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ABORTION AS A FUNDAMENTAL RIGHT: A COMPARATIVE STUDY OF INDIA AND USA

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Abstract

P. Ramanatha Aiyer, in his book 'The Law Lexicon,' defines abortion as "The premature delivery or expulsion of the human fetus, i.e., before it is capable of sustaining life. It is the emptying of the pregnant uterus before it is viable". The MTP Act governs abortion in India and was passed in August 1971. It allows the termination of certain pregnancies by registered medical practitioners under specific conditions. The Act was amended in 2021, extending the abortion limit to 24 weeks for special cases.

In a recent case, a rape survivor sought abortion at 26 weeks, exceeding the legal limit. Due to unnecessary delays by the High Court, the case lost valuable time. Sections 312 to 315 of the IPC cover penal consequences for illegal abortions, aiming to protect the health and lives of pregnant women and their developing fetuses.

In the United States, abortion laws have been shaped by pivotal Supreme Court decisions, most notably the Roe v. Wade case. However, in the recent case of Dobbs v. Jackson Women's Health Organization, the U.S. Supreme Court issued a ruling taking away the constitutional right to abortion, abandoning decades of Roe v Wade case precedent, which paved the way for states to ban abortion.

Both countries acknowledge that abortion exists at the intersection of individual rights and societal interests. Legislation is supposed to establish clear guidelines & regulations for abortion, which is, unfortunately, not the case in the present scenario. This research work aims to bridge the uncertainty between medical and legal aspects, as it is essential for making new policies with analysis of empirical data.

KEYWORDS- *Abortion, India, The USA, MTP Act, Amendment, Rights, Autonomy, International Laws, Legal Framework.*

"No woman can call herself free until she can choose consciously whether she will or will not be a mother".

-Margaret Sanger

I. ABORTION-RELATED LAWS IN INDIA

The Medical Termination of Pregnancy Act of 1971, which is also referred to as the MTP Act, is a legal structure in India that controls the "termination of pregnancies". As the name suggests, this Act is commonly used in abortion-related laws and regulations. This Act manages to regulate the Termination of pregnancy in India by a **registered medical practitioner**, with some exceptions and conditions.

The MTP Amendment Act amends the MTP Act by enlarging the gestational limit for termination from 20 to 24 weeks in some exceptional circumstances and presenting a medical board for deciding termination past 24 weeks. Related to this the **recent judgment of Delhi HC issued guidelines for "rape victims" whose pregnancy exceeded 24 weeks**. This case was of a minor girl who was the victim of rape, seeking permission from the court to terminate her pregnancy under the MTP Act. She was raped and sexually assaulted in September 2022. She was too young and scared to talk about her assault to her mother and not initially tell her mother, but her mother noticed her physical body changes, and finally, came to light that the girl was raped. Then, that girl went for a medical test on 19th January, and it was found that she was pregnant for 24 weeks and 5 days, passing the limit for termination of pregnancy under the MTP Act. Our Indian law clearly states the roof of 24 weeks of termination of pregnancy for certain special

categories, including survivors of rape, victims of incest, and other at-risk women, like minors, and differently abled women. In the High Court's judgment, the HC directed that there would be a mandatory pregnancy test for urine, which would be supervised during the medical examination of all sexually assaulted victims. If the victim is found to be pregnant and expresses her wish to terminate the pregnancy, then the court said that the investigating officer must ensure that the victim is presented to a medical board in one of the capital's four government hospitals on the same day.

The MTP Act allows pregnancy termination if it poses a risk to the woman's life or health or if the child suffers severe physical or mental deformities. Termination is also allowed for other specified reasons under the rules. Consent of the pregnant woman is mandatory, and if she is a minor or mentally ill, her guardian's consent is required — unless the minor is married. Terminations can only occur at approved government or authorized facilities. Performing an abortion without consent or by an unregistered practitioner is an offense. Disclosing the woman's identity after termination is also strictly prohibited.

The IPC, 1860, also mostly referred to as IPC, holds provisions related to abortion. It says that abortion is generally a crime, but in some exceptions, it is one means to save the pregnant woman's life. In IPC, sections 312-316 cover the provisions under law. Section 312 of the IPC expresses that causing a miscarriage is an offense, but if it has been done to save the pregnant woman's life, then it will come under the exceptions. The section also distinguishes between whether the pregnant woman causes miscarriage and when the fetus's movement can be felt. The punishment extends up to three years of imprisonment with a fine up to seven years imprisonment with a fine, which is dependent upon the situation to situation. Section 313 concerns miscarriage caused without the consent of a pregnant woman, which is punishable by 10 years of imprisonment to life imprisonment with a fine. Section 314 appeals when that miscarriage caused an end to the pregnant woman's life, leading to 10 years of imprisonment along with a fine. Section 315 punishes those actions that restrain the unborn child's birth, which is punishable by up to 10 years of imprisonment. There is an exception under it that if the act is done in good faith, it means to save the life of that pregnant woman. And in the last, section 316 relates to culpable homicide by punishing those actions that cause the death of a quick child by imprisonment for 10 years with a fine.

The Government of India enacted The POCSO Act, i.e., The Protection of Children from Sexual Offences Act in 2012, to deal with sexual offences against children mainly under the age of 18. It was a step taken to provide a safer environment for the children of our country. It ensures to treat all pregnant women under the age of 18 as rape survivors & mandates the provider to report the issue. POCSO Act may not directly be related to Abortion but both POCSO Act and MTP Act overlap each other as POCSO Act requires medical providers to report sexual abuse among minors and the MTP Act allows registered providers to terminate pregnancies resulting from rape. The intersection between the MTP Act and the POCSO Act creates confusion, delays, and sometimes denial of abortion services for minor girls.

