
ABORTION AS A HUMAN RIGHTS CONCERN: WHERE DO INDIA AND USA STAND?

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ABSTRACT

Abortion refers to the removal or expulsion of a foetus, or an embryo, which results in the termination of a pregnancy. The WHO has declared it as a common health intervention, which can be *safely* carried out when done by a qualified individual, according to a procedure recommended by the WHO. This paper explores the links between abortion and claims for human rights, looking at the facets of abortion and essentially looking at abortion itself as a human rights concern. Abortion as a legally protected right is intertwined with a woman's bodily autonomy, reproductive freedom, and by extension access to safe healthcare and social justice. All these rights are often hung in the balance against the unborn foetus' right to life. Drawing upon these considerations, paper further looks into the much-debated stance of the United States of America, and then the stance of our country of origin i.e. India, on abortion, and essentially explore possible answers to the question :- '*Should human rights be considered as inherent or as recognised by the law of the State*' The Indian legislation at present addresses abortion at a centralized level with the Medical Termination of Pregnancy Act, 1971. It protects abortion, but as a limited right rather than an absolute right. Meanwhile in the USA, the recent overturn of *Roe v. Wade* has left no centralized stance, and has left each State to decide for itself, with most states banning it, others heavily regulating it, and very few upholding it. This topic is of relevance as at a time when the world is making greater strides than ever before in achieving gender equality, regressive abortion laws can set our progress decades behind.

INTRODUCTION: HUMAN RIGHTS CONCERNS IN ABORTION

International human rights standards have dramatically evolved over the past two decades to view the denial of safe abortion services as a human rights violation.¹ Through their general comments, general suggestions, and concluding observations, treaty bodies have reaffirmed that governments are required to make sure that legal abortion services are available, accessible, acceptable, and of good quality.² They have advised states to get rid of procedural barriers - like waiting periods, requirements for third-party authorization, and biased counselling - that prevent access to abortion services.³ Additionally, treaty bodies have repeatedly and explicitly urged nations to decriminalise abortion, guarantee access to safe abortion care, and acknowledge the connection between restrictive abortion legislation, a high percentage of unsafe abortions, and maternal mortality. Recently, these bodies have gone beyond defining the precise circumstances in which abortion should be permitted (such as when a woman is sexually exploited), and instead have called on states to generally guarantee access to safe abortion services as part of their duty to provide comprehensive reproductive health services. In addition to the treaty monitoring bodies, Special Procedures of the United Nations Human Rights Council have also acknowledged abortion as a human rights issue.⁴

The right to access abortion is a feminist issue that touches on a woman's fundamental right to decide what she does with and to her body. Inhibiting women's sexual freedom and upholding patriarchal and capitalist views of women's responsibilities in society go hand in hand with restricting access to abortion. Hence, this issue has more than just medical and legal facets.⁵

¹ *Health and Human Rights*

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² Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22, The Right to Sexual and Reproductive Health, UN Doc. E/C.12/GC/22(2016); CESCR General Comment no. 14, The Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4(2000), para 12; Human Rights Committee (HRC), Communication No. 1608/2007, *L.M.R. v. Argentina*, UN Doc, CCPR/ C/101/D/1608 (2011), para 10; Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Communication no. 22/2009, *L.C. v. Peru*, UN Doc. CEDAW/C/50/D/22/2009 (2011).

³ CESCR (2016, see note 4), para. 41; CEDAW Committee, Concluding Observations on Kuwait, UN Doc. CEDAW/C/KWT/CO/3-4 (2011), para. 43(b); Concluding Observations on Hungary, UN Doc. CEDAW/C/HUN/CO/7-8 (2013), paras. 30-31.

⁴ Interim Report of the Special Rapporteur on the right of everyone to the enjoyment of highest attainable standard of physical and mental health, UN Doc. A/66/254 (2011), para. 21.

