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# **The Collapse of ROE v WADE: The abolition of Right to Abortion in United States**

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## **Abstract**

Globally 1 in 4 pregnancies are terminated via abortion either medically or through use of drugs available in the market. There are various reasons for which people opt to terminate their pregnancy. This particular procedure shall be done in presence of a specialized medical practitioner but now-a-days people are resorting to unsafe methods as there are countries wherein the abortion itself is not legal. This in fact has a huge impact on the lives of the person opting unsafe method to abort the pregnancy.

A person shall have a right over their body and reproductive parts. Right to abort is directly linked to human rights to live life safely and in a free environment. But this basic right is not available to the people. Recently U.S Supreme court has raised questions over this very essential right of a person whereby taking a step backwards the U.S Supreme court has held that the Constitution of United States does not guarantees a right to abortion and thereby overturning half a century old precedent set in ROE v WADE. This decision has raised several protests throughout the country. This article talks about the need of decriminalizing abortion, timeline of the right to abortion in United states and international position of abortion laws.

**Keywords:** Abortion, ROE v WADE, Human right, United States, Pregnancy

## Introduction

The term abortion is a medical procedure to terminate a pregnancy. Such termination of pregnancy is an induced one with the help of either clinical surgical procedure or drug induced, through the combination of mifepristone and prostaglandin. Right to abortion is a subject of human right which is commonly adopted by millions of females across the world. International Human right laws guarantees a basic right to humans to live life with dignity, right to have a healthy life, right to live freely and in a safe environment. It clearly implies that a humans have a right over their own body which implies a right to abort an unwanted pregnancy. Abortions are one of the safest medical procedures when executed under hygienic settings by a competent healthcare expert. There are various reasons for which females adopt abortion and compelling them to take forward an unwanted pregnancy is against their life to have a healthy life and more importantly it is against right on their own body.

There are various reasons as to why females opt abortion which may include the following:

1. 40% people were not financially prepared
2. 12% people had Concern for their own health and Concern for the foetus' health
3. 19% people were not mentally and emotionally prepared
4. 12% people wants a better life for a baby than they could provide
5. 36% people felt its unplanned pregnancy for them
6. 7% people are not independent or mature enough <sup>1</sup>

The above listed reasons compel people to resort to abortion. While many countries are changing their legal regime in order to decriminalize the termination of pregnancy through abortion, United states have recently overturned 1973 landmark judgement abolishing 50-year-old constitutional right provided to women to terminate their unwanted pregnancy via abortion.

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<sup>1</sup> Why do people have Abortion, <https://www.verywellhealth.com/reasons-for-abortion-906589> (Last visited June 25, 2022)

# Timeline Of Abortions Laws And Rights In The United States

## **1.1 Pre ROE v WADE era**

Before this most remarkable precedent abortion was mostly illegal in almost all the states across U.S. Irrespective of the illegality of the abortion there were many illegals abortions that used to happen putting the life of the women getting abortion in a great risk. But this whole system of abortion laws saw a revolution in the year 1973.

## **1.2 About ROE v WADE**

This particular case is one of the most controversial cases of its time. This particular decision was a precedent in the terms of constitutional right to abort. The facts of the case are: Jane Roe (fictitious name) became pregnant in 1969 bearing her 3<sup>rd</sup> child. She was a resident of Texas in United states and wanted to resort to abortion. According to the laws in Texas abortion is an illegal act except in scenarios where there is a threat to mother's life and it is necessary to resort to abortion to save her life. She files a lawsuit before US federal court against the district attorney claiming that such laws are unconstitutional in nature. A 3-judge bench struck down Texas Abortion laws holding that such laws are unconstitutional and giving a judgement in the favour of Jane Roe. The defendants filed an appeal before the U.S Supreme court.

With a majority of 7:2, US Supreme court on 22<sup>nd</sup> January 1973 held that the rudimentary "right to privacy" is guaranteed by the United States Constitution's 14<sup>th</sup> Amendment's Due Process provision which impliedly safeguards a pregnant woman's right to an abortion in her first 3 trimesters of her pregnancy. The Court held that the abortion laws shall be governed with the help of women's trimester table and hence a female has a right to opt abortion during first two trimesters of her pregnancy period.

## **1.3 Planned Parenthood v. Danforth**

In 1976 the restriction requiring the permission of a parent or a spouse to get an abortion was struck down stating that such a restriction provides absolute veto power to the third unrelated party.

#### **1.4 Hyde amendment**

This amendment entered in 1976 which targeted to limit federal backing for abortions under Medicaid provision. This amendment was upheld in a case of 1980 where it was held that even though a woman has a right to get abortion but that does not imply that she a right to get paid for the procedure of the abortion to be done.

#### **1.5 Akron v Akron**

This 1978 case struck down the restriction regarding a consent to be given by parents in case a patient below the age of 15 years wants to get abortion with 24 hours waiting period. The court held that these restrictions if implemented would make it difficult for the patients to get abortion.