The Pre-conception Pre-Natal Diagnostic Techniques Act (PC-PNDT Act) was enacted on 20 September 1994 to prohibit sex selection after conception, which may lead to female foeticide, i.e., the termination of a female fetus from the womb of the pregnant mother before birth. The cause of female foeticide is the preference for male children in society, which leads to the low status of female children. It aims to protect the rights of the unborn girl child. It also discourages Abortion. It allows the use of prenatal diagnostic techniques for the detection of any specific genetic disorders. This Act defines various offenses and provides punishments for those found guilty.

The Madhya Pradesh High Court has permitted the termination of pregnancy for a 14-year-old girl who

was allegedly kidnapped and raped in Singrauli district. Justice G.S. Ahluwalia ordered that the medical termination procedure be conducted at the risk and expense of the girl's parents. The court directed authorities to preserve the fetus for DNA testing and specified that the procedure could be performed at the District Hospital in Singrauli or a multispecialty hospital if recommended by the Chief Medical Health Officer (CMHO). Referring to a report from the District Medical Board, the court stated that termination could proceed if the fetus had substantial abnormalities and was approved by the board. The girl's father had approached the court after rape charges were added to the case following her medical examination confirming pregnancy upon her return after being missing earlier in the year.[1]

The Bombay High Court granted permission to a 19-year-old woman to terminate her 25-week pregnancy, citing "grave psychological effects" and "social stigma" as primary reasons. The division bench of Justices Somasekhar Sundaresan and NR Borkar emphasized the woman's right to make autonomous decisions about her body. Despite no abnormalities in the fetus, medical reports highlighted potential grave psychological injury if the pregnancy continued, considering her current psychological, sociocultural, and economic conditions. The court, following Supreme Court guidelines, ruled that the woman's partner does not have a stake in her reproductive choices. They permitted the termination procedure to proceed immediately at Sassoon Hospital, Pune, affirming her decision after thorough consideration.[2]

The Jabalpur bench of the Madhya Pradesh High Court has granted permission for the medical termination of pregnancy for a 16-year-old rape survivor. Chief Justice Ravi Malimath and Justice Vishal Mishra allowed the termination, overturning a previous dismissal by a single bench concerned about the potential benefit to the accused, who is the girl's brother-in-law. The girl was abducted and raped between November 2023 and February 2024. Her mother filed a petition to terminate the 20-week pregnancy, citing the risks to her physical and mental health. The court, noting the findings of a medical board, concluded that continuing the pregnancy posed significant risks to the girl's life and well-being. It emphasized that the court could not ignore her suffering and authorized the termination in the best interest of her health.[3]

- **INTERNATIONAL LAWS AND ABORTION IN INDIA**

India is a signatory to a few International Human Rights Treaty, which includes abortion laws, such as The Convention of The Elimination of All Forms of Discrimination Against Women (CEDAW), The Convention on the Rights of the Child (CRC), The International Covenant on Economic, Social, and Cultural Rights (ICESCR), Universal Declaration of Human Rights (UDHR) which may not be directly, but they are connected to the aspects related to reproductive rights, including abortion indirectly. India has not signed any international treaties or international conventions specifically on abortion laws. However, **India has ratified these conventions.** Also, these conventions ensure that several rights apply to this issue, rights such as the right to life, the right to health, the right to privacy, the

[1] M.P. HC Allows Termination of Teen's Pregnancy, Directs Preservation of Foetus, The Hindu (1 March, 2026), available at https://www.thehindu.com/news/national/madhya-pradesh/mp-hc-allows-termination-of-teens-pregnancy-directs-preservation-of-foetus/article68307190.ece.

[2] Bombay HC Allows Teen to Terminate 25-Week Pregnancy, *The Hindu* (1 March, 2026), available at https://www.thehindu.com/news/cities/mumbai/bombay-hc-allows-teen-to-terminate-25-week-pregnancy/article68233136.ece.

[3] MP High Court Allows Medical Termination of Pregnancy of Minor Rape Survivor, *Hindustan Times* (1 March, 2026), available at https://www.hindustantimes.com/cities/bhopal-news/mp-high-court-allows-medical-termination-of-pregnancy-of-minor-rape-survivor-101716293180079.html.

right to non-discrimination, the right to liberty, the right to security, the right to decide on the number and spacing of the children. These international human rights lay out the important legal sub-structure for safeguarding women and girls' rights related to abortion. In addition to internal laws, India has domestic laws on abortion. The MTP Act, 1971, provides for the legal termination of pregnancy under certain conditions, such as if the pregnancy poses a risk to the life or physical or mental health of the pregnant woman or unborn child. The PNDT Act of 1994 prohibits prenatal diagnostic techniques for sex selection, aiming to prevent female foeticide driven by male preference.

International human rights laws ratified by India have also influenced the interpretation and enforcement of the MTP Act, aligning it with global standards. While the Act is largely compatible with international human rights principles, there are areas for improvement. For instance, the MTP Act could be modernized to allow abortion on demand, ensuring all women have timely access to safe and legal abortion services. In 2021, the Supreme Court of India ruled that unmarried women have the same abortion rights as married women, citing India's obligations under CEDAW. This highlights how international law plays a key role in shaping India's abortion laws, ensuring they evolve in line with global commitments to reproductive rights and gender equality.

