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Abortion as a Human Right: A Comparative Study of Abortion Laws around the world

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Abortion or the termination of pregnancy has always been involved with much religious and social stigma since time immemorial; however, with developing times more and more people are now acknowledging the fact that it should be the sole decision of the woman who undoubtedly has the most stake in the matter whether she wants to carry on with an unwanted pregnancy or not. With this realization, there have been massive waves of movements towards the liberalization of abortion laws throughout the globe fueled by human rights and women's rights activists and this has led to many countries reviewing and revolutionizing their archaic abortion policies; however, there are still many countries which refuse to acknowledge this dire need and are still holding on to their obsolete traditionalist views regarding abortion risking the lives of millions of women. This paper aims to provide a vividly comparative illustration of the different legal standings of abortion throughout various countries around the world including the history of abortion laws and policies around the world. This paper also provides a detailed account of why abortion should be considered a basic human right.

Keywords: *law, abortion, human rights, abortion laws, society.*

INTRODUCTION

Every year, an estimated 70 million women around the world end up with unwanted pregnancies.¹ Various factors including a woman's mental and physical health, social and economic condition and availability to proper healthcare influences her decision on whether to carry a pregnancy to term or not, and given the fact that it is the pregnant woman who is impacted the most by such a pregnancy, the right to make such a decision should be her alone. An abortion is a medical procedure that induces the termination of a pregnancy. Access to safe abortion services is a fundamental healthcare requirement and a human right. But it has been a widely controversial subject worldwide with different people having different views on its moral standing and different nations having different standpoints on the legality of abortion.

Most countries in the world provide for certain instances where abortion is legalized. In a handful of countries, a complete abortion ban has been enacted whereas, in several countries, abortion is mostly restricted with exceptions existing in cases of rape, incest, fetal impairment or to save a pregnant woman's life. In most countries, abortion is allowed without any restriction or with restrictions taking into account the pregnant woman's physical or mental health or her social or economic conditions impacting her situation.

In this paper, Section II explains the history of abortion laws and policies that existed around the world. Section III includes a thorough comparative analysis of the abortion laws of various countries around the world including the countries with a complete ban on abortions, countries with strictly restrictive legislations concerning abortion, and countries with lenient abortion laws. Section IV talks about the abortion laws in our country India including a brief comparison of the Medical Termination of Pregnancy (MTP) Act, 1973, and the 2021 Amendment of the Act. Section V talks about the abortion laws in the US with emphasis on the overturning of the landmark Supreme Court Judgement in *Roe v Wade*. Section VI includes an account of how

¹ Global Health Council, *Promises to Keep: The Toll of Unwanted Pregnancies on Women's Lives in the Developing World* (2002) 3

abortion is considered a human right and this article concludes with remarks and suggestions from the author on the current position of abortion laws around the world.

HISTORY OF ABORTION LAW AND POLICY AROUND THE WORLD

By the end of the nineteenth century, the process of abortion was legally restricted in almost every single country around the world with the main sources of such laws being the European imperial countries of Britain, Spain, Italy, France, and Portugal imposed their legislations on their colonies.² Historically, there were three main reasons why abortions were restricted which are as follows:

- Abortion was an extremely dangerous procedure possessing a great risk to the life of pregnant women and therefore, restrictive laws on abortion were introduced in the interest of public health and the intention of protecting women who despite everything sought abortions risking their lives.
- Abortion was considered a sin by almost all religions and a form of moral transgression which was highly frowned upon in those times.
- Abortion was restricted to protect fetal life over the pregnant woman's life in most circumstances because of societal views and sentiments.

But with time, as abortion methods became much safer, efforts were starting to be made to reform the restrictive abortion laws of the past since the 1900s with such efforts coming to fruition in October 1920 when the Soviet Union became the first country to reform its abortion law through a decree on women's healthcare sparked by the feminist revolutionary, Alexandra Kollantai. Since then the world has seen a progressive reform in abortion laws but even after over 100 years of efforts, there are still some countries where such archaic restrictive laws on abortion from another age remain to this day. Let us take an extensive look at the abortion laws in various countries around the globe further on.