⁵ Virginia Santini, "Our Right to Choose: Challenging the State's Control over Women's Bodies" [2016] Socialist Lawyer

Moral Concerns

The cause of women's liberation is undermined by the emphasis on the legalisation of abortion solely in circumstances of rape, incest, and fatal foetal abnormality rather than the calling for all women to have access to reproductive rights in all situations and without the need for justification. Identifying 'good' and 'bad' abortions perpetuates the moralistic and sexist attitudes. Focusing only on the most tragic and extreme circumstances while determining the prospects of an abortion promotes having opinions about women's motivations and morals, and implies that others can decide if a woman has a valid reason for wanting an abortion. Abortion access can be empowering, but focusing on tragic incidents will reduce women to victims of adversity and violence rather than agents with control over their bodies and lives. The fight for women's liberation, the fight against male ownership of women's bodies, and the desire to overthrow the patriarchal family structure that fosters both economic and gender oppression, are all intrinsically tied to the fight for abortion rights.

Another significant moral challenge arises when stringent abortion regulations are defended under the pretext of protecting unborn life. Prenatal life may be maintained as an independent right or a state interest against the widespread denigration of human life, and this purpose may be influenced by religious or secular beliefs.⁶ When the law defines abortion as an ethically or morally relevant act, it gives reason to regulate it as a social act rather than just a person's choice or medical treatment. Many draw a line of distinction between an embryo and a foetus based on gestational period, and cite that it is morally justifiable to abort the former, but morally questionable to abort the latter. International human rights law does not contest this objective of abortion law, but rather acknowledges that abortion legislation may have a legitimate purpose in the protection of morals, which includes the right to life of the unborn or the sanctity of life as a matter of public interest.⁷

As a natural consequence of moral and gestational abortion-bans comes coerced birth, which is a grave violation of human rights because it violates both reproductive freedom, which is understood to include both body and mind, and the freedom to choose one's own life course, as well as physical integrity by performing a medical procedure without consent. The European

⁶ Eser A., Koch H-G. In: *Abortion and the law: From international comparison to legal policy*. Silverman E., editor. The Hague: TMC Asser; 2005. pp. 13–17. (trans)

⁷ *Open Door Counselling and Dublin Well Woman v. Ireland*. 1992 See. Application Nos. 14234/88 and 14235/88, Eur. Ct. H.R. *Vo v. France*. 2004 Application No. 53924/00, Eur. Ct. H.R.

Court also acknowledges that, in accordance with the European Convention on Human Rights, a woman's right to respect for her private and family life is affected by laws governing abortion and, more broadly, whether she chooses to have children or not.⁸ Conceptualising this right in a broader manner plays a critical role in examining the morality in a woman's decision for later abortion.

Health Concerns

The World Health Organization's (WHO) guidance on safe abortion⁹ advises against gestational limitations and required waiting periods because they pose access barriers and, consequently, human rights concerns. The guideline explicitly recommends against laws and other regulations that prohibit abortion based on gestational age limits. They have reported that gestational age limits are associated with increased rates of maternal mortality and poor health outcomes. Their studies also revealed that where women requested abortions but were denied care purely because of gestational age, it resulted in the continuation of an unwanted pregnancies for several women who were mentally, physically or financially unfit to have the baby. This result can be seen as being in conflict with the duty in international human rights legislation to provide abortion when a woman would experience significant pain or suffering if she carried a pregnancy to term, regardless of the viability of the pregnancy.

Also in cases where women cannot avail an abortion under her own country's legislation and neither travel to avail a safe abortion elsewhere, she is forced into more precarious practice without legal protection. Abortion should not cost a woman her life, by death or by imprisonment

Justice

The most frequent claim for justice in terms of abortion is the understanding that abortion will always be a necessity alongside pregnancy.¹⁰ International human rights law must insist that states specifically offer legal, safe, and accessible abortion in the second trimester and beyond

⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, European Treaty Series No. 5 (1950), Article 8. See also. P. and S. v. Poland. 2012 Application No. 57375/08, Eur. Ct. H.R. para. 96.