Now let us analyze the number of abortions that took place in each state of India from 2016 to 2020 with the help of the given data:

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Details of Abortions conducted (Spontaneous and Induced)[6]					
	2016-17	2017-18	2018-19	2019-20 (up to December)	Total
All India	973701	1284279	1316595	950349	4524924
A & N Islands	183	338	306	231	1058
Andhra Pradesh	11848	12456	11849	7719	43872
Arunachal Pradesh	818	1736	2175	1850	6579
Assam	96380	114972	127176	93647	432175
Bihar	6575	25516	20299	11120	63510
Chandigarh	2842	3878	3472	2057	12249
Chhattisgarh	20295	34120	32542	26757	113714
Dadra & Nagar Haveli	927	1167	1286	850	4230
Daman & Diu	215	335	440	546	1536
Delhi	38114	43779	43514	31230	156637
Goa	825	1266	1290	1355	4736
Gujarat	28204	42391	41883	28660	141138
Haryana	48437	59603	52749	37334	198123
Himachal Pradesh	9716	9842	12847	8155	40560
Jammu & Kashmir	11825	17869	15617	10845	56156
Jharkhand	19986	26643	25922	20872	93423
Karnataka	39455	53269	58617	46655	197996
Kerala	15810	21633	23633	17484	78560
Lakshadweep	30	109	111	46	296
Madhya Pradesh	49590	71601	76336	58396	255923
Maharashtra	209231	220911	209561	146466	786169
Manipur	4778	6285	5814	3902	20779
Meghalaya	4242	4588	4620	3345	16795
Mizoram	1200	1424	1326	1001	4951
Nagaland	2956	2879	2543	1378	9756
Odisha	55582	59403	63391	46056	224432
Puducherry	1346	2442	2297	1339	7424
Punjab	24040	40214	42768	32450	139472
Rajasthan	51505	77586	84712	66175	279978
Sikkim	586	426	376	239	1627
Tamil Nadu	60359	99336	112431	82670	354796
Telangana	6481	7862	8154	5062	27559
Tripura	3216	3896	3558	2597	13267
Uttar Pradesh	51419	72925	76856	51231	252431
Uttarakhand	7811	7754	8256	5807	29628
West Bengal	86874	133825	137868	94822	453389

[6] Rajya Sabha Unstarred Question No. 277 dated 4th February 2020

Now, with the help of the above data, we can analyze the trend of abortion from 2016-17 to 2019-20 (up to December). Here are the yearly insights:

The abortion trend occurred overall in India-

- 2016-17: 9,73,701
- 2017-18: 12,84,279 (+3,10,578 abortions occurred more as compared to 2016-17)
- 2018-19: 13,16,595 (+32,316 abortions occurred more as compared to 2017-2018)
- 2019-20 (up to December): 9,50,349 (-3,66,246 abortions occurred less as compared to 2018-19)

The total number of abortions increased from 2017 to 2018, but appeared to decline in 2019–20, though the data for 2020 only goes up to December and doesn't cover the full year.

In terms of state-wise trends, most Indian states saw an increase in abortions during 2019–20, except Uttar Pradesh, where the numbers dropped by 1.2%. The sharpest increases were seen in Assam, Bihar, and Chhattisgarh. This rise could be due to more awareness among women about their reproductive rights, and better access to safe and legal abortion services.

The decline in UP could be attributed to factors like a shortage of abortion providers, changing social attitudes, or improved access to contraception. However, these are just a few possible explanations, and the actual reasons can vary depending on local context.

Overall, the data highlights a continuing need to strengthen access to sexual and reproductive health services, especially in less developed regions with lower education levels. Doing so could help reduce unintended pregnancies and the need for abortions.

II. ABORTION RELATED LAWS IN THE USA

In the United States, Abortion Laws have always been a very debatable topic. **There are always two campaigners present in the debate: Pro-life and Pro-Choice.** It is all about whether the mother carrying the unborn child has a right over it or not. Those who believe that everyone has a right to choose whether they want children or not are known as Pro-choice. Alternatively, those who are against this idea are pro-life; they believe that everyone has a right to live. In other words, Pro-life campaigners are anti-abortion, while pro-choice campaigners support abortion. The legality and accessibility of abortion vary from state to state, resulting in a complex patchwork of regulations that give rise to social and political discussions.

There have been several cases relating to Abortion laws, but none of them made a major impact until the year 1973, when the Supreme Court agreed to hear two cases that challenged the laws regarding Abortion restrictions. In the case, the plaintiff Norma McCorvey, who goes by the name of Jane Roe, a fictional name used to protect her identity, filed a case against Henry Wade, the district attorney of Dallas County, Texas, where Roe lived. She was pregnant with her third child and was unable to abort due to laws of Texas that only allowed abortion in the case where the mother's health or life was at risk.[4] The case went all the way to the Supreme Court, where they ruled that the Constitution protects women's right to freedom and privacy founded in the Fourteenth Amendment, to have an abortion without governmental restrictions, and became the landmark case of Abortion rights law. On the same day as Roe Vs Wade[5], another abortion case was ruled by the Supreme Court, Doe Vs Bolton[6]. It struck down a

[4] Sandra Mardenfeld, *Here's What Really Happened to the Baby from Roe v. Wade*, Grunge (September 10, 2024), https://www.grunge.com/599750/heres-what-really-happened-to-the-baby-from-roe-v-wade/

[5] Roe v. Wade, 410 U.S. 113 (1973).
[6] Doe v. Bolton, 410 U.S. 179 (1973).