² Marge Berer, 'Abortion Law and Policy around the World: In Search of Decriminalization' (2017) 19(1) HHRJ <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/>> accessed 12 November 2022

ABORTION LAWS AROUND THE WORLD

Different nations around the world have different customs, cultures, and belief systems that impact their views on abortion which further determines the different laws and policies regarding abortion in those countries. But with the overall development of all the countries around the globe, the safety and quality of the abortion procedure have also increased and so has maternal survival. However, the level of safety of the abortion procedure varies greatly with the varied legal restrictions regarding abortion in different countries around the world. It differs widely between the countries where abortion is normally legal and the countries with significantly high legal restrictions on abortion.

According to the World Health Organization, approximately 5-13 percent of maternal deaths worldwide are results of complications arising from unsafe abortions, the majority of which take place in developing countries with strict legal restrictions on abortions.³ There are some countries around the world that have lenient policies regarding abortion and others which are against it with much stricter restrictions and it is saddening to know that even in this modern age, there are still some countries around the world with a complete ban on abortions under any circumstances, depriving women of their reproductive and human rights and safety. Let us take an in-depth look into the legislation regarding abortion in various countries around the globe further on.

Countries With a Complete Ban on Abortions

There are only a handful of countries around the world where abortion is completely banned. There are 24 countries around the world including Iraq, Laos, Palestine, and the Philippines in Asia, Madagascar, Mauritania, Senegal, Sierra Leone, Jamaica, the Republic of the Congo, and Egypt in Africa, Andorra, San Marino, Poland and Malta in Europe, Aruba, Suriname and Curacao in South America, El Salvador, Haiti, Dominican Republic, and Honduras in North

³ 'Health Topics: Abortion' (*World Health Organization*) <<https://www.who.int/health-topics/abortion>> accessed 12 November 2022

America and Palau and Tonga in Oceania where abortion has been completely restricted in any circumstances as of 2021.⁴

In some of these countries, women can even be imprisoned for getting abortions as per the laws in those countries like in the country of El Salvador where abortions are punishable by up to 8 to 10 years under their legislation but a lot of women who have gone through any kind of termination of pregnancy have been found guilty of ‘aggravated homicide’ punishable by imprisonment of 30 to 50 years,⁵ including instances of women who suffered miscarriage. In the European Union, Malta is the only country in which abortion is banned under any circumstance but recently there has been a huge pro-choice movement in the country calling to consider a change in the centuries-old archaic laws of Malta last year, whereas, in Poland, abortion has been almost entirely banned with exceptions being made only in cases of incest, rape or the pregnant woman’s life being at risk in 2019. In a lot of African countries, abortion is either entirely banned or mostly restricted, for instance, in Nigeria, abortion is only allowed if the pregnant woman’s life is at risk whereas, in Botswana and Zimbabwe, abortion is allowed only in cases of incest, rape and foetal defects.

Countries with Significant Restrictions on Abortion

In almost 50 countries around the world including Bangladesh, Afghanistan, Myanmar, Ivory Coast, Sudan, Uganda, Yemen, Venezuela, Libya, Nigeria, Indonesia, and Iraq, abortion is allowed only if the pregnant woman’s life is at risk whereas other countries permit abortions in cases of incest, foetal abnormality or rape.⁶ For example, in Brazil abortion is only allowed in cases of rape or foetal disability in which case, the pregnant woman will need to get approval from a doctor and at least three clinical experts and in cases of rape, the doctors are required to

⁴ ‘Countries Where Abortion is Illegal 2022’ (*World Population Review*)
<<https://worldpopulationreview.com/country-rankings/countries-where-abortion-is-illegal>> accessed 12 November 2022

⁵ Will Grant, ‘El Salvador’s abortion ban: I was sent to prison for suffering miscarriage’ (*BBC News*, 28 June 2022)
<<https://www.bbc.com/news/world-61798330>> accessed 20 November 2022

⁶ Rahel Philipose, ‘Explained: Abortion laws around the world’ (*The Indian Express*, 28 June 2022)
<<https://indianexpress.com/article/explained/explained-abortion-laws-around-the-world-7991798/>> accessed 20 November 2022

report to the police beforehand about any rape victim who seeks abortion according to a health ministry regulation in the year 2020 whereas Chile now allows abortion in cases of rape or if the life of the mother or the child is at risk ending almost 30 years of a complete ban on abortion in 2017. Recently in the predominantly catholic country of Poland, the constitutional court ruled against abortions in cases of malformed foetus in October 2020 where abortion is only allowed in the case of incest, rape, or if the pregnant woman's life is at risk.