⁹ Abortion care guideline. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO

¹⁰ Harris L.H., Grossman D. "Confronting the challenge of unsafe second-trimester abortion" International Journal of Gynaecology and Obstetrics. 2011;115(1):77-79. pp

if women are to survive pregnancy and avoid potentially fatal clandestine abortions.¹¹

However, second trimester and later abortion frequently lack professional and public support, leading to a shortage of human resources, insufficient training and direction on medical treatment, and severely constrained availability and access in the public sector. The missing deaths and suffering of women denied access to safe and lawful abortion at a later stage in pregnancy is itself a human rights issue. The first and most basic entitlement of human rights law is the right to be acknowledged as a person whose health and life matters.¹² Women seek or are required to access later abortion for different reasons. Some discover foetal diagnoses or symptoms, others go through the onset or worsening of a health issue for which termination is medically advised, and yet other individuals go through a change in circumstances that forces them to re-evaluate their priorities. Before placing blame or responsibility for the delay on the women themselves, it is important to consider what these causes of delay reveal about the context in which women access resources, make decisions, and seek information about abortion.¹³ The reasons why women seek and need later abortion raise a second and distinct justice claim, where they reveal scope for public policy interventions to address underlying needs that create the delay.¹⁴ A third claim of justice focuses on the effects of delay and what happens to women who find themselves past legal or customary gestational age restrictions. Many women endure severe financial, physical, and emotional suffering when they travel to seek legal assistance. The culmination of these struggles—the tremendous effort that a woman have to do, the unshakable conviction she must possess, and the significant resources she must use to get services—has generally not been fully captured by international human rights law.¹⁵

¹¹ UN Human Rights Committee. General Comment No. 28. UN Doc. No. CCPR/C/21/Rev.1/Add.10. Equality of Rights between Men and Women (Article 3) 2000

¹² Graham W., Hussein J. “The right to count” *Lancet*. 2004;363:67–68. pp.

¹³ Blake M.T., et al. “Factors associated with the delay in seeking legal abortion for pregnancy resulting from rape” *International Archives of Medicine*. 2015;8/29 doi: 10.3823/1628.

¹⁴ Marie Stopes International. *Late Abortion: A research study of women undergoing abortion between 19 and 24 weeks gestation*. London: MSI; 2008.
<http://www.shnwales.org.uk/Documents/485/Research,%20late%20abortion%20Marie%20Stopes.pdf> available online.

¹⁵ Purcell C., et al. “Access to and experience of later abortion: Accounts from women in Scotland” *Perspectives on Sexual and Reproductive Health*. 2014;46(2):101–108. pp. Kelly L., Tuszynski N. “Introduction: Banishing Women: The Law and Politics of Abortion Travel” 2016;33(1):25–28. See also: pp. set of essays that grapple with these enduring questions of feminism and citizenship in the context of reproductive rights and justice.

COMPARATIVE ANALYSIS BETWEEN USA AND INDIA'S STANCE ON RIGHT TO ABORTION

USA's stance

The Committee on the Elimination of Discrimination against Women (CEDAW) Convention is regarded as the one and only near-universal treaty in terms of protection of women's human rights, inclusive of their reproductive and sexual health rights. Article 12 of the CEDAW Convention covers the right to health, which protects the right to bodily autonomy of women. The right to decide of free will and having access to information and education regarding abortion is also protected under Article 16(e) of the CEDAW Convention. The Committee has consistently urged State parties to the CEDAW Convention to dismiss any existing punitive measures for women in case they opt for an abortion¹⁶. Furthermore, the Committee also advised that abortion should be legalized at least in cases where the pregnancy is the result of rape or incest, or if the pregnancy threatens the woman's life or health, or if the foetus is severely impaired¹⁷.

