

THE CATAclySMIC CONSEQUENCES OF OVER-TURNING ROE v. WADE AND ITS IMPACT ON WOMEN'S RIGHTS

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ABSTRACT

The 24th of June, 2022 was the same as every other day, ordinary and mundane. People from of all walks of life went about their day, unaware of the sordid judgement which would be pronounced in the Supreme Court of the United States of America, the world's superpower, the nation for dreamers and optimists, the nation which now took away the very constitutional right of a woman to seek abortion. This article revolves around the repercussions of the judgement pronounced in Dobbs v. Jackson Women's Health Organization¹, wherein they did not limit, but outrightly struck out the Right to Abortion from the Constitution and overruled the decade-old judgements of Roe v. Wade² and Casey v. Planned Parenthood of South-eastern Pennsylvania³ which conferred the said right to abortion.

The author seeks to highlight the negative impact of the judgement pronounced in Dobbs v. Jackson Women's Health Organization, the trajectory of reproductive rights in America, the clash in ideologies and beliefs while regulating state laws on abortion, the stigmatization which will ensue and influence other nations around the world and ultimately encourage regressive thinking and stagnation. The laws of a nation reflect the society and the progress level of the people living in it, and this judgement of Dobbs v. Jackson Women's Health Organization, is a cautionary tale of how even a world hegemony can take away the basic facet of choice in a woman's life.

Keywords: *Abortion, Dobbs v. Jackson Women's Health Organization, Maternal Mortality, Reproductive Health, Right to Choice.*

¹ 2022 WL 2276808; 2022 US LEXIS 3057

² 410 US 113 (1973)

³ (1992) 120 L. Ed 2d 67

INTRODUCTION

Etymologically, the term 'Abortion' is derived from the Latin word '*Abortio*' which means 'to miscarry'. It is a medical procedure for the termination of pregnancy. The subject of abortion is a very fragile subject-matter of discussion due to which its perception, legality and a woman's access to safe abortions varies, wherein it is restricted by law in some countries or in practice in most countries. Abortion is a vital element in a woman's healthcare.

For a period of fifty years, Abortion in America was a constitutional right vested in the citizens, which stemmed from the case of *Roe v. Wade*⁴, wherein the American Apex Court opined that the various state governments lacked the authority to outlaw abortion and that abortions would be legal up to the stage of foetal viability⁵. The Court declared that the Criminal Abortion Statute of the state of Texas which criminalized abortion, with an exception to save the life of the mother, infringes the due process clause under the fourteenth amendment.

TRAJECTORY OF ABORTION LAWS IN AMERICA

Roe v. Wade was immensely revered and influenced the laws and even the origins of statutes on a global scale. Even India's Medical Termination of Pregnancy Act, 1971 which applies to the abortion laws in India was heavily influenced by it. The scope of abortion in America was further expanded in *Planned Parenthood South-Eastern Pennsylvania v. Casey*⁶, wherein the American Supreme Court re-affirmed the case of *Roe v. Wade* and a fresh dimension to abortion right was given. The test for the constitutionality of the State's abortion restriction was postulated wherein the Court asserted that the '*Undue Burden Test*⁷' instead of the trimester chassis is to be assumed when ascertaining instances where a state's regulation restricts a woman from seeking an abortion before viability.

Hence, the two afore-mentioned cases played a vital role in the trajectory of Abortion laws in America, wherein they veered it to a positive light and mostly showcased as to how interlinked Right to Privacy and the Right to have an abortion are. The interest of the country was to protect the unborn child only after the period of viability and it stressed on the utmost priority which was to be given towards a mother's life and reproductive health. Various states cannot impede

⁴ 410 US 113 (1973)

⁵ Foetal Viability- "*The time period after which a foetus can survive in the womb. At that time, it was around seven months*"

⁶ (1992) 120 L. Ed 2d 67

⁷ Undue Burden- "*It is defined as having effect of placing substantial obstacles in the path of a woman's right to choose*"

this right without having a substantial interest of its own, wherein '*Interest*' is given a strict interpretation. However, this all changed after the pronouncement of *Dobbs v. Jackson Women's Health Organization*⁸.

On June 24th, 2022, the Supreme Court of America, in a ratio voting of six to three, opined that Abortion is not a Constitutional right but a substantive right, which was not '*deeply rooted*' in the nation's history and upheld Mississippi's Abortion law which was contended in the present case. The reception to this judgement ranged from positive to aghast. From the former, many voiced that Roe never outrightly vested a constitutional right to undergo an abortion. It instead protected, '*the woman from burdensome unduly interference with her freedom to decide whether to terminate her pregnancy*'. According to Originalism, a school of law in American Jurisprudence, it states that only the explicitly conferred rights of the American Constitution can be recognized as Constitutional Rights. If it was not stated explicitly, it could be recognized as a Constitutional right. Hence, they believe there was no explicit Constitutional Right conferred in *Roe v. Wade*.

