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## The Current Status of Rights of Abortion in America

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*In June 2022, the U.S. Supreme Court abolished the right to an abortion in a significant decision. By doing this, the Supreme Court changed its five-decade decision that gave women the right to abortion through law. The Supreme Court concluded that the U.S. Constitution does not provide the right to abortion;<sup>1</sup> therefore, the court set aside the Judgement of the Roe v Wade case. Also, the Supreme Court said that all the states of America can make laws related to abortion according to their own. The U.S. Supreme Court gave the famous historical case Roe v Wade decision in 1973, and in 2022 the Supreme Court overturned that decision. A woman named Norma McCorvey went to the U.S. Federal court for an abortion, but the federal court did not permit her; then, she went to U.S. Supreme Court, where the Judgement was given in her favour. But now, after so many years, the Supreme Court has reversed its own decision, due to which the situation in the country is awful. Because of these circumstances, U.S. President Joe Biden has appealed to the people to protest peacefully.*

**Keywords:** *abortion laws, US constitution, protest.*

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<sup>1</sup> 'SC: Voluntary retirement only if person meets the eligibility criteria' (Legal Wires, 3 October 2021) <<https://legal-wires.com/buzz/sc-voluntary-retirement-only-if-person-meets-the-eligibility-criteria/>> accessed 25 June 2022

## INTRODUCTION

Recently a piece of news is trendy on many news channels, where the Supreme Court of America has abolished the constitutional right related to abortion in the United States. This journal will show why the U.S. Supreme Court has declared abortion unconstitutional. The right to abortion was a right that had constitutional protection under the U.S. Constitution. We'll focus on the U.S. Supreme Court decision, read about the main case (*Roe v Wade*<sup>2</sup>) that was overturned this June 2022, the court's reasoning on the matter, Mississippi law, and the significance of the decision on a global level, and Conditions of Abortion in India.

## THE DECISION OF THE U.S. SUPREME COURT

On June 24, 2022, the U.S. regarding abortion in the country. The Supreme Court gave a decision in the *Dobbs v Jackson Women's Health Organization*<sup>3</sup> case where the Supreme Court overturned the landmark American decision of *Roe v Wade*, 1973. A nine-judge Constitutional Bench took the decision where six judges supported the decision (to declare the right of abortion unconstitutional), and three judges dissented in support of the decision. Under *Roe v Wade*, abortion had previously been considered a constitutional right. After the *Dobbs v Jackson Women's Health Organization*, the right to abortion would no longer be regarded as a constitutional right. Due to this decision, the situation in the country is awful. Therefore, many people in America are divided into two groups regarding this decision: one group supports this decision, and the other group criticizes and opposes the decision. And it has been seen that the majority of the population is against Judgement, according to the opinion poll.

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<sup>2</sup> *Roe v Wade* [1973] 410 US 113

<sup>3</sup> *Dobbs v Jackson Women's Health Organization* (2022) US LEXIS 3057

## **ROE v WADE CASE**

Let's first look at this case, also known as the Roe case. In this case, a 22-year-old girl named Norma McCorvey filed suit against defendant Henry Wade, a district attorney. Roe filed a lawsuit against these laws, under which the court ruled that all laws that made abortion illegal and a criminal offence would be abolished. The court said, "Abortion allowed up to the point of fetal viability" it sounds like such a technical phrase. The court interpreted it as "The time after which the fetus can survive outside the womb; in such a situation, abortion cannot be done; it can be done in an earlier condition." As the study and production of the medicine evolved, the condition of twenty-eight weeks was reduced to twenty-three or four weeks at about six months. But now, according to a new study, it is said that it can be as long as 22 weeks.

However, basically or you can say that the average duration of pregnancy for a woman is forty weeks, an estimated nine months. What we discussed above on the term 'fetus viability' can be defined in another way. A situation when a woman's rights can be distinguished from the rights of an unborn fetus, meaning that a woman or mother is considered to have ownership over it as long as the fetus is present in a woman's body. But when the stage comes when the embryo will be recognized as a free or independent person, and its rights are identified, then such a condition is called viability of the fetus.