Article 12 of the International Covenant of Economic, Social, and Cultural Rights (ICESCR) states that the right to sexual and reproductive health is an essential component of the right to health. General Comment No. 22 of 2016 was aimed at assisting States parties to implement the Covenant and comply with their reporting obligations under it¹⁸. It mainly pertains to the States parties' obligation to safeguard each person's enjoyment of their right to sexual and reproductive health, as outlined in article 12. The Committee on Economic, Social, and Cultural Rights (CESCR), which monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its State parties has also recognized that abortion services be made economically accessible, advising the States to either reduce the cost of abortion or to provide financial services, if and when needed¹⁹. While recognizing the deep hole that abortion

¹⁶ *Access to safe and legal abortion: Urgent call for united states to adhere to women's rights convention, UN Committee (2022) OHCHR*. Available at: <https://www.ohchr.org/en/statements/2022/07/access-safe-and-legal-abortion-urgent-call-united-states-adhere-womens-rights> (Accessed: November 2, 2022).

¹⁷ *Ibid*.

¹⁸ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22, The Right to Sexual and Reproductive Health, UN Doc. E/C.12/GC/22(2016)

¹⁹ Centre for Reproductive Rights, "Breaking Ground: Treaty Monitoring Bodies on Reproductive Rights" (2019, United States of America)

causes to women's pockets, it has also recognized that the fees often act as a barrier to women's autonomy and informed choice²⁰.

The United States of America, arguably the most developed nation in the world is one of the only seven countries in the world that is not a party to the CEDAW Convention²¹. The United States had signed the CEDAW Convention in 1980, however it was never ratified. Similarly, the United States of America signed the ICESCR in 1977, but did not ratify the covenant²². While signing only creates an obligation on the state, ratifying legally binds a state to implement the Convention. Being a signatory to the covenant merely means that the state must refrain from doing acts that would defeat the object and purpose of the treaty. Since the Convention is not legally binding on the United States, it allows the nation the freedom to make laws regarding sexual and abortion health at their whim. One of the biggest tenets of Abortion law in the United States of America was placed in the decision of *Roe v. Wade*²³, which established the right to abortion as a matter of privacy and had remained as the pioneer in doing so. This case had been a landmark judgment which made the right to an abortion until the point the foetus could survive outside the womb, which is usually 22-24 weeks of pregnancy a constitutional right. The Court balanced the State's interest in protecting potential human life and the privacy rights of the woman seeking abortion. It recognized that the constitutional right to privacy came from the Due Process Clause of the Fourteenth Amendment and extended to having control over one's pregnancy. The Court acknowledged that a forced pregnancy put the woman's physical health, mental health, financial burdens and social stigma at high risk. While discussing different views on when life actually begins, the Court took into consideration the beliefs in many faiths, but emphasized that the Constitution did not accord for a definition of a 'person'. After scrutinizing cases related to unborn children, the court held "the unborn have never been recognized in the law as persons in the whole sense."²⁴ It was finally concluded that when life begins is not a matter for the states to decide:

*"[W]e do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake."*²⁵

²⁰ Ibid.

²¹ Ibid.

²² United Nations Treaty Collection, Depository.

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-3&chapter=4

²³ 410 U.S. 113 (1973)

²⁴ *Roe v. Wade* 410 U.S. 113 (1973)

²⁵ Ibid.

Since Donald Trump came into power and Justice Ruth Bader Ginsburg passed away, the bench of the US Supreme Court had been occupied by conservative judges. On 24th June 2022, the US Supreme Court in *Dobbs v. Jackson's Women's Health*²⁶, which challenged the abortion statute in Mississippi and the validity of *Roe v. Wade*, in a 6:3 majority overturned the 1973 landmark judgment. The State argued that although this case upheld women's independence and their equality, it has been the centre of critique ever since the decision came out. Moreover, the whole case had been controversial from the beginning and hence could not be relied upon as established law. The argument of stare decisis was also defeated because the case dealt with constitutional interpretation²⁷. In the decision, the court cited that abortion was not referred to in the constitution and that it was not 'deeply rooted in this Nation's history and tradition' either²⁸. While arguing that *Roe's* reasoning was 'exceedingly weak', the court also mentioned the State had 'legitimate interests' in regulating abortion i.e., in preserving the life of a prenatal in all stages of development²⁹.