Georgia Law that limited the reasons for receiving an abortion. Sandra Bensing Cano, also known as Mary Doe, was a mother of three and was unable to terminate her pregnancy legally for the fourth child. The Court had also ruled while determining whether the woman needs an abortion or not, that doctors may consider "all factors physical, emotional, psychological, familial, and the woman's age".

Both cases challenged the abortion laws imposed in the states, and together, the cases declared abortion as a Constitutional Right and also overturned most laws in the country.

The laws varied from state to state, until the Landmark case of **Roe vs Wade**, which played a significant role in shaping the role of Abortion. The Supreme Court abolished the restrictions imposed on the state regarding abortion and recognized women's constitutional right to privacy, which includes the right to have an abortion. Discretionary powers were granted to the States to regulate abortion laws, therefore, the strictness varied from state to state. The legality of abortion is purely determined by the trimester framework established by Roe v. Wade, which states that in the first trimester, states are prohibited from imposing any restrictions on access to abortion. In the second Trimester, abortion can be reasonably regulated by the States, keeping in mind maternal health, but in the third trimester, the states have the power to ban the abortion if the mother's health or life isn't at risk.

After 1973, when abortion was legalized nationwide, many states began imposing restrictions. The Supreme Courtissued several rulings that made it harder for young people and those with limited financial means to access abortion.

In Bellotti v. Baird, [7] the Court reviewed a Massachusetts law requiring minors to get parental consent for an abortion. If parents refused, a judge could authorize the procedure. In an 8-1 decision, the Court found parts of the law unconstitutional because it didn't allow a mature and competent minor to obtain an abortion without mandatory parental involvement or an independent judicial review. [8] Tragically, Rebecca Suzanne Bell became one of the first known victims of such consent laws.

Following *Roe*, Medicaid—a joint state-federal program—initially covered abortion as part of healthcare for low-income women. But in 1976, Congress passed the Hyde Amendment, banning the use of federal funds for abortion care. This disproportionately affected low-income women who relied on Medicaid. Rosie Jiménez was the first known victim of the Hyde Amendment; she died after seeking an unsafe abortion in Mexico due to lack of coverage.[9]

In 1980, the Supreme Court, in a close decision in Harris v. McRae, upheld the Hyde Amendment. The Court ruled that the ban on federal funding did not violate constitutional rights, even if abortion was medically necessary for the woman's health.

Alongside the Hyde Amendment, there was also the Helms Amendment, passed in 1973 shortly after the *Roe v. Wade* decision. [10] While the Hyde Amendment restricts domestic federal funding—

[7] Bellotti v. Baird, 443 U.S. 622 (1979).
[8] Oyez, Roe v. Wade, 410 U.S. 113 (1973), (September 12, 2024), https://www.oyez.org/cases/1978/78-329
[9] Latina Institute, Sin Seguro, *No Más: Without Coverage, No More Latinxs' Access to Abortion Under Hyde* (2024), (September 1, 2024), https://www.latinainstitute.org/resource/sin-seguro-no-mas-without-coverage-no-more-latinxs-access-to-abortion-under-hyde.
[10] Guttmacher Institute, *Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment*, (September 1, 2024), https://www.guttmacher.org/gpr/2013/09/abortion-restrictions-us-foreign-aid-history-and-harms-helms-amendment.

particularly through Medicaid—for abortion services, the Helms Amendment limits the use of foreign aid for abortion-related care. Specifically, it bans the use of U.S. foreign assistance funds for abortions as a method of family planning, impacting reproductive health services abroad.

In 2020, U.S. Representative Jan Schakowsky (D-IL) introduced the Abortion is Health Care Everywhere Act, the first bill aimed at repealing the Helms Amendment, a policy that had been in place for 47 years.

Meanwhile, in 1988–1989, the Pennsylvania Legislature amended its abortion control law to include new restrictions: a 24-hour waiting period, informed consent, spousal notification for married women, and parental consent for minors. These changes were challenged by physicians and abortion clinics, leading to further legal battles over their constitutionality.

In the Planned Parenthood of Southeastern Pennsylvania v. Casey case[11], the Supreme Court, in a 5-4 majority, upheld most of the challenged provisions. The Court abandoned the trimester framework from *Roe v. Wade* and introduced a new standard based on "undue burden", [12] defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." Under this test, all but one of Pennsylvania's restrictions were upheld—the husband notification requirement was struck down.[13] Following *Casey*, state and local legislatures began enacting more abortion restrictions, many of which were upheld by the courts. However, in the Stenberg v. Carhart case (2000),[14] the Supreme Court struck down a Nebraska statute in a 5-4 decision. The law was found unconstitutional [15] because it lacked an exception for preserving the mother's health and broadly banned the D&E method—the safest and most common procedure for second-trimester abortions.[16]

Targeted Regulations of Abortion Providers (TRAP) laws are state-level regulations that impose requirements on abortion providers and clinics. These laws are costly and burdensome and have medically unnecessary requirements that are more severe than the requirements necessary for other medical procedures. Many Medical experts oppose TRAP laws as they don't impose safety, instead, they hurt people by blocking access to safe medical care. The landmark case of Whole Women's Health V. Hellerstedt [17], 2016 is centered around TRAP Laws.[18] The decision of this case resulted in the biggest Supreme Court victory for abortion access.[19] The Court had ruled that two abortion restrictions were unconstitutional in Texas as they would shut down most clinics in the state and would cause undue burden on the Texans to access legal and safe abortion. With