The factor of the mother's health plays a vital role in the equation as well. Abortion is illegal unless it saves the mother's life in 37 countries around the world.⁷ In various other countries, abortion is banned unless it is used to save the pregnant woman's life or to preserve her health during the pregnancy like in the case of an ectopic pregnancy in which case the embryo fails to get implanted in the uterus and gets implanted in a different organ like the ovaries or fallopian tubes or outside the uterus. Such pregnancies cannot be carried to term as the embryo can't survive outside the uterus and can result in the pregnant woman suffering fatal injuries as well if the pregnancy is not terminated. In some countries (specifically Asian countries where male children tend to be more desirable than females) gender-based abortion is legal.

Countries with Lenient Abortion Laws

In numerous countries around the world, abortion has been made easily accessible with a minimal level of restriction regarding the limited legal gestational periods in countries like Canada, Australia, and most European countries. In Canada abortion has been permitted at all stages of pregnancy despite the reason for the last 24 years since the country's orthodox federal law banning abortions was struck down by the Supreme Court in 1998 where it was ruled that the aforementioned law violated a woman's right to "life, liberty and security" that was guaranteed under Canada's Charter of Rights and Freedoms, even though there is no particular law that grants the right to an abortion.

In Russia, abortion is completely legal up to the 12th week of the pregnancy and up to 22 weeks in cases of rape and at any point in the pregnancy if it threatens the pregnant woman's life.

⁷ Countries Where Abortion is Illegal 2022 (n 4)

Russia was the first country to legalize abortion for any reason in the year 1920 but an overall ban was reinstated in 1936 which was later on lifted in 1955 and abortion has remained legal in Russia ever since.⁸ In most European countries, abortion is allowed within the gestational time limit which is generally about 12 to 14 weeks but in many other countries, there exist various exceptions allowing abortions even later than that, for example, in cases of foetal disability abortion is permitted during any stage of the pregnancy right up until the birth in the UK.

Recently many traditionalist Latin American and European Catholic countries have changed their policy regarding abortion rights following continuous protests by reproductive and women right's activists. For instance, in Colombia, the Constitutional court decided to legalize abortion before 24 weeks of pregnancy as recently as last year after the case had been brought before the court by the Causa Justa movement comprising civil society and human rights groups before which abortion was only permitted in case of rape or if the pregnant woman's life was at risk.

Meanwhile, in Ireland abortion within 12 weeks of pregnancy has been legalized in 2018 following a widespread protest against the restrictive abortion laws in the country, however, facilitation of illegal abortion is still illegal and punishable by imprisonment up to 14 years and in 2019, the neighbouring nation of Northern Ireland legalized abortion as well becoming the last UK nation to do so.⁹

New Zealand decriminalized abortions allowing it up to 20 weeks of pregnancy in 2010 as well which was only legal in case of rape or the mother's life being at risk earlier. Argentina also legalized abortion up to the 14th week of pregnancy in December 2020. In 2019 South Korea also ended its ban on abortion deeming it unconstitutional and bringing much-needed changes to its highly restrictive legislation. Besides this, just last year the Mexican supreme court struck down a law criminalizing abortion even in cases of rape with the recent development of the southern

⁸ Giulia Carbonaro, 'Is Abortion Legal in Russia? How US Compares to Other Nations' (*News Week*, 5 March 2022) <<https://www.newsweek.com/abortion-legal-russia-how-us-compares-other-nations-1702904>> accessed 20 November 2022

⁹ 'Abortion Laws Around The World' (*The New York Times*, 3 July 2022) <<https://www.nytimes.com/2022/07/03/world/abortion-laws-international.html>> accessed 20 November 2022

state of Guerrero in Mexico legalizing abortion within the legal gestational time limit of 12 weeks on May 18th of this year becoming the eighth among the Latin American countries, federal entities to do so.¹⁰

ABORTION LAWS IN INDIA

In our country, India, abortion or the medical termination of pregnancy by surgical, chemical, or any other means was legalized and a complete ban was eased with the Medical Termination of Pregnancy Act in the year 1971.¹¹ Under the Medical Termination of Pregnancy (MTP) Act, any woman seeking an abortion would be allowed to have one as long as the ground on which she claims an abortion is legal which only included cases in which the pregnancy endangers the mental and physical health of the pregnant woman or if the foetus has a significant chance to be born with severe physical or mental defects. However, women's rights activists kept on crusading for further easement of the legislation including legalising abortion in cases of rape or fetal anomaly.