## **ARGUMENTS OF THE COURT ON THE DECISION (DOBBS v JACKSON WOMEN'S HEALTH ORGANIZATION)**

Let us see why the court overturned such a historical judgement of *Roe v Wade*, 1973, in the *Dobbs v Jackson Women's Health Organization*, 2022. The earlier ruling was a good decision for the people of America. Justice Samuel Alito wrote the Judgement, where he said the conclusion of the Roe case was wrong from the starting. According to him, the decision was not right in the Roe case that the court

gave in 1973. Because according to him, the fetus which is about to be born should not be killed, that is, which should not have been done long ago, if it comes within 28 weeks, which is related to the life of the fetus, that is why he said of Roe case decision was wrong. After the Roe case, another case came before the U.S. supreme court: *Parenthood v Casey*. The judgment of this case was based upon the Roe case, where the court said the right to abortion is a constitutional right. Both these cases were considered important decisions in America. However, Justice Samuel Ali Auto held both decisions wrong and said that the right to abortion is not deeply rooted in the nation's history and traditions. They believed that if the right to abortion is given, it should not be recognized as a constitutional right; instead, it should be considered a polity issue, and whatever the decision is related to it, the state governments should take what law. In the context of abortion, not a law should be made by the court. He said such a thing should not be recognized at the level of constitutional rights.

### **SOME LAWS RELATED TO ABORTION ARE USA**

Moreover, the Mississippi law is mentioned here, meaning that several similar laws were passed in different U.S. states. However, many other laws were also given, but none was as significant as Roe. In 2018, a Republican-majority legislature existed. It had enacted a law according to which, after fifteen weeks of pregnancy, women could not do an abortion. When this law came into force, the limit was fifteen weeks. Therefore, several institutions of abortion challenged that law in court because these institutions have done the abortion in sixteen weeks, but the law talks about the 15 weeks, so as per the law, it was illegal; therefore, they challenged that law. The decision came against that law where the court said it violated women's constitutional rights and against the Roe case; thus, the court abolished the law, which stated abortion in fifteen weeks.

Similarly, a decision came in 2019; the name of that law was Heartbeat Bill. Under this law, abortion cannot do after six weeks; it means that most abortions performed

after fetal heart activity was detected to be banned. It means a condition when the heartbeat of a fetus becomes measurable. After that, the situation of abortion will be prohibited. This law was also taken to the District Court and was struck down based on the Roe case. Therefore, both the regulations have been abolished case-by-case because they infringed on women's right to abortion.

## **SIGNIFICANCE OF THE COURT DECISION**

If the readers see this case significantly because from the beginning, we have seen that due to the Supreme Court's recent decision, the people of America divided into two groups under which one group supported the Judgement, and another did not. Therefore, we can see the separation between conservative and liberal opinions. If we look at the history of America, we will find that the governments are almost republican or democratic, which have the power of government exchange. Therefore, Republicans consider conservative views, and democrats believe in liberals. For example, Barack Obama and Joe Biden followed a democratic perspective, and Donald Trump pursued a Republican point of view. So, when you look at it very carefully, we find that the opinion of the conservative majority in the U.S. Supreme Court is more in which the last President, Donald Trump, played a significant role. He had made a big change in the Supreme Court, under which the majority was on the Republican side, so this process was followed for a long time.

Many reports say that the Supreme Court took this decision, planning was going on for a long time, and as soon as the majority came into their hands, they took it. That decision has affected poor women in the South and Midwest of the United States. It is also being said that there has been a 14 percent drop in abortions performed legally. If this case is seen in many states, it can be seen between six weeks to fifteen weeks, depending on the old laws. Therefore, within six weeks, it has also been said that some women will not be aware of it and will have conceived.<sup>4</sup> Thus, a situation

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<sup>4</sup> Ritwick Dutta, 'How the Finance Act 2017 Cripples National Green Tribunal (NGT)' (*Live Law*, 7 July 2017) <<https://www.livelaw.in/finance-act-2017-cripples-national-green-tribunalngt/>> accessed 15 July 2022

will be created where the woman does not want to give birth to the child, but despite this, she will not be allowed to have an abortion.

There will no longer be any federal law to protect the right to abortion. In addition, cases like pre-ban after six weeks of pregnancy can be seen in many states, especially those states where the Republican government is present. Apart from this, the matters there now will ultimately reach the states, and the states will decide by making laws under which law and order will run. Many discussions are being held on this, and many questions have arisen regarding telemedicine. For example, a woman has to have an abortion, but abortion is illegal in the state where she lives. In such a case, that woman will contact any other person who lives in another state, and abortion is not illegal there. So, from there, this woman can get telemedicine medicine and do an abortion.