[11] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).
[12] Oyez, *Planned Parenthood of Greater Ohio v. Hodges*, 897 F.3d 508 (6th Cir. 2018), (September 1, 2024), https://www.oyez.org/cases/1991/91-744.
[13] Oyez, *Planned Parenthood of Greater Ohio v. Hodges*, 897 F.3d 508 (6th Cir. 2018), (September 1, 2024), https://www.oyez.org/cases/1991/91-744.
[14] Stenberg v. Carhart, 530 U.S. 914 (2000)
[15] Indiana University School of Law, *The Impact of Roe v. Wade on Abortion Policy* (2010), (September 1, 2024), https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1096.
[16] Oyez, *Planned Parenthood of Greater Ohio v. Hodges*, 897 F.3d 508 (6th Cir. 2018), (September 4, 2024), https://www.oyez.org/cases/1991/91-744.
[17] Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016).
[18] Pregnancy Archive, *Major Supreme Court Ruling on Whole Woman's Health v. Texas Underscores the Importance of Reproductive Rights* (2021), (September 1, 2024), https://pregnancyarchive.com/blog/major-supreme-court-ruling-on-whole-womans-health-v-texas-underscores-the-importance-of-reproductive-rights.
[19] Planned Parenthood Action Fund, *Whole Woman's Health v. Hellerstedt* (2024), (September 1, 2024), https://www.plannedparenthoodaction.org/issues/abortion/roe-v-wade/whole-womans-health-v-hellerstedt.

this historic decision, the Supreme Court reaffirmed the constitutional right to access legal abortion.[20] In less than 24 hours of this ruling, efforts to enforce similar abortion restrictions fell in Alabama, Mississippi, and Wisconsin.

The Unborn Victims Of Violence Act, 2004 [21] also known as Laci and Conner's Law, allows for anyone who causes injury or death to an unborn child during a violent crime to be charged separately. It recognizes the child in utero as a legal victim and was signed into law by President George W. Bush on April 1st, 2004.

The Pain-Capable Unborn Child Protection Act, 2013, or Micah's Law, was introduced in several states to prohibit abortions after around 20 weeks, based on the argument that fetuses may begin to feel pain at that stage. Though the language varied across states, the core idea was the same. Critics argue that fetal pain science is still unsettled, and such laws can restrict a woman's right to choose. Texas passed the Texas Heartbeat Act, which bans abortion once fetal cardiac activity is detected—usually around six weeks. The law requires physicians to check for a heartbeat before proceeding and only allows exceptions in cases of medical emergencies.

Since 2010, over 300 abortion restrictions have been passed across the U.S. While some efforts to ban abortion were struck down by the Supreme Court, there were both setbacks and victories. The landmark Roe v. Wade case had once made abortion a private right and limited state interference, but Pro-life groups opposed it, often citing religious grounds. Despite all the protests, the right to abortion remained Constitutional until June 24, 2022.

The Supreme Court overturned the long-standing precedents of Roe V. Wade (1973) and Planned Parenthood V. Casey (1992) in the case of Dobbs V. Jackson Women's Health Organization [22], taking away the constitutional protections for the right to abortion for American women, a right previously upheld for a decade. This ruling means that for many states, abortion rights will be rolled back immediately. It was the first time in the history of the SC that a fundamental constitutional right was taken away in the United States. The re-consideration of the Roe case came into the picture when Jackson Women's Health Organisation challenged Mississippi's Gestational Age Act, which provides that except in the case of a medical emergency or several cases of fetal abnormality, termination of pregnancy should not be performed on a person if the probable gestational age of the fetus has been greater than fifteen weeks. This Act was challenged in the Federal District Court, claiming that it violated the SC's precedents establishing a constitutional right to abortion. It was held by the District Court that Mississippi's 15-week restriction on abortion violates this Court's cases, and the judgment was in favor of the respondents.[23] Later, the petitioners came before the Supreme Court, defending the Mississippi Act on the grounds that Roe V. Wade and Planned Parenthood V. Casey were wrongly decided and stated that the Act is constitutional as it satisfies rational-basis review. The rational basis test is a judicial review test, which is used by the courts to determine the constitutionality of a statute or ordinance. While it is being decided by the judges whether these laws may go into force, abortion is still lawful in a number of states that have passed bans or limitations.

[20] Planned Parenthood Action Fund, *Whole Woman's Health v. Hellerstedt* (2024), (September 1, 2024), https://www.plannedparenthoodaction.org/issues/abortion/roe-v-wade/whole-womans-health-v-hellerstedt.

[21] *Unborn Victims of Violence Act of 2004,* Pub. L. No. 108-212, 118 Stat. 568 (2004), (August 1, 2024) https://www.congress.gov/108/plaws/publ212/PLAW-108publ212.pdf.

[22] Dobbs v. Jackson Women's Health Organization, 597 U.S. (2022).

[23] Lumen Learning, *Dobbs v. Jackson Women's Health Organization* (2024), (August 12, 2024), https://courses.lumenlearning.com/suny-monroe-law101/chapter/dobbs-v-jackson

In March 2024, The League of Women Voters of United States were joined by more than 100 other organizations to come forward on an issue, which was briefed by the National Women's Law Center. The friendly brief was made to affirm that The Emergency Medical Treatment and Labor Act (EMTALA) covered pregnant patients as well, who need lifesaving and stablizing abortion care. The brief made to the Court was in context to the ongoing maternal health crisis going on in the United States. It emphasized that ruling for Idaho would make it worse for all the pregnant patients as the care decreases.

