

Does The Government Have The Right to Make Laws On Women's Abortion Rights?

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Abstract “Human rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity.” (**Mother Teresa**) We all have the right to live in every part of the world and we can make choices without any kind of fear and discrimination. Yet all over the world, people are getting bullied they are discriminated against for their body, gender etc. and also getting arrested because of choosing their lives over anything else. Almost 40% of women of childbearing age are living in countries where abortion is banned or strictly restricted and women also can't use contraception even if they want to stop not having children. We all should break the silence and talk openly in our society; these norms are mainly controlled by the government, our communities and our families too. There should be no third-party control over the decision like when having children or when to abort or not, these are our rights to decide whether we want it or not and why it is becoming a matter for the government to control it. The American Supreme Court has drafted a devastated opinion on **Thomas E Dobbs V. Jackson Women Health Organization** in which the court prohibited the abortion of a foetus above the age of 15 weeks except in the case of emergency. With this many, American women have lost their fundamental protection and yes, it is important to discuss the government's rights and control over women's bodies.

Can other countries also adapt this judgment later?

I Introduction

It is productive that the government passes the law that affects fundamental equality in a good way but does it is applicable or the women are getting their fundamental rights in an affirmed way? If someone controls one's body, it is the same as controlling one's life.

According to the World Health Organization abortion is a fair practice and there are around 73 million abortions are made annually across the globe out of that 45% are unsafe if the government think that making abortion illegal will stop the abortion, no, otherwise it will make them unsafe to the health of the female.

China and Iran also made the major headline which can be a vast effect on returning the ages of controlling women's wombs, of the fear of people getting old the China government replace the One Child Policy with the Two-Child Policy, 2016 and recently the government might

be dropping all the restrictions of the children number.

In another phase, the Iran government recently blocked all the hospitals and clinics from providing contraception and aborting the child because for boost the birth rate in the country and it is because the population is getting aged and the economy is on down the way. Forcing women to give birth is not prohibited or restricted in developing countries it should be understood that women have the right to their bodily autonomy and they are not for moving your economy forward.

In the case of gender, women have few legal protections but what about the lives and control of their own bodies, Yes, we may say that the condition is far better than years, but the current state of the law is not enough for this system. As the U.S. Supreme Court has overruled the case of **Roe v. Wade** 410 US 113 (1973) which was the landmark judgment that established that abortion is a constitutional right. The court backed up the Mississippi Gestational Age Act which the law bans abortion after 15 weeks in the controversial case of **Dobbs v. Jackson Women's Health Organization** 597 U.S. (2022).

Abortion has a great influence and also affects numerous things and it has a ray of

hope for rape victims, and also if a person does not want to get pregnant, they have the right to their body, and the decision of the Dobbs straightly threatens the fundamental rights and also for the bodily autonomy.

“An individual person should have their rights to make decisions about their bodies these are the absolute rights and cannot be entertained by judges.”

II Literature Review

Analysis of the case and Decisions

The major turn take place when the U.S. Supreme Court drafted an opinion in *Dobbs v. Jackson Women's Health Organization* overturning *Roe v. Wade*, this affected the whole person who is with the stamp of being a female whether a married woman or unmarried.[10]

In 1970, An American woman namely Jane Roe wanted to end her pregnancy safely but she was prohibited because of the law of Texas that says about no pregnancy could be terminated unless the other's life is in danger.[5] After that, she sues Attorney Henry Wade, and she argues that the Texas laws violate her rights under the first, fourth, fifth, ninth and fourteen amendments of the U.S. Constitution.[6]

After that, the U.S. Supreme Court held in the favour of Roe and down the Texas law,

and there was a recognition of a right to privacy and was vested in Fourteenth Amendment, the court held that the women had their absolute right to abortion by consulting her doctor without the interference of the State, the State can only prohibit unless there is a threat to the life of a mother.[4] Also, in the case of **Planned Parenthood of Southeastern Pennsylvania v. Casey** 505 U.S. 833 (1992), the court held that the undue burden on a woman seeking an abortion before the foetus is viable.[3]

The case in *Dobbs v. Jackson Women's Health Organization*, in which the State of Mississippi asked to remove the constitutional validity of the right to abortion was settled by the case of *Roe v. Wade*. Mississippi said that the state can protect the health of the mother so, the laws of pre-viability abortion should be valid.

The majority says that there is no right to abortion as this is not "deeply rooted" and "implicit in the concept of ordered liberty". Also, they said that the decision of *Roe* is wrong since starting.

In the draft opinion, there are many criticisms of the right to privacy including same-sex marriage, interracial marriage etc. of which the judgment of *Roe* was the foundation. In the opinion of *Dobbs*, abortion rights are in danger for females

all over the world and it is a big blow to all women's reproductive rights.