However, the prominent school of law asserts that the Constitution has to be interpreted in a dynamic way and states that there are implied rights conferred on citizens, based on liberty and privacy in the *Equal Protection Clause* and *Due Process* in the 14th Amendment. These rights are intrinsically present in the American Constitution and are given due recognition by mapping the progress of development in the society. Thus, *Roe v. Wade* actually developed the Right to Abortion as a Constitutional Right and conferred the Constitutional Right to Abortion and terminate a pregnancy on citizens.

A POLITICALLY DIVIDED NATION

It is a known fact that America is a land which houses a myriad of ethnicities, culture and opinions. However, it is also another known fact as to how ideologically different America is, with a strong barrier of differing ideologies between the Republicans and Democrats. Governments change, but the laws made by them and their impact on society hardly ever change. For decades, Pro-life and the Pro-Choice debate has been revolving around which stance one takes in interpreting the legality and the acceptance of abortion, wherein the former seeks to restrict abortion and the latter seeks to encourage access to abortion. There are different streams of reasoning for the Pro-life movement, but its most inherent one is the Biblical

⁸ 2022 WL 2276808; 2022 US LEXIS 3057

references in the scripture which emphasizes the value of God. It is strikingly seen in the passage of *Jermiah* 1:4-5 which reads, “*Now the word of the Lord came to me, saying, 'Before I formed you in the womb, I knew you, and before you were born, I consecrated you; I appointed you a prophet to the nations'.*”

Therefore, it becomes increasingly difficult to make water-tight laws and regulations on abortion, especially when strong, religious sentiments are involved. Currently, access to abortion is limited, mostly in the Republican states wherein thirteen states have trigger laws and nine states have Pre-*Roe* laws which have not been amended. A few states are trying to create ‘*safe havens*’ for abortion, whereas, nearly sixteen states and the District of Columbia continue to protect access to abortion. Hence, even if a judgement is pronounced or a law is made, people who dissent it, mostly perceive it in a political sense where they view it as undermining their ideologies and beliefs.

WHETHER AN UNBORN CHILD CAN BE CONSIDERED TO BE A HUMAN BEING

The pressing question which has been the subject of debate between different individuals, nations and conventions is whether an unborn child can be considered to be a human being and if it can be given the status of a person or not. Despite there being a myriad of elements such as religion, ideologies, morals, ethics, sociological and legal values which heavily criticize abortion, it all boils down to whether an unborn child has a Right to Life or whether a mother has a Right to Abortion.

A study by a renowned American jurist, Ronald Myles Dworkin⁹ conducted a tedious and comprehensive study on this particular subject of abortion. He heavily criticized the contention that a foetus is given the status of a legal person from the time of conception and the theory, while backing it up with proper scientific and biological research. According to the study, a foetus has no vested *interest* before it reaches the third trimester, since biologically, prior to that, it merely consists of an embryo which does not develop an active brain up to the initial twenty-six weeks¹⁰ to feel any emotions or pain. Hence, deciding whether abortion goes against the interest of the foetus is heavily dependant on whether a foetus has interest or not, and especially not on whether interests will develop if no abortion is taking place. Therefore,

⁹ Ronald Dworkin, “*Freedom’s Law- The Moral Reading of the American Constitution*”, 90, Oxford University Press, 1999

¹⁰ Clifford Grobstein, “*Science and the Unborn- Choosing human futures*”, Basic Books, 1998-pg 13

something which is not alive cannot have interest and such interest develops only after the third semester. Thus, the cult ideology of equating abortion to murder, does not scientifically and biologically make sense if it is conducted prior to foetal development, with due care and procedure.

WHY ABORTION IS NECESSARY

Abortion is an essential healthcare choice and in America, it is a choice mostly taken by the lower strata of society, marginalized people who are severely affected by the structural inequalities such as poverty and racism. Data shows that almost seventy-five percentile of patients who undergo this medical procedure live at or below 250 percent of the poverty line of the federal.

The other sections of society who undergo abortion include LGBTQ+ community, young people, undocumented immigrants, minority communities, communities of colour and disabled community. It is extremely preposterous to take away the right and choice of a woman to undergo abortion and compel her to have a child, when she does not have either the mental, physical, emotional or monetary support to do so. According to Erin Duffin's published report¹¹, about four hundred thousand children in America are in foster care and penalizing abortion will be directly proportional to the increase in the number of children in foster care, since the mother cannot afford to raise the child.