#### **1.6 Planned Parenthood v. Casey**

The state of Pennsylvania approved certain abortion laws wherein specific restrictions were put in order to get an abortion procedure including 24 hour wait line, information to the spouse regarding the procedure and etc. These restrictions were ultimately creating sprints for the patients to get an abortion done. These were challenged by Planned Parenthood in 1980 stating that such laws violate the precedents set by ROE v WADE in 1973. The court upheld the ruling of ROE v WADE by reaffirming the right to get an abortion but the court also upheld some of the provisions of the laws stating that it should be looked with a view whether the law is causes any undue burden on the patients or not.

#### **1.7 The 2022 controversy**

Dobbs v. Jackson Women's Health Organization in 2022 overturned 50-year-old precedent set by ROE v WADE. In 2018, state legislature of Mississippi enacted Gestational Age Act banning abortion procedure after 15<sup>th</sup> week of the pregnancy with no exclusions for situations of rape or crimes against women in Incest situation, but only in circumstances of medicinal emergencies or severe terminal abnormalities. The lawmakers used the arguments that abortions were "a brutal procedure, risky for the mothers, and such a practice is degrading medical occupation". The lower courts ruled against such laws stating that they violate the precedents set by ROE v WADE in 1973.

The state of Mississippi aggrieved by such decision appealed to the 5<sup>th</sup> circuit court which confirmed the lower court decision and then the matter was taken to supreme court stating that the decision given in 1973 case was egregiously wrong. The matter was taken in the Supreme court stating that the court should consider the abortion as inhuman procedure. The state argued that such a legislation is required to save the life of a potential human being. whether with a majority of 6:3 reversed the decision given by 5<sup>th</sup> circuit court and held that right to abortion is not guaranteed by the constitution of U.S overturning Roe V Wade case and Casey case.

## **The Aftermath Of The 2022 Controversial Case: Dobbs V. Jackson Women's Health Organization**

U.S is one of the most developed countries in the world and with its judgement it has taken away the autonomy of women on their body. All the 50 states did not make abortion procedure illegal but the states which implemented trigger legislation to restrict abortion re-implemented them after the decision of the Supreme court. With the decision of the Supreme court over 40 million people will be directly impacted in states where abortion is expected to be banned or criminalized<sup>2</sup>. States like Texas, Mississippi, South Dakota will implement all the trigger laws that were hauled sue to Roe case ultimately Banning abortion. While 68% of Americans believe that abortion should remain legal nationwide, at least 26 states are likely to implement total or near-total bans on abortion in the wake of the decision.<sup>3</sup> Approximately more than 13 states have put trigger abortion laws. Even abortion allowed within early gestational period say up to 8 weeks still reduces the access for people to opt for abortion.

With the overturning of the Roe case, now the states are free to put restriction on the procedure of abortion and frame laws accordingly. According to President Joe Biden, his government is considering taking unilateral action to lessen the effects of the decision given by the Supreme

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<sup>2</sup> The Practical Impact of Dobbs v. Jackson Women's Health, <https://www.findlaw.com/legalblogs/federal-courts/the-practical-impact-of-dobbs-v-jackson-womens-health/>, (Last Visited June 26, 2022)

<sup>3</sup> The Practical Impact of Dobbs v. Jackson Women's Health, <https://www.findlaw.com/legalblogs/federal-courts/the-practical-impact-of-dobbs-v-jackson-womens-health/>, (Last Visited June 26, 2022)

court. Biden said it was a "sad day" and that overturning of Roe had put "the well-being and lives of women at jeopardy." According to him this judgement has taken U.S 150 years back.

## **Legal Analysis Of Overturning Of ROE V WADE**

During the time period of Trump government there was a Gag rule which restricted state funding for any type of abortion procedure which was later overturned embarking upon a new way to reproduction right but due to current decision taken by the Supreme court the country has taken a back seat to 1900s.

Many legal experts opined that overturning of Roe V Wade will have an effect on states of U.S i.e., states now will have the authority to make their own independent abortion regulations. They will establish a separate legal framework. Some experts claimed that the fact that so many states have laws criminalising abortions, even when they occur outside of their borders, creates a legally induced environment that allows states in United States to operate to act more independently by bringing cases against those who violate federal law.

It has been questioned if such a judgement is realistic and enforceable. The decision has been viewed in light of the nation's growing divisiveness and political polarisation.

The decision also effected the reproductive rights severely. Thus, this ruling has taken away federal protection for abortion and cuts off access to abortion for 36 million US women<sup>4</sup>.

