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THE REPEAL OF ROE V. WADE: UNVEILING THE CONSEQUENCES OF THE OVERTURN FOR WOMEN IN THE UNITED STATES¹

AUTHORED BY - PARIDHI JAIN

Abortion refers to the practice of willful termination of pregnancy by the mother. The act of abortion was made a matter of constitutional liberty by the historic judgement of Roe vs. Wade in 1973, which established that “the right to have abortion was a constitutional liberty of fundamental importance” (Dellinger and Sperling, 83). This meant that a woman could exercise her right to have an abortion up until fetal viability is achieved, that is upon the commencement of the third trimester of gestation whereupon a fetus is capable of surviving outside the womb. The decree of Roe not only furnished women with access to legalized and safe mechanisms of getting an abortion, but also provided safeguard to bodily integrity and autonomy over their reproductive rights. However, this right was curbed on 24th June 2022 when the United States’ supreme court overturned the Roe decree with a 6-3 vote and thus corroborated that henceforth there will state specific regulations on abortion practices instead of standardized and uniform federal law on abortion. This bestowed immense power into the hands of individual states to dictate the terms of abortion care and created a disproportionate abortion care mechanism in the whole country. Texas for instance has imposed austere regulations on abortion making it criminally penalizing to get an abortion and simultaneously deeming it a felony to provide abortion (Klibanoff, n.p.). in the absence of a uniform federal law on abortion, women residing in different states of the country will be governed by sets of laws that are different from other states. Under such circumstances, a woman will be forced to either travel long distance to access safe and legal abortions or will have to resort to illegal and often fatal means of getting an abortion. Apart from the obvious physical and mental implications of this overturn, there are a myriad of other problems that women currently residing in USA will face. Moreover, while this paper focuses mainly on the effects of abortion ban on women, it is obligatory to address the effect it will have on people who capable of being pregnant apart from the female population. People who identify as transgender

¹ Authored by PARIDHI JAIN.

or non-binary, who are biologically capable of conceiving require both representation and right in matters relating to abortion. Majority of the anti-abortionist arguments stem from the premise that the fetus is a citizen and has a right to live. This argument establishes that a woman's rights become less important the moment she conceives, and that all priority is to be given to protection of the life of the fetus. This argument has manifested itself in the form of the strict abortion laws prevalent in many states of USA and has resulted in the mass support of the overturn of the Roe judgement which will have repercussions on women in USA. The aim of this paper is not to antagonize any of the stakeholders in this issue, but to simply lay out the potential consequences the overturn can have for the women in the USA. Thus while the anti abortionist, also termed as 'pro-life', proponents believe that the annulment of Roe is a victory for the country, this paper argues that the repeal of Roe will cause gross infringement of individual and reproductive liberty of women currently residing in the USA, implying thereby that the rights of the unborn foetus supersede the mother's., further leading to increase in death rate in USA due to unsafe abortions while bereaving victims of rape access to legalised and safe abortion.

The USA constitution, via the Fourteenth amendment's Due Process Clause, guarantees that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law" (Constitution annotated, n.p.). The Roe judgement was in lieu of these rights and its overturn meant immediate infringement of the same. The original judgement implied that restrictive abortion statutes invade a pregnant woman's right to terminate her pregnancy and are an attack on the woman's bodily integrity and reproductive liberty (Roe vs. Wade, 114). However, in Washington vs. Glucksberg, it is argued that the fourteenth amendment only safeguards rights that rooted in American history, which means that abortion is kept out of the ambit of the liberties guaranteed by the amendment. A fundamental flaw in this argument is the assumption that the circumstances of the American society will remain constant throughout time and hence the society can properly function with ideas that can be found only in history, at the time of making of the constitution. Times change, and with them laws should and ought to change. In today's age, basing privileges of the citizens on historical notions and subsequently denying women discretion over the matters of their body not only infringes the aforementioned fundamental right of women as citizen but is also discriminatory against women. It is equivalent to condescending women's rights on two levels first in comparison to men

by treating women as “less” of a citizen when they get pregnant, almost becoming detached from their own identity as a person. And the second in comparison to the foetus which when conceived supersedes the rights of the woman carrying it. A lot of importance is given to the life of the unborn foetus and how abortion is deemed synonymous to ‘murder’ by pro-life activists, meanwhile the life and liberty of the mother is forgotten or rather surpassed by the foetus.