We will call such a situation illegal, and many such cases are going on in America against which people are protesting. After the overall issue is decided, we will see the victory of conservative right-wing ideas. History teaches us that conservatives and liberals have faced each other many times. It is said that conservative and liberal are two factions where right-wing and left-wing streams often clash, so here the victory of right-wing ideology is being told after the decision of the Supreme Court. Now the President of America has appealed to the American citizens to maintain peace and not to hold their protests openly on the streets. But it arises here that all the Presidents who belong to the Democratic Party are against this court decision, whose displeasure has been given by everyone on the Twitter handle. They all said that the decision taken by the Republican majority was wrong, and Biden condemned the U.S. Supreme court's tragic error of overturning the Roe v Wade case law. If the decision of the U.S. Supreme Court is to be changed, then a lesser majority of Republican judges is needed in the court. Then only Democratic views will be able to win over conservative views.

## CONDITION OF ABORTION IN INDIA

If we look at the situation at the global level, then India has also not remained untouched. In India, the <sup>5</sup>Medical Termination of Pregnancy Act, 1971 exists, which allows abortion up to twenty weeks of pregnancy, although it was amended in 2021 to extend this permission to 24 weeks in some instances, such as in the event of rape or incest, the court may grant such exemption. There is no period for abortion in respect of total disability but based on the certificate provided by the expert medical committee.

## CONCLUSION

After a detailed discussion about the Supreme Court ruling on abortion in America, we clearly found that now in the U.S., there is no constitutional protection on abortion in the United States.<sup>6</sup> The Supreme Court, in its landmark decision in *Roe v Wade*, 1973, is reversed in *Dobbs v Jackson Women's Health Organization*, 2022. Initially, the women's arguments against that decision were that women had the right to abort a child, meaning that a woman "can abort if she does not want her child, or if she does not want a child, she cannot abort." It will be decided only by the women and not by anyone else. But the court has described its decision in depth in its judgment, which we have already discussed above. According to our analysis, we can conclude that the decision is partly right or wrong. Because if the couple is not ready to take care of the child's responsibility, then they have the right to abortion, which will be the sole right of the women and not the men. Men are pressured to have not a child because the man/husband doesn't want to have a child. In that case, it would be illegal in the eyes of the law and against justice concerning

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<sup>5</sup> Swetha Sridhar, 'Abortion in India: The Medical Termination of Pregnancy Act' (ASAP, 25 January 2018) <<https://asap-asia.org/blog/abortion-in-india-the-medical-termination-of-pregnancy-act/>> accessed 15 July 2022

<sup>6</sup> Aditya Mehta, Aditi Thakur & Shreya Bansal, 'Awarding Interest on Interest: A three Judge Bench of the Supreme Court upholds the Law' (Cyril Amarchand Blogs, 28 June 2022) <<https://corporate.cyrilamarchandblogs.com/2022/06/awarding-interest-on-interest-a-three-judge-bench-of-the-supreme-court-upholds-the-law/>> accessed 15 July 2022

women and not follow the natural principle which states that someone should Don't even kill whether she was born or not.

Currently, abortion in the United States has no protection for the fetus, meaning that women cannot have an abortion without wanting to have a child. There is no set time in today's scenario in the U.S. like in India, where women are given twenty weeks for abortion under the *Medical Termination of Pregnancy Act, 1971*, where women can have an abortion before twenty weeks. Still, after this, it is not allowed. Abortion is not a good thing, but a woman has a right over her children, whether she wants them or not because we sometimes see women give birth to a child and leave them isolated. Those children are raised without their parents because they are not ready to be parents then. Sometimes the pain of leaving their child alone makes most women in America addicted to drugs, which is inappropriate for any country. Therefore, the right to abortion should be banned but not strictly because, at some point, women <sup>7</sup>should have the right to choose whether she wants a child or not.

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<sup>7</sup> Charlene Aaron, 'I Murdered More People Than Ted Bundy': Former Abortionist Reflects on Painful Past' (*CBN News*, 29 November 2018) <<https://www1.cbn.com/cbnnews/us/2018/march/i-murdered-more-people-than-ted-bundy-former-abortionist-reflects-on-painful-past>> accessed 15 July 2022