Without the protection of the CEDAW Convention, the states were validly able to pass laws that held abortion illegal. However, the regressive decision in *Dobbs* although did not mean that abortion would be immediately banned in all of USA, it gave the member states of USA the authority to make their own laws regulating the termination of pregnancy. Abortion was restricted by way of TRAP, which is Targeted Regulation of Abortion Providers, which would single-out physicians providing abortion care and would reprimand them for the same by imposing on them legal requirements which would be more burdensome than those placed on other physicians³⁰. As these laws do not increase the safety of patients, it is believed that they exist merely as a legal hurdle for abortion providers. Republican Henry Hyde in 1976 introduced a budget rider which is famously known as the 'Hyde Amendment' which introduced restrictions on federal funding for abortion³¹. Ever since the Hyde Amendment has been introduced, the Congress has renewed it every year.

²⁶ No. 19-1932, 597 US 2022

²⁷ Laura Temme, 'Why Was *Roe v. Wade* Overturned?' (*Find Law*, 6 July 2022) <https://supreme.findlaw.com/supreme-court-insights/could-roe-v--wade-be-overturned-.html>

²⁸ Jonah McKeown, 'Why Was *Roe v. Wade* Overturned?' (*CAN*, 25 June 2022) <https://www.catholicnewsagency.com/news/251637/why-was-roe-v-wade-overturned-heres-a-look-at-some-of-the-reasons-given>

²⁹ *Ibid.*

³⁰ 'After *Roe* Fell' (*CRR*, 2022) <https://reproductiverights.org/maps/abortion-laws-by-state/>

³¹ *Ibid.*

Since States have the autonomy of setting their own abortion related laws, all of them had the freedom to set their respective gestational periods up to which pregnancy was allowed, set certain exceptions to those limits and to introduce any other factors the legislature of the states deem fit. There are laws which required the parents or legal guardian to be notified by way of a parental notification if the person seeking abortion was young and some also require parental consent before abortion is performed. There are also laws which mandate biased and often inaccurate counseling to pregnant people and useless waiting periods, or even ultra sounds prior to getting abortion care. Although these laws serve no purpose medically, they are essentially put in place to discourage people from exercising their bodily autonomy³². There are 13 states so far that have banned abortion and 5 states that have placed a gestational limit on terminating a pregnancy, ranging from 6 to 20 weeks³³. The most appalling characteristic of these bans is that most of the states which have banned abortions do not allow for exceptions of rape and incest, although there are exceptions for life- threatening pregnancies. However, among the states that had an abortion ban, by subsequent filing of a suit by an executive and in some cases, a good Samaritan, bans have been blocked in 8 states, meaning abortion continues to be legal in those states³⁴.

Therefore, in the absence of centralized legislation and without the ratification of CEDAW and ICESCR, and after the overturning of *Roe v. Wade*, States got the autonomy to make their own laws regarding abortion without necessarily flouting their treaty obligations. While some states had blanket bans on abortion with no change of opinion regarding the same, some also surprisingly placed a ban on abortion and some had trigger bans in place which were immediately blocked, showcasing the widespread change in opinion. Had the US ratified the CEDAW and ICESCR Conventions, it would have added as a protective shield around the sexual and reproductive rights of women. Therefore, it is of absolute necessity to incorporate the right to abortion in the law of the land, which would result in the right staying protected despite the political and legal climate of the state.

Hence, at present, USA is largely denying its women the right to abortion, and by extension of it the very fundamental human rights of their bodily autonomy, safe healthcare, and social justice. Abortion is either entirely illegal in some states, or heavily restricted in others, with

³² Ibid.