There is a dire need of access to safe and lawful means of abortion when pregnancy is the result of rape, both within and outside of marriage, and especially when the victim is a minor (Bhate-Deoshtali and Rege, 189). When pregnancy is a consequence of sexual assault or coercion, it becomes a psychological and emotional burden for the mother because it is unwanted or rather unpleasant. Further, when the child is born he/she is subject to social stigmatization and exile which will cause psychological trauma and emotional turmoil. This means that both the mother and child will be subjected all types of anguishes because the pregnancy is unwanted as the victim is practically being forced to borne a foetus that is not a result of love or marriage. According to a report by ACLU, almost 350,000 US teenagers become pregnant each year, 82% of which are accidental pregnancies. Abortion becomes key when a minor is pregnant. This is because there are different connotations to legal age to consent and actual age to consent. Often, teenagers get pregnant out of a consensual act which in legal terms cannot be considered to be consensual because at the time of consent the individual is a minor by law and hence their consent is invalid. Moreover, the minor is, more often than not, incapable of sustaining oneself on their own and hence cannot be expected to bear an offspring physically, emotional and financially. Moreover, having to continue a pregnancy during teenage will have detrimental effects on the person’s body, education and future career prospects. Under such circumstance the person should be given access to safe and legal methods of abortion, that is not barred by time as sometimes pregnancies are not detected until later stages, because of two main reasons. First to ensure that termination of pregnancy does not have an effect on future chances of getting pregnant, and second to save the individual from the guilt, shame and social exclusion. Withholding the right to abortion will not only affect individuals that choose to terminate their pregnancy, it will also affect individuals who need to get their pregnancy terminated by dint of their predicament.

Banning abortion or imposing stringent abortion policies will not suffice in decreasing abortion from being performed, it will only decrease the number of safe abortions being performed (Falcon n.p). This is because in absence of legally mandated mechanisms of getting an abortion, pregnant women will be forced to resort of illegal and often septic means of abortion or sometimes try to terminate their pregnancy by themselves, a practice referred to as self-abortion. Self-abortions are currently prevalent in the American society as a way of terminating pregnancy and they pose serious threat to both the mother and foetus because women who indulge in self abortion opt for practices that make them vulnerable to septic shocks, sepsis, infertility and even death (Alford, 1013). Criminalisation of abortions will not only increase maternal mortality in USA, it will also incentivise an increase in such fatal abortion practices. Such practices might eventually lead to criminal proceedings against the mother or an increase in medical expenditure because more often than not, the mother has to get treatment for the complications that arise out of the unsafe abortion. International Human Rights Law recognises that being forced to travel long distances to access abortion, or being compelled to resort to alternate means of abortion constitutes to torture, inhuman and degrading treatment (Londras and Enright, 46). This is because unsafe abortions are a threat to the woman's life and are also the cause of mental and emotional distraught because of the persecution that comes along with it.

Roe vs. Wade paved way for women in USA to get access to constitutionally mandated means of abortion but it's overturn will have multitudinous impact on the lives of the women currently residing in USA. Denying women the right to choose whether or not to continue their pregnancy is an outright infringement of their fundamental rights and puts into question the position of the mother as a citizen of USA. Not only that, it serves as basis for reducing women's rights due to the presence of the foetus in comparison to men who cannot conceive a baby. It implies that when the woman becomes pregnant, her whole being is confined into survival of the foetus and that the rights of the foetus as a person supersede the mother's. This problematic because often, abortion is not a choice but a surrender to circumstances, for instance in the unfortunate cases of rape survivors. Abortion becomes key when it comes to women who have been subjected to sexual assault and as a result of which have undergone unwanted impregnation. Forcing the woman to continue said unwanted pregnancy will be a mental burden on the mother, and upon birth a social burden on the child. Moreover, when the person is a minor, abortion is indispensable because a child (in layman terms) cannot be expected to carry another because they themselves are reliant on others for survival. It is imperative to establish that denying

access to abortion will not decrease the number of pregnancies being terminated because due to lack of safe and hygienic means of abortion, the mother will be forced to resort to unsafe and usually lethal means of getting an abortion. So abortions will continue to occur, legally or illegally. This not only poses a threat to the woman's physical and mental health, it also affects the maternal mortality rate of USA. Terminating a pregnancy is a huge step a woman takes and it can transpire because of myriad reasons best known to the woman herself, but it is the duty of the state to guarantee autonomy to the woman in making this decision, just like Roe did. Scrapping of the precedent set by Roe will create moral, legal, psychological, physical and constitutional dilemmas for the women currently residing in USA.

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