotting chromosomal abnormalities, congenital deformities, or sex-related diseases. Second, to stop such technology from being used—or rather, misapplied—for prenatal sex selection, which would then result in sex-selective abortions.

Protection of Children from Sexual Offences Act (POSCO), 2012

The age limit for consensual sexual activity under this Act is set at 18. According to this law, all pregnant women under the age of 18 are regarded as rape survivors, regardless of whether the sexual act was consensual.

Landmark judgements on abortion in India

Along with the many statutes and laws, the judiciary has been active in handing down progressive rulings on the touchy subject of abortion. Prominent cases such as Suchita Srivastava and V. Krishnanan have been noted.

Ms. X V. Kerala State

Union of India and Ors., Mrs. X V

3.2. USA**Alabama- The Alabama Human Life Protection Act**

This law became effective on May 15, 2019. Such abortions performed by doctors in violation of the Act are made illegal by this Act.

Louisiana- 1061.1.3. Abortion prohibited; detectable fetal heartbeat; ultrasound required

Abortion once the foetal heartbeat of the unborn child has been identified is now a crime punishable by law.

Analysing the Indian position on abortion laws

The nation is seeing more progressive policies in the area of abortion after a long-driven social vs. legal battle. IPC first implemented an inherent punishment strategy in 1860. makes deliberate abortion unlawful the only circumstance in which such an abortion is exempt from criminal culpability is when the mother's life is in danger. No rape or contraceptive failures resulted in abortions. Furthermore, it does not take into account the exception for abortions related to mental health. The country eventually became kind enough to loosen such prohibitions. The MTP Act takes into account the psychological effects of having an unwanted child. Additionally, the 2020 Amendment wants to raise the maximum gestational length to 24 weeks while focusing on women's privacy and taking into account technical advancements in abortion. This demonstrates how the laws are progressive and reflect all changes that occur so that better abortion facilities are available.

Analysing the USA's position on Abortion laws

States in the USA had highly tight abortion laws that prohibited women from having an abortion unless the pregnancy posed a serious risk to the woman who was carrying the child. The Roe v. Wade ruling helped to alleviate this. It offered women more freedom to terminate pregnancies by taking into account the right to abortion inside the "zone of privacy." It is significant to highlight that the laws do not take an abortion caused by rape or incest into account. Few states in the USA allow pregnant women with mental illnesses to have abortions. Additionally, the consequences of continuing an unintended pregnancy are not considered on a medical or psychological level. The good news about Georgia's abortion law is that it includes measures to shield its doctors from criminal culpability for unexpected or accidental abortions or any injury inadvertently or accidentally done to the unborn child.

Conclusion

In comparison to American abortion laws, Indian abortion laws are far more progressive. Through the Roe v. Wade ruling, the USA was the first country to recognise abortion as falling within a woman's "zone of privacy." India acknowledged a woman's right to an abortion as part of her article 21-guaranteed right to personal liberty. Since the country primarily prioritises the rights of the unborn child and mostly disregards the risks to other bodily integrity and mental health, the USA has strong and restrictive abortion legislation.

Most nations permit abortion if continuing the pregnancy would endanger the physical safety or life of the woman. Rules that prohibit abortion after a particular tenure can be introduced to take into account the negative effects of abortion on the bearing female. Because it can be hazardous, Indian law now forbids abortion after 20 weeks of pregnancy. However, this upper limit has been requested to be increased to 24 weeks by legislative amendment in light of the nation's current medical and technical advancement. These processes must be followed.

Abortion should be permitted in sensitive and mentally upsetting situations such pregnancies resulting from rape and incest since they have a negative effect on the mental health of the female who is carrying the child. It would be unfair and unjust to the rape or incest victim if this were not done.

Therefore, all nations should take into account the rights of the female, the rights and health of the unborn child, as well as the physical and mental condition of the woman if she is not allowed to end her pregnancy, while crafting abortion legislation. The law will be fair and just in this way.

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