³³ 'Tracking the States Where Abortion Is Now Banned' (The New York Times, 11 October 2022) <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>

³⁴ Ibid.

gestational bans (posing health risks, as discussed above) and familial and social consent barriers (which challenge a woman's own authority on her body). The denial to legalize abortion even in unjust and cruel situations like rape is practically punishing a woman for being raped. Moreover, banning abortion is not even likely to stop abortion, it is only likely to force women to obtain illegal unsafe abortions, or spend a vast amount of their resources on travelling to another country for safe abortions. Added to this mix is also the mental stress and agony a woman goes through, in her own home country, due to her inability to safely and legally exercise her reproductive freedom.

Abortions can be protected via statute or mention in the state constitution, which safeguards the right. The best way to protect the right to abortion is by passing a statute which protects abortion. By providing constitutional protection to abortion, a State will have safeguarded women's right to bodily autonomy in the highest order by separating its existence from any federal constitutional right. Among the 10 states where abortion is legal although limited and 15 states where abortion is fully legal, several of them have included the right to abortion in their respective constitution or the process is still underway³⁵. Certain states have also state funded abortion procedures, while some have not. The state of Colorado went as far as not giving personhood to fetuses under their state law³⁶. North Dakota has codified legal abortion into their state law³⁷.

India's stance

Abortion was punishable in India under British administration in 1860 by a prison term, a fine, or both³⁸. Only in 1971 was a distinct law for reproductive rights created and approved by the Indian Parliament in the form of the Medical Termination of Pregnancy (MTP) Act. Through this Act, the Indian Parliament allowed for the medical termination of pregnancies for special categories of women, such as rape survivors, women with mental disabilities, minors, women with abnormally developing foetuses, etc. for up to 24 weeks. However, this Act systematically excluded unmarried women in consensual relationships for the longest time.

Through an amendment to the Act in 2021, the phrase "*any woman or her partner*" was introduced in place of "*married woman or her husband*," indicating the intent of the legislature

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Akanksha Khullar, 'Amended abortion rights in India' (*ORF*, 10 October 2022)

to bring pregnancies occurring outside the institution of marriage under the protective ambit of the law as well.

In September 2022, the Supreme Court of India passed a progressive ruling, which included all women - regardless of their marital status – under the ambit of the MTP Act, thereby reflecting India's commitment towards treating safe legal abortions as every woman's Constitutional right. The Court re-interpreted Rule 3B of the *Medical Termination of Pregnancy Rules 2003*, as per which only certain categories of women were permitted to seek a termination of their pregnancy between 20-24 weeks, under certain extraordinary circumstances. The court took a collective reading of all the sub-clauses under Rule 3B and came to the conclusion that none of them explicitly specify that the woman in question has to be married, they only specify the circumstances a woman may face in which she can avail an abortion, such as sexual assault or change in marital status, among others. The court also noted that it would be unconstitutional to distinguish between women based on their marital status for them to be able to avail protection under a law. The court held that the MTP Act should be interpreted in tune with societal realities, and acknowledged that granting only married women the right to terminate their pregnancy would be traditional and stereotypical as it would mean believing that unmarried people do not engage in sexual intercourse.³⁹ The Court stressed on the basic right to bodily autonomy, which every woman is entitled to.

While this ruling was a step in the right direction as it did pave the way for the rights of unmarried women, the enforcement of the right is still largely dependent on a case-to-case basis, taking the unique facts and circumstances of each woman into account. The origin of this right is still not based entirely and plainly on a woman's choice, as a woman must have to prove certain circumstances that have rendered the pregnancy unviable. And this somewhat continues to feed into the distinction between a 'good' and 'bad' abortion, which basically is a distinction balanced against a woman's personal choices, and gives others a debatably unjust power to determine when a woman *deserves* to be eligible for abortion.

India has also signed and ratified the CEDAW Convention as well as the ICESR, which bind it to the internationally established obligation of safeguarding a woman's right to reproductive

³⁹ Ibid.

freedom and bodily autonomy, and ensuring that she is not discriminated against on any grounds while legally exercising this right.