Recent studies have shown an 8% increase in infant mortality in Texas, linked to the state's abortion ban, as infants are dying from untreatable birth defects.Since the Dobbs ruling, many U.S. states have introduced new protections for abortion, keeping it legal in those regions. However, in 14 states—including Alabama, Oklahoma, and Missouri—abortion is banned in nearly all circumstances. In four other states—Georgia, Florida, Iowa, and South Carolina—abortion is banned after six weeks of pregnancy. North Carolina and Nebraska have a limit of 12 weeks. In August, the South Carolina Supreme Court upheld the six-week ban, reversing an earlier January ruling that had struck down a similar 2021 law as unconstitutional. Meanwhile, Montana and Wyoming have 12 abortion bans that are currently blocked, keeping abortion legal until viability. In Wisconsin, abortion was previously under legal dispute, but is now legal up to 22 weeks, following a 2023 ruling where a judge clarified that the 1849 law, long seen as a ban, does not apply to abortion. The State Supreme Court is expected to take up the case, which challenges the 175-year-old statute. In Alaska, the State Supreme Court has recognized a constitutional right to reproductive choice, making abortion fully legal without gestational limits. There are five other states where abortion is also legal, including Ohio and Kansas (with a 22-week limit) and New Hampshire (24-week limit). Washington, D.C. and 20 other states have also moved to protect abortion rights under state law.[24]

III. FACTORS INFLUENCING ABORTION LAWS IN INDIA AND THE USA

There are many factors that have influenced the abortion laws in both countries, i.e., India and the US. It includes factors such as economy, religion, socio, and psychological respectively. Let us understand in detail how each factor is responsible for abortion laws in India and the US.

1. Economic Factor

A. India is a developing country, therefore the government is under financial pressure to provide all the needed requirements or services to the citizens which also include healthcare. The economic factor played a role in the MTP Act's implementation, as in some parts of India, due to reasons like lack of awareness of the MTP Act and lack of healthcare facilities the accessibility to healthcare services including abortion services is restricted, particularly in rural areas.[25]

B. The US is a developed country with having strong economy. Due to the high level of income inequality, many women are there who cannot afford abortion fees, even if they are illegal too. Even in recent years, there have been a number of movements to defund Planned Parenthood which is the largest service provider in the US. Also, these movements have been successful and have reduced access to abortion services, especially for low-income women. Some

[24] The New York Times, *Interactive: Abortion Laws in the U.S.* (2024), (August 11, 2024), https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html

[25] Sarika Chaturvedi,Sayyed Ali, Bharat Randive, Yogesh Sabde,4 Vishal Diwan,and Ayesha De Costa, *Availability and distribution of safe abortion services in rural areas: a facility assessment study in Madhya Pradesh, India*, (July 31, 2024) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4369557/

states have passed laws that preserve abortion rights due to the overturning of Roe v. Wade.

Therefore, the economic factor has a multiplex impact on abortion laws in India and the US. In India, the economy has engaged in the **expansion** of abortion rights, while in the US, the economy has played a role in the **restriction** of abortion rights.

2. Societal factor

A. In India, societal factors reasons like social stigma or taboo, traditional norms, religious beliefs, and gender roles play crucial roles in abortion laws. As we all are aware historically India has had a conservative societal norm. While the laws are liberal, still in many parts of India the reason for being judged or that stereotyped thinking of people becomes fear for women and discourages them from seeking abortion services, even if it's important for their health point of view. Then, awareness is the next reason. Many women especially in the rural side are unaware of their rights related to abortion. Then, India is a diverse country as we all are aware, which means a diverse country = diverse beliefs and thoughts! Mix numbers of thoughts and beliefs of every single individual. Different religious groups and different views on the topic of abortion. Many religion opposes abortion, whereas many religion supports it in some circumstances.

B. In the US, reasons like religious beliefs, political ideology, advocacy, and accessibility come under societal factors. In the US conservative religious groups mostly Christian sects, opposes abortion. Accessibility in America is available as compared to India but the recent overturning of Roe v. Wade, brought restrictions in many parts of the abortion laws and the accessibility for abortion services became difficult for women to find. The clashes between pro-life and pro-choice activists are shaping and influencing people's opinions and views on abortion. Also, in the US, abortion has become a political issue, where clashes between the ideologies of liberals and conservatives are impacting the abortion laws and legal landscape around abortion.

3. Religious factor

A. India, a predominantly a Hindu nation with a mix of other religions, such as Islam, Sikhism, Christianity, Buddhism and Jainism, has a more nuanced religious landscape. Different communities have different views about abortion but largely, it is accepted by all, despite all the debates arising from religious leaders and groups regarding the ethical implications of abortion. Religion also played a major factor in setting the previous generations thinking about abortion, which further made their future generation vary about abortion. But the new generation is aware about the abortion and the laws regarding it, and therefore there have been attempts to overcome the stereotypical thinking surrounding abortion. However as compared to cultural and socioeconomic factors, religion plays a smaller role.

B. In the US, Christianity is the most followed religion, with various denominations, it holds various opinions on the topic of abortion. It mainly consists of groups such as Catholics, who tend to oppose to the idea of abortion, due to their teachings on sanity of life. Religious organizations therefore advocate for stricter laws regarding abortion, supporting their arguments from a religious and moral standpoint. Religion also impacts abortion policies in states as some lawmakers cite their religious faith as a motivation for new laws for their states.

However, some religious groups and leaders also support abortion rights, and argue that their faith affirms the dignity and autonomy of women. A survey was conducted post Dobbs decision which changed the face of abortion rights in the country. In that survey, 65 percent of Americans had a view that abortion should be made legal in most or all cases, out of which atleast 33 perecnt wanted abortion to be legal in all cases and rest percent were in favour of abortion in most cases. But one-third of Americans were against it. 33 perecent of them wanted abortion to be illegal in all or in most cases. Overall, Catholics in America believe that life begins the moment a baby is

conceived, so according to most of them, abortion is basically taking away someone's life. [26]
Whereas in India, some believe the same as the Catholics but, they also believe that life begins when the pregnant woman is in 7th month of her pregnancy.