## **Criminalizing Abortion Doesn't Prevent It; It Merely Makes It Riskier**

The decision of the Supreme court overturning Roe case in U.S triggered many protests across the state. Where many countries are decriminalising abortion in order to promote safe a health environment for the patients, United States is taking a step backward by holding abortion as unconstitutional. Its not only females who are in need to opt for abortion but also the transgender males, intersex people and people having female reproductive organ capable of conceiving who may need an abortion in case of unwanted or unsafe pregnancy. Mere

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<sup>4</sup> Constitution does not confer right to abortion: US Supreme court overturns ROE v WADE, <https://www.downtoearth.org.in/news/health/constitution-does-not-confer-right-to-abortion-us-supreme-court-overturns-roe-vs-wade-83437>, (Last visited June 28, 2022)

criminalizing the pregnancy will not stop the act of pregnancy at all. In case of no option available to them people will opt for unsafe and illegal ways to abort their unborn child which will put the life of such patients at a greater risk. Around 73 million induced abortions take place worldwide each year<sup>5</sup>. Thus, it is essential to provide access to safe abortion environment to each patient in order to provide the risk posed by unsafe abortion procedure where an abortion is induced with the use of drugs or without healthcare experts. Unsafe abortion may have deadly result for the patient. Thus, it is about time that the countries shall legalize abortion. Right to abortion is directly linked to protecting human rights and upholding gender justice across the world. People shall have autonomy to exercise their bodily rights and shall be able to make a sound decision for their body parts including reproductive organs as well. Forbidding abortion is discrimination, and it feeds the stigma.

## **International Position Of Abortion Laws**

The Abortion laws around the world various according to the region. A lot of international frameworks have included abortion as a basic human right that should be available without discrimination. **World Health Organisation (WHO)** in 1967 first recognised the problem of unsafe abortion as public safety issue, in 2003 developed certain guidelines with respect to the same and in 2020 have issued a list with respect to essential health care services which also included broad abortion care services as well. International Conference on Population and Development in 1994 issued an action plan which includes a pledge to prevent unsafe abortion. In 2005 United Nation Human rights committee made Peru liable for not allowing a woman to have a medically induced abortion. This was the first UN committee to recognise the problem of abortion.

In past 25 years many countries have liberalised abortion laws thereby providing access to safe abortion to the people. In 2018, **Ireland** repealed all their abortion banning laws thereby making abortion constitutional. In **India**, the Medical Termination of Pregnancy Act, 1971, allows for legal abortions under specific circumstances.

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<sup>5</sup> Abortion, <https://www.who.int/news-room/fact-sheets/detail/abortion>, (Last visited on July 1, 2022)

According to the Ministry of Health and Family Welfare, an abortion in India is lawful under this act if it is terminated within 20 weeks, has the sanction of a doctor, and is performed by a medical professional at a recognised medical institution. An amendment to this act has been made in The Medical Termination of

Pregnancy (Amendment) Bill, 2020 which was passed to change the time period of termination to 24 weeks. In 2020, **Argentina and Thailand** have also legalised right to abortion. **New Zealand, South Korea, Mexico** also legalised Abortion. Although a lot of countries have legalised Abortion but there are some countries like **Honduras, El Salvador and United States that have put ban on Abortion** in their territories.

## Conclusion

More than anything a right to abortion is a person's own independent right. It is a right over one's own body, health, mind, privacy, and reproductive organs. The right to abortion shoots from a person's right to privacy which was established by Roe V Wade. But the controversial 2022 case changed the whole interpretation of right to Abortion. It is stated by Justice Samuel Alito that the constitution of United states does not expressly guarantees right to Abortion and no provision in the constitution impliedly protects this right. This conservative approach has led to the destruction of right of a person over their own body.

People will ultimately opt for unsafe abortion methods in order to terminate their pregnancies. Giving access to safe medical abortion procedure will help a country to achieve social as well as gender equality. It was reported that post Roe decision, the death rate due to unsafe abortion has declined tremendously. Abortion is not just a right but a matter of public safety. In the era where a lot of countries are changing their legal framework with respect to abortion, U.S have taken a back seat in this matter. This is 21<sup>st</sup> century where almost half of the world follows democracy. People are becoming more radical with respect to their mind-set as we are moving forward in the future. We require more liberal abortion supporting laws. The Dobbs case has set a bad precedent and will take away women's right over her own body. This will burn the right to privacy thus affecting over millions of people directly. Thus, people will either have to continue with their pregnancies or get it terminated illegally which poses various life threats. Abortion is safe when done under the surveillance of a medical expert as it requires post procedure intensive care as well which is done given when done illegally. Also, people can opt

to go to another state where they do not have tigger laws w.r.t abortion and where abortion is still valid.

In the consequence of Dobbs V Jacksons case, numerous people are trying to evade the situation of pregnancy by resorting to medical procedures like vasectomy and plan B pills. All these efforts will directly affect the health and mental well being of the people. It high time that we realize that we rare living in 21<sup>st</sup> century where everything is accessible and available. Even though abortion is no more legal in several states of U.S there are way to get it done. At time is important for rape survivors or people with life risks to get abortion done. This is not only affecting the health physically but, in some context, it is also affecting the mental health and the relations as well. Thus, it's time to change the laws and prioritise health over conservatism. There is high need to establish proper laws safeguarding right to abortion, proper medical assistance procedure manual and training systems for the medical staff. There is a need to create a better world with any discrimination. Political influencers around the world have called the Dobbs decision as egregiously wrong, a huge setback and loss for people around the world especially women.