On the pro-choice versus pro-life debate in terms of the issue of gestational bans and the Right to Life for an unborn foetus which is traditionally recognised after a certain point into the pregnancy, although the MTP Act permits abortion only up to 24 weeks, a woman past 24 weeks is not entirely out of remedies and could approach the High Court in prayer of termination of pregnancy.

The Telangana High Court recently delivered a verdict balancing the rights of the mother vis-a-vis the foetus. A 16-year old approached the court seeking to terminate her 26-week long pregnancy which was caused due to rape and sexual assault. The court delivered a pro-choice verdict in the matter and cited the importance of Article 21 of the Indian Constitution, which guarantees the fundamental right of Life and Liberty to everyone taking under its ambit the right to reproductive choice. The flip side of the coin however grants the unborn foetus the right to life. Hence, the courts have to balance the interests of the mother and the foetus.

The opinion of the bench was that Article 21 would be violated if the minor girl was allowed to continue her pregnancy which was a result of rape. Offering primacy to the life of the mother over the foetus' life, the court allowed termination of pregnancy.

However, there have been cases where the courts have taken the opposite (pro-life) approach as well. In the case of *Indulekha Sreejith v. Union of India* (2021), the Kerala High Court was approached by a woman petitioning to terminate her 31-week pregnancy. The Court emphasised on the rights of the unborn foetus and equated it with that of a born child and upheld the foetus' Right to life under Article 21. Even the Calcutta High Court, in *Re: Suparna Debnath and Anr. v. State of West Bengal* (2019), held that a 26 week old foetus' right to life overthrows the mother's mental agony and lack of financial resources.

Therefore, it can be understood that while a lot of the Indian legislation on abortion is based on circumstantial factors, and differences of opinion by several High Courts across the nation, at the very core abortion stays a uniformly protected right across India since there is a dedicated legislation at the Central level regarding the same, which safeguards the right to terminate. Although, this right is not absolute in nature and is weighed alongside other considerations, India has overall succeeded in creating a comparatively safer reproductive environment for

women than the USA. The irony is inherent in the fact that India being a third-world country is ahead of the world's largest superpower in terms of providing basic human rights under the ambit of abortion.

Yet, India's struggle with the matter is beyond just its legislation. Abortion is still a social stigma, especially amongst the lower rungs of society. As a result, families and sometimes even medical healthcare practitioners tend to obstruct the right of abortion. For India, slowly liberalising its legislation is just one step, but spreading adequate information, awareness and education is a larger obstacle in the effective use of abortion rights.

CONCLUSION

The right to abortion is fundamentally linked to a woman's bodily autonomy, reproductive freedom and essentially her right to privacy and life. Through an analysis of USA's stance on the right to abortion, it was discovered that since this right has not been vested in, or derived out of, the nation's constitution, and does not enjoy any centralized legal protection, it has provided leeway for the now conservative Supreme Court to scrap its liberal interpretation of this right established in *Roe v. Wade*. That, taken together USA's lack of treaty obligations, has also resulted in each state coming up with its own legislations on the matter, most of which are heavily or entirely restrictive, with only a few exceptions. In India, the right to abortion stems from the Right to Privacy and Right to Life enshrined in the Indian Constitution as fundamental rights. While the right to abortion is protected by a centralized legislation in India, it is still not an absolute right that a woman can exercise at her personal instance.

The other side of the coin is the 'pro-life' debate, which considers an unborn foetus' right to life, but at the cost of an already existing woman's rights.

From these considerations on abortion as a human right, and the examples of USA and India, we arrive at an answer for the question, "*should human rights be considered as inherent or as recognised by the law of the State?*" Without proper legal recognition, evidently human rights, especially for women, will continue to be weighed against societal, cultural, and patriarchal notions, and more often than not the rights will be outweighed.