
IS MY BODY MINE?

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ABSTRACT

Reproductive autonomy is a fundamental human right, yet its legal recognition remains deeply contested worldwide. The 2022 overturning of *Roe v. Wade* marked a critical regression in women's rights, reinforcing patriarchal structures that deny women agency over their own bodies. This decision not only criminalized abortion in several U.S. states but also set a troubling precedent that undermines reproductive rights globally. This paper explores the historical and legal context of abortion rights, analysing the intersection of gender, autonomy, and state control over bodily decisions. It argues that abortion restrictions reinforce systemic gender discrimination by reducing women to their reproductive capacities and perpetuating inequality. Through an examination of international human rights frameworks and key rulings, this paper highlights the legal obligations of states to uphold reproductive rights as a component of privacy, health, and freedom from discrimination. The discussion also addresses the impact of restrictive abortion laws, which not only violate women's rights but also disproportionately harm marginalized and impoverished communities by making safe reproductive healthcare a privilege for the wealthy while forcing economically disadvantaged women into unsafe alternatives. The paper further engages with the ongoing debate between "pro-choice" and "pro-life" perspectives, dismantling the false dichotomy between life and choice by emphasizing that human rights protections extend to individuals after birth. The jurisprudence of international bodies consistently prioritizes the rights of pregnant individuals over fetal interests, reinforcing the necessity of legal access to abortion. Ultimately, this paper argues that the criminalization of abortion is a violation of fundamental human rights, including bodily autonomy, equality, and the right to health. It calls for urgent legal reforms to decriminalize abortion