On 25th March 2021, the Medical Termination of Pregnancy (Amendment) Act was enacted amending the 1971 Act by expanding the legal criteria required for abortions and increasing the legal gestational time limit to 20 weeks, and allowing abortions up to 24 weeks with the approval of at least two doctors and after 24 weeks only in case of the mother's life being at risk. The amendment also provided for women to be able to opt for abortion despite their marital status which was only available to married women before the amendment. It also added a privacy clause to protect the identity of women who opt for abortions.¹² Despite it all, abortions violating the law are still punishable by up to seven years of imprisonment for both pregnant women and medical professionals facilitating abortions.

Even though the recent amendment significantly improved the legal stance on abortion in our country, it still failed to acknowledge and tackle the most significant fundamental flaw in the

¹⁰ 'In Mexico, Guerrero is now ninth state that voted to allow abortions' (*NBC News*, 18 May 2022) <<https://www.nbcnews.com/news/latino/mexico-guerrero-now-ninth-state-voted-allow-abortions-rcna29393>> accessed 18 November 2022

¹¹ Medical Termination of Pregnancy Act 1971

¹² Medical Termination of Pregnancy (Amendment) Act 2021

Medical Termination of Pregnancy (MTP) Act, 1971, that it does not grant a woman the right to abort an unwanted pregnancy at her own will but allows her to do so only in specific circumstances and only if such circumstances are proven to have met by a medical professional and it still does not legalize abortion in the country.

ABORTION LAWS IN THE US

The recent judgement by the US Supreme court in June 2022 which takes away the Constitutional Right to Abortion prevailing for half a century marks the first time in history that the Supreme Court has taken away a fundamental right guaranteed by the Constitution making the United States of America one of the very few countries to restrict abortions when the rest of world is moving forward and liberalizing their abortion laws with the modern times. The Supreme Court's ruling in the case of *Dobbs v Jackson Women's Health Organization* overturns the 1973 Supreme Court ruling in the landmark case of *Roe v Wade* which has enshrined a woman's right to abortion for nearly the last 50 years.

In *Roe v Wade, 1973*, the Supreme Court recognized that the decision whether to carry on or terminate a pregnancy belongs to the individual who is pregnant, not the government. The judgement recognized that the right to liberty guaranteed in the constitution protecting the personal privacy of an individual includes the right to abortion as well. This decision included the right to make reproductive decisions with the other fundamental rights including the freedom of religion or the freedom of speech, by granting it 'strict scrutiny' which is the highest level of constitutional protection.¹³

This significant decision was recently overturned in the Supreme Court judgement of *Dobbs v Jackson Women's Health Organization, 2022* which ruled that there exists no constitutional right to abortion and granted individual states the right to decide on their particular reproductive rights and abortion restrictions on their own. Following the judgement, most abortions have been banned in at least 13 states and about half of the states are expected to ban

¹³ *Roe v Wade* (1973) 410 US. 113

or enact severe restrictions on abortion with exception only in case of the mother's life being at risk.

In states including Alabama, Louisiana, Kentucky, Arkansas, Missouri, Tennessee, South Dakota, West Virginia, Oklahoma, Texas, Wisconsin, and Idaho nearly all abortions are banned with no exceptions in cases of rape or incest. Other States including Georgia, Arizona, Florida, Utah, and North Carolina have enacted restrictions on abortion with particular legal gestational limits in each state ranging anywhere between 6 to 20 weeks whereas, in several other states, legal battles over the enforcement of laws restricting abortions are still going on in courtrooms.¹⁴

ABORTION AS A HUMAN RIGHT

Every individual has a right to life, a right to health, and a right to be free from violence, discrimination, torture, cruelty and degrading or inhumane treatment ensured by international human rights law. 'Bodily autonomy' has been ensured under international human rights law which means that the decisions about one's body are theirs alone. Access to safe abortion can be considered a human right and denying women or any other individual is a form of discrimination and violates their human rights. The International human rights legal instruments have concluded that every individual has the right to independently decide in all reproductive matters. Legally binding or forcing someone to continue with an unwanted pregnancy or to opt for an unsafe abortion procedure violates their human rights including their bodily autonomy, right to privacy, and right to life and health.