Therefore, In both countries, the USA and India, religion plays a significant role. It shapes public opinion on abortion. The influence of religion can also be observed in legislation relating to abortion in both the countries.

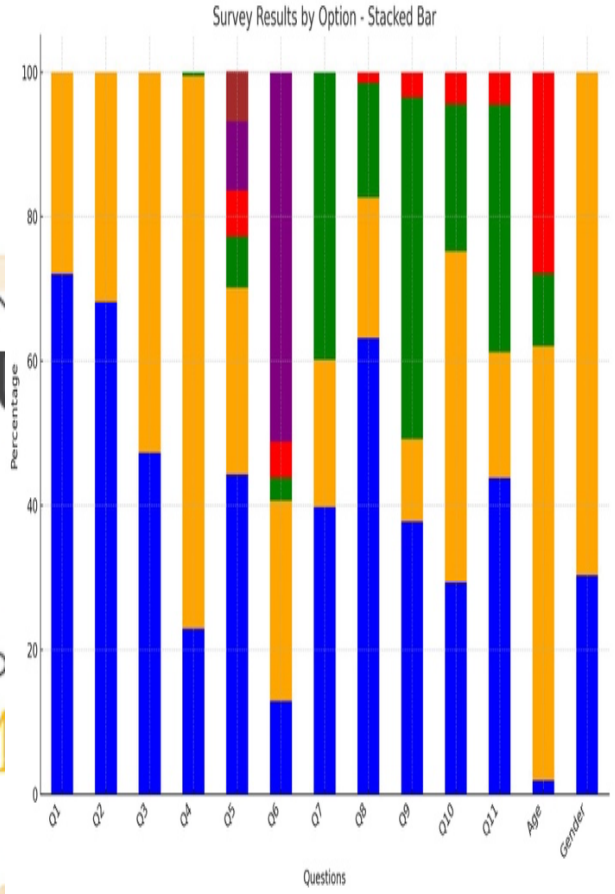
4. Psychological factors

A. In India, where abortion is legal, there are still cultural and societal taboos surrounding it. Women, particularly in rural areas face societal judgment, and discrimination and are often excluded from social gatherings, etc. This complex web of social and cultural norms can lead to great emotional distress, anxiety, and trauma for women who seek to terminate their pregnancy. But on the other hand, the availability of legal and safe abortion has a positive psychological outcome. Women don't need to worry about any disease post-abortion or finding a place where it is legal, unlike the US, India has a uniform law, which means that abortion is legal in all the states. Strict abortion laws could push women to seek unsafe abortions, which could lead to physical or psychological distress or both.

B. In the USA, abortion laws vary from state to state. In some states, abortion is now banned, and in some states, it is legal but with new restrictions. These laws, in the past and even now, contribute to the feelings of shame, anxiety, guilt, etc, among the women seeking abortion. Abortion laws in the country have created barriers that lead women seeking abortion to emotional distress. The restrictive environment surrounding it tends to discourage open discussions about abortion choices, which may lead to a sense of isolation.

In both USA and India, abortion has significant consequences for women's mental health and well-being. Even though there are differences in the laws and regulations surrounding it, both countries have similar psychological effects surrounding it.

IV. DATA ANALYSIS



In a survey conducted by us for our research with the aim of understanding what the stance of abortion is in the minds of the people, we aimed to determine whether the public knows the abortion laws that prevail in India. and much more.

Multiple responses from multiple age groups were received, mainly from the 18–24 age range (60.2

[26] PRRI, *Political and Religious Activation and Polarization in the Wake of the Roe v. Wade Overturn* (2022), (August 1, 2024) https://www.prri.org/research/political-and-religious-activation-and-polarization-in-the-wake-of-the-roe-overturn/

percent), above 35 (27.9 percent), 25–34 (10 percent), and under 18 (2 percent). The responses received were mainly from females (69.7 percent), and the percentage of males who took up the survey was 30.3 percent.

Out of all of them, 72.1 percent were familiar with the abortion laws in India, with 68.2 percent of people aware of the legal gestational limit for abortion, but only 52.7 percent were aware of recent changes in abortion laws, while 53.8 percent were unaware. When asked about their stance on abortion, 76.6 percent of people are pro-choice. And 22.9 percent of people are pro-life.

When people were asked if there are any barriers that make it difficult for individuals to access abortion services in India, mixed responses were received. 44.3 percent of individuals opted for stereotypical thinking; they believe that "India is a country very set in its ways, so it is difficult to change or influence their views on things like abortion," while 25.9 percent chose family pressure; 9.5 percent opted for difficulty in medical services; they believed that it is complicated because of governmental laws and medical services; apart from that, 6.5 percent of people opted for economic reasons and religious beliefs to be the barriers. Individuals shared their views on the topic; they stated that "the country is still orthodox and traditional in nature, so women may face family pressure and peer pressure to keep the child. Conservatives and ultra-religious individuals and groups may still consider abortion to be the murder of a child, so women may still feel pressure from family and peers.

The individuals were asked if they knew anyone who had had an abortion. And if yes, then what was the reason? 27.4 percent of individuals stated the reason being the risk to the health or life of either the pregnant woman or her fetus, while 12.9 percent of individuals reasoned that abortion was done because of female foeticide. 5 percent stated the reason as a baby conceived out of wedlock, while 3.5 percent stated the reason as forced abortion, i.e., when the pregnant woman is forced to do so due to peer or societal pressure. And 51.2 percent chose none of the above options.