Simply by looking back as they stated about the ages of 13th and 14th century and 17th century at that time the discrimination of black people and white people was there and it was never protected by the law but it is protected then why not the abortions rights so the unreasonable logic for talking about the ancient ages doesn't make any sense to say on the rights of women. The right to abortion is for the women and their livelihood and no one should take control of that as there are choices for them to decide on their body and also for their social and economical equality.[1]

"By overruling *Roe* and *Casey*, the court not only held that there is no constitutional right to abortion but they also determined the abortion will not be subject to the viability."

The impact of these bans will be mostly hard on the people who already facing discrimination in the community on their colour for their healthcare facilities also the transgenders and the people in the rural area who cannot afford good healthcare and other drugs for their needs. The reasons for having an abortion or not should be left in the hands of an individual and not be regulated by the government and their policies.[2]

Somehow it also affects parenting the students, who face discrimination, loss of earnings and all educational opportunities almost the State fail to support pregnant women and their families with proper facilities and treatment and Mississippi had the worst infant mortality rate in the country and the court almost ignores all these facts. The majority does not understand the harm of taking the rights away which is fundamental for liberty and equality.

III METHODOLOGY

How can Indian laws be affected by the Dobbs?

The U.S. Supreme Court in the case of *Dobbs v. Jackson Women's Health Organization* concluded that the right to abortion is not found in the first eight amendments and also it is not a fundamental right.

As the issue begins if the Mississippi Gestational Age Act is challenged in the Indian Supreme Court what could be the outcome as somehow Indian Courts borrow the American constitution philosophy for the content of the Indian constitutional rights.

As the Indian courts have the right to female autonomy as a fundamental right to life and liberty under Article 21 and the

Medical Termination of Pregnancy Act, 1976 (MTP Act) which is amended in 2021, in which the termination of pregnancy can be up to 24 weeks, however in Mississippi Gestational Age Act the is prohibited after 15 weeks of pregnancy which somehow inappropriate according to the rights of the females and their body autonomy.

In the recent order of the Indian Supreme Court on **X v. The Principal Secretary, Health and Family Welfare Department** where the court according to the case of **Suchita Srivastava v. Chandigarh Administration (2009) 14 SCR 989** held that the women's rights for the reproductive choice is her part of the personal liberty whole Article 21 and it allows the termination of 24 weeks of termination in pregnancy and also the Indian High Courts are accepting the fundamental right in the subject to female autonomy that it should be read into right to life and liberty.

Implications Process After overruling *Roe*, almost 11 states banned abortion and also clinics are stopping in providing abortion facilities due to the legal uncertainty, almost many millions of women could no longer get healthcare and their rights in a particular state.

However, it will also force the people to move to multiple states which cost their

money and many barriers to affordable care, and also the people have to worry about their actions as if they are criminalized or not, also there is a fear of security and privacy which can be monitored by the government and the politicians.

People are worried about their privacy rights, the increased surveillance growing the access to birth control is being affected the people may be denied for accessing other treatments for their life saving and the counselling for the emergency abortions or any other would be there or not is the big questions for the Doctors too and the patient who should get the proper knowledge.

Also, there would be trouble ahead for other important rights like the right to contraception and same-sex marriages. The Roe case make a far great influence to establish the right to abortion which also expanded the right to privacy and liberty and somehow it contains the basis for the rights related to contraception, marriages, intimacy etc.

IV SUGGESTION

For me, this decision is a death knell to the reproductive rights for women, the majority of the judges did not like Roe they did not want Roe according to them the decision was wrong from the start and

unfortunately, they took the opportunity to send the Americans to the dark ages in which the reproductive autonomy was totally void.

Many women in the U.S. who particularly have low income and those who belong to the racist community in minorities, will be more affected by the damages to their own fundamental rights.

This is about how the precedent of 50 years of the existence of a woman's rights now have been cut back so unceremoniously with no defensive wall at all, it is a huge blow to the woman's human rights and equality, in the International Human Rights Law there is about the access to safe and legal abortion which is mentioned and the abortion rights are also human rights and the U.S. Supreme Court cannot overrule the Roe without contradictory obligations under the International Human Rights Law.

The future seems dreary, but one can hope that the draft opinion remains a draft and the government protects the rights of the women for their body autonomy, right to life, right to abortion and gender justice.

V CONCLUSION

As I conclude, with that over five decades of a precedent being overruled and the

decision is devastating in itself mainly for the rights and powers which one should hold and have the right to use according to ourselves are been taken away from the woman.

The Dobbs v. Jackson Women's Health Organization, is a direct attack on access to abortion independently and it has created a vast crisis on legal, public health and most importantly the constitutional validity of the state and somehow it can affect the whole world.

Achieving gender equality and freedom is not possible without having out all the reproductive rights violation which also includes nationalistic, economic and racist too, and every woman should take charge of her body and should have the right to choose her family size.

Abortion is a fundamental human right that should be recognised and must be accessed accordingly to the rights and non-discriminatory framework and all woman has the power to get back.

Irrespective of what this lawless Court says, the ability to decide whether or when to become a parent is a fundamental right of the woman that is in control of gender justice and personal bodily autonomy of the woman.