Abortion is a deeply emotional issue that garners different opinions from different masses however, there is no question that the decision should lie with the pregnant woman who has the most stake in it and it should be up to her whether she wants to carry on with her pregnancy or not. However, it's devastating to know that a woman's ability to access safe and legal abortion is legally restricted to some extent or together in most countries around the world. Even in countries where abortion is legal, women have extremely limited access to safe abortion services

¹⁴ 'After Roe Fell: Abortion Laws by State' (*Centre for Reproductive Rights*)
<<https://reproductiverights.org/maps/abortion-laws-by-state/>> accessed 13 November 2022

because of the lack of proper knowledge, regulation, or health services. Approximately 13 percent of annual maternal deaths worldwide are resulting from unsafe abortion procedures which fall between a total of 68000 and 78000 deaths.¹⁵

It is not just cisgender women or girls (individuals assigned as female at birth) but also transgender men and boys, intersex people or people with other gender identities who have the reproductive capacity to become pregnant who require access to safe and legal abortions which is well within their human rights and these group of people are one of the foremost bearers of discrimination and stigma in accessing medical abortions. These individuals also face presumptions that they do not require access to contraception or abortion services. However, reproductive and sexual rights advocates, human rights activists, and LGBTQI rights activists are rallying towards raising awareness and making abortion legal and accessible for all individuals who require it.

Also, denial of any medical service including reproductive health services like abortion that just certain people require is a form of discrimination that violates the individual's human rights guaranteed by international human rights laws. It has been stated by the committee for the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW or the Treaty for the Rights of Women) that restrictive abortion laws are discriminatory against women which applies to people (other than women) who can become pregnant as well.¹⁶

The United Nations human rights treaty bodies have consistently urged the governments of various countries around the world to decriminalize abortions in all respects and to ensure that any individual gets access to legal and safe abortion. All nations are obligated to respect, satisfy and protect human rights including the rights concerning an individual's sexual and reproductive health and autonomy. Wherever legal and safe abortion services are restricted

¹⁵ Lisa B Haddad, 'Unsafe Abortion: Unnecessary Maternal Mortality' (2009) 2(2) Rev Obstet Gynecol <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/>> accessed 13 November 2022

¹⁶ 'Access to safe and legal abortion: an urgent call for United States to adhere to women's rights convention, UN committee' (United Nations Human Rights Office of the High Commissioner, 1 July 2022) <<https://www.ohchr.org/en/statements/2022/07/access-safe-and-legal-abortion-urgent-call-united-states-adhere-womens-rights>> accessed on 14 November 2022

unreasonably or not made available entirely, other internationally protected human rights including rights to life, health, equality, non-discrimination, information, liberty, freedom from torture, cruel, inhuman, and degrading treatment, freedom of conscience and religion and to enjoy the benefits of scientific progress, to privacy, bodily autonomy, and integrity, etc. may also be in jeopardy. In a lot of cases, individuals who resort to unsafe abortions without having any other choice are left also risk facing prosecution and even imprisonment and inhuman, degrading, and discriminatory treatment in addition to risking their health. Hence, access to safe and legal abortions is fundamentally associated with the protection and upholding of the human rights of women or anyone capable of getting pregnant and is of the utmost importance for achieving social justice.

CONCLUSION

It is extremely heartbreaking as well as enraging to witness that even in this 21st century women are still being deprived of their fundamental reproductive rights including their human right to access safe and legal abortion and are even being persecuted for the same in some countries. Not allowing access to safe abortion and forcing an individual to undergo a life-threatening unsafe abortion violate their rights to life and health which is unacceptable and is one of the foremost reasons for maternal mortality worldwide. From this article, we can deduce how essential it is for individuals to have access to safe and legal abortions therefore it is high time that all the nations around the globe join hands in reforming their obsolete restrictive policies concerning abortions and grant women and other individuals capable of getting pregnant their basic human right to get abortions for the sake of a better and just future.