Moreover, many women cannot afford to travel to other states, which legalizes abortion and will have no choice but to seek untrained doctors and incompetent physicians with poor facilities and medical care which may cause negative symptoms and even lead to death. According to Lisa Haddad¹², every year, about forty-two million women with unintended pregnancies choose to undergo abortion, under which, twenty million of them are unsafe. Up to sixty-eight thousand women die of unsafe abortion, making it another leading cause of maternal mortality, amounting to thirteen percent.

¹¹ Erin Duffin, "*Foster Care in the US- Number of children from 2007-2021*", Statista, publ. December 7th, 2022.

¹² Lisa B Haddad, Nawal M Nour, "*Unsafe Abortion- Unnecessary Maternal Mobility*", *Obstetrics and Gynecology*, National Library of Medicine, *Rev Obstet Gynecol*, 2008 Spring; 2(2): 122-126.

HEALTH CONSEQUENCES OF ABORTION

Globally, around five million women are being hospitalized every year due to abortion-related complications such as sepsis and haemorrhage, and such high maternal mortality levels leave around two hundred thousand children motherless.¹³ The World Health Organization¹⁴ asserts that the prominent causes of death from unsafe abortions include sepsis, genital trauma, haemorrhage, infections and necrotic bowel syndrome. Long term health consequences include infertility, poor wound healing, bowel resections and internal organ injury. The intangible consequences of unsafe abortion include depression, anxiety attacks, psychological damage and loss of productivity.

Moreover, many researchers including Lewandowska and Guillaume & Rossier^{15 16} assert that the nations wherein abortions are illegal, such as Jamaica and Egypt; or nations wherein abortions are restricted only to save a mother's life, such as Mexico and Nigeria and on the medical grounds and reasoning as seen in Qatar and Poland, women usually end up resorting to self-management for abortions at their house. Women cannot not have access to safe abortions even if they have 'obstetric complications, miscarriages, ectopic pregnancies' or if they need 'life-saving abortions or aftercare'. This also puts forth the query as to how far the various states of America can go in terms of supervising a woman's access to contraception, abortion health care facilities and services.

RIPPLES CAUSED IN THE HEALTH-CARE SECTOR

This judgement has also heavily impacted the health-care providers and clinical staff who mete out abortion care in abortion clinics such as doctors, nurses, medical assistants, patient counsellors and social workers who have been economically affected and are losing their jobs. The doctors who used to perform abortions in states where it is outlawed, are being banned from providing abortion care immediately after the pronouncement and effect of the judgement.

¹³ Benson J, DA Grimes, S Singh; "*Unsafe Abortions-The Very Preventable Pandemic*"; Lancet., 2006; 368:1908-1919

¹⁴ World Health Organization (WHO), "*The Global and Regional estimates of Incidence of Unsafe Abortion and Associated Mortality*". 5th ed. Geneva-WHO, 2007

¹⁵ Guillaume & Rossier, "*L'avortement dans le monde. Etat des lieux des legislations, mesures, tendances et consequences population*", 2018; 73(2):225-322

¹⁶ Lewandowska M, "*The Fall of Roe v. Wade- The fight for abortion and its rights is universal*"; BMJ, 2022; 377: o 1608

The physicians who specifically provided only abortions have no other recourse, but to relocate or resign.

INTERNATIONAL SCRUTINY AND INFLUENCE

Since America is a superpower in the world, it holds immense power to influence regulations and bring new changes to the Abortion provisions in other countries. Hence, I truly hope this judgement is not cited as a precedent in future suits and that this judgement comes under heavy international scrutiny. This judgement is completely against the internationally recognized principle of *Non retrogression*, which asserts that ‘*The State must not take any measures or steps that deliberately lead to the regression on the enjoyment of rights which is either prescribed under the Constitution or otherwise*’.

The International Convention for the Elimination of All Forms of Discrimination Against Women (ICESCR) & Convention on the Rights of a Child follow the principle that the woman who has an unborn child in her womb has the Fundamental Right to dignity, privacy and autonomy to choose what should happen to her body. However, America has not ratified ICESCR but it is a derivative of Universal Declaration of Human Rights, to which America is bound to. Hence, it will be altruistic if the Human Rights Council were to issue formal reprimands.

CONCLUSION

Therefore, the case of *Dobbs v. Jackson Women’s Health Organization* is a very regressive and conservative judgement and citing it or making it a cornerstone of Anti-Abortion policies would be extremely erroneous on a global-scale. Taking away the choice of a woman to have children or not, without giving any due consideration to her mental health, physical wellbeing and monetary condition, and compelling her to giving birth to children, only for them to not receive proper care and grow up in harsh circumstances, is extremely cruel and unjust in nature. The victims here are not only the women but the children as well. As US President, Joe Biden ruefully addressed the nation, the 24th of June, 2022 was indeed a sad day for the entire nation, whose ripples will be felt all across the globe.