References

1. United Nations Population Division. Abortion policies: A global review. 2002 <http://www.un.org/en/development/desa/population/publications/abortion/abortion-policies-2002.shtml> major dimensions of abortion policies. Available at.
2. Wikipedia. Abortion in Russia. https://en.wikipedia.org/wiki/Abortion_in_Russia Available at.
3. World Health Organization. Safe abortion: Technical and policy guidance for health systems. Geneva: WHO; 2012. [Google Scholar]
4. Kassebaum N. J., Bertozzi-Villa A., Coggeshall M. S., et al. "Global, regional, and national levels and causes of maternal mortality during 1990–2013: A systematic analysis for the Global Burden of Disease Study 2013" *Lancet*. 2014;384(9947):980–1004. [PMC free article] [PubMed] [Google Scholar]
5. World Health Organization. Primary Health Care: Now More than Ever. World Health Report 2008. Geneva: WHO; 2008. p. 65. http://www.who.int/whr/2008/whr08_en.pdf [Google Scholar]
6. Guttmacher Institute. Induced abortion worldwide: Global incidence and trends. 2016 May; <https://www.guttmacher.org/fact->

sheet/induced-abortion-worldwide

Available at.

7. the UN Human Rights Committee Recommendations on abortion law and policy: Burkina Faso, Ecuador, Ghana. 27 July 2016 <http://us12.campaign-archive1.com/?u=c02a095d6213ac4bd2aed2e81&id=351dc6b224> See, for example, at. United Nations Office of the High Commissioner for Human Rights. “Unsafe abortion is still killing tens of thousands women around the world—UN experts warn” 2016 Sep 27; <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E> press release. Available at. African Commission on Human and Peoples’ Rights. Statement by the Special Rapporteur on the rights of women in Africa commemorating the Global Day of Action for Access to Safe and Legal Abortion. 2016 Sep 28; <http://www.achpr.org/news/2016/09/d238> Available at.

8. International Campaign for Women’s Right to Safe Abortion. Feature: African Commission on Human and Peoples’ Rights calls for decriminalisation of abortion in Africa. 2016 Jan 22; <http://conta.cc/1OKSHmy> Available at.

9. Arthur J. “Canada: Proof that no country needs an abortion law” 2016 Jan;

<http://www.safeabortionwomensright.org/portfolio/canada-proof-that-no-country-needs-an-abortion-law> presentation. Available at.

10. Abortion in the United Kingdom. https://en.wikipedia.org/wiki/Abortion_in_the_United_Kingdom#Section_1.281.29_of_the_Abortion_Act_1967 For a summary, see Wikipedia. Available at.

11. Protection of Life during Pregnancy Act 2013. <http://www.irishstatutebook.ie/eli/2013/act/35/enacted/en/pdf> Ireland. Available at.

12. See International Campaign for Women’s Right to Safe Abortion. Sierra Leonean President Koroma still won’t sign Safe Abortion Act into law and calls for referendum. 2016 Jul 6; <http://www.safeabortionwomensright.org/sierra-leonean-president-koroma-still-wont-sign-safe-abortion-act-into-law-and-calls-for-referendum> Available at.

13. United Nations Population Division. Abortion policies: A global review. 2002 <http://www.un.org/en/development/desa/population/publications/abortion/abortion-policies-2002.shtml> major dimensions of abortion policies. Available at.

14. United Nations Population Division. “UN Population Division issues updated study on abortion policies” 2002 Jun 14; <http://www.un.org/esa/population/publicati>

ons/abortion/pop830.pdf press release.
Available at.

15. United Nations Population Division. Abortion policies: A global review. 2002 <http://www.un.org/en/development/desa/population/publications/abortion/abortion-policies-2002.shtml> major dimensions of abortion policies. Available at.

16. Johnson B. R., Ganatra B., Khosla R. Addis Ababa: Dec, 2016. conference presentation. [Google Scholar]

17. Boland R. “Second trimester abortion laws globally: Actuality, trends and recommendations” *Reproductive Health Matters*. 2010;18(36):67–89. [PubMed] [Google Scholar]

18. Cleeve A., Oguttu M., Ganatra B., et al. “Time to act—comprehensive abortion care in East Africa.” *Lancet Global Health*. 2016;4(9):e601–e602. [PubMed] [Google Scholar]

19. Tanzanian Penal Code: Chapter 16 of the Laws (Revised) (Principal Legislation) 1981 [Google Scholar]Keogh S., Kimaro G., Muganyizi P., et al. “Incidence of induced abortion and post-abortion care in Tanzania” *PLoS One*. 2015 Sep 11; [PMC free article] [PubMed] [Google Scholar]Tanzanian Ministry of Health and Social Welfare. The national road map strategic plan to accelerate reduction of maternal, newborn and child deaths in

Tanzania (2008–15) 2008 Apr; [Google Scholar]

20. Keogh S., Kimaro G., Muganyizi P., et al. “Incidence of induced abortion and post-abortion care in Tanzania” *PLoS One*. 2015 Sep 11; [PMC free article] [PubMed] [Google Scholar]