Another question was asked of them: in cases of late-term abortions where individuals claim they can't afford to raise a child, what approach should the legal system adopt? And to answer this, 39.8 percent believed that the financial situation should be evaluated as a valid factor for late-term abortion, ensuring the individual's economic challenges are considered. 39.8 percent of individuals opted for the option of providing financial and social support to help the individual raise the child, ensuring a stable environment, and 20.4 percent believed that late-term abortion should be allowed, considering the financial constraints and offered counseling for adoption as an alternative.

When asked in rape cases whether abortion rights should be granted to the pregnant woman or her parents, 63.2 percent believed that abortion rights should solely belong to the pregnant woman. 19.4 percent of people believed that it should be a joint decision between the pregnant woman and her parents, while 15.9 percent believed that the right should belong to the parents in cases involving minors. While 1.5 percent of people specified their view, "Abortion rights should be solely the decision of a woman who suffered from sexual abuse, Parents may be given limited intervention if the victim happens to be a minor. Pregnancy can be difficult to deal with, especially since the victim would have trauma both from abuse and pregnancy resulting from it; also, pregnancy could have adverse effects on the health of both the mother and the unborn child if the victim is a minor. So, rights should be held by the mother, especially as conservative parents may pressure her into keeping the child, citing religious and traditional beliefs."

The SC, on October 11, referred a case involving the termination of a 26-week pregnancy to a larger bench. The decision came after a disagreement between Justices Hima Kohli and BV Nagarathna. Justice

Kohli was hesitant due to the possibility of the fetus surviving, while Justice Nagarathna respected the petitioner's choice given her difficult circumstances. The Union sought a recall of the earlier termination order based on a new medical report indicating fetal viability. The case underscores the delicate balance between a woman's choice and the potential viability of the fetus. In the above case, should a woman's right to choose be absolute, even in cases where a fetus is viable? 47.3 percent of people believed that it depends on the specific circumstances; each case should be evaluated individually, while 37.8 percent believed that a woman's right to choose should be absolute, as a woman's autonomy over her body should always take precedence. While 11.4 percent believed that viability should be a factor, termination should be allowed only within a certain gestational limit. 3.5 percent of people shared their opinion. They believed that decisions may be based on individual cases. If the person seeking abortion is a rape victim or has a health concern, then abortion should be allowed, and if the reason is trivial and the child can be managed, then abortion should not be allowed. Another person shared their opinion by saying that in cases of rape, a woman's choice should be put above all else, but in other circumstances that do not involve abuse, the viability of a fetus should be considered.

Another question was asked: how can the legal system strike a balance between respecting a woman's choice and ensuring the potential life of the fetus is considered? 45.8 percent believed that a medical board should be involved to assess each case, considering both the woman's condition and her fetal viability. 29.4 percent supported establishing a clear gestational limit after which termination is not allowed except for severe medical reasons. And another set of 20.4 percent of people believed that strict criteria for evaluating mental and physical health before allowing late-term abortions should be implemented.

4.5 percent shared their opinions; one said, "The court should establish a strict gestational period for allowed abortion but should allow abortion if the child was the result of sexual assault or further pregnancy or childbirth may result in health issues." And another shared, "Decisions should be made solely based on a woman's decision if she wants to terminate pregnancy or not while being aware of the circumstances regarding the risk to her life. If there's a risk to her life, she should know that, and consent should be signed regarding that before the procedure so that if something happens to her, that will be their responsibility. For the fetus If it is abnormal, then it should be done, but if the fetus is normal, it still has to be the woman's choice because if a woman doesn't want to have a child, she will not be able to raise the child properly even if it is born, and it will be difficult for the child to have a healthy environment to grow well. Exceptions can be there."

A question was asked about the appropriate time frame for delivering judgment in cases involving abortion after rape. 43.8 percent believe that judgments should be delivered promptly, ensuring swift justice for the victim; 34.3 percent consider that there should be a specific time limit, for example, within 3 months, to expedite justice in such sensitive cases; and 17.4 percent believe that judgments should be carefully deliberated, regardless of the time taken, to ensure fairness and accuracy. While 4.5 percent gave their opinions that decisions should be made carefully but also quickly so that the abortion limit isn't crossed and that judgment regarding abortion should be done fairly quickly so as not to damage the victim further mentally or physically, Though a fair trial should be given to the accused.

V. CONCLUSION.

The Medical Termination of Pregnancy Act, 1971, recently amended to allow abortions up to 24 weeks in special cases, highlights the importance of women's health and autonomy in India. Judicial rulings aim to ensure timely access for rape survivors and minors, but overlaps with laws like POCSO create complications. Despite India's commitment to international reproductive rights, the MTP Act still

needs modernization to allow abortion on demand and enhance women's rights.

In the United States, abortion laws remain polarized between Pro-Life and Pro-Choice advocates. While Roe v. Wade (1973) established abortion as a constitutional right, the Dobbs v. Jackson (2022) ruling overturned it, leaving states to impose varying bans and restrictions, reflecting ongoing struggles for reproductive rights.

In both countries, abortion laws are shaped by economic, social, and political factors. In India, economic barriers and societal stigma often limit access, while in the U.S., income inequality and conservative movements create hurdles, especially for low-income women. Religious beliefs also influence public opinion in both nations, limiting women's autonomy. Women in both countries face emotional distress due to social judgment and restrictive laws, highlighting the need for better awareness and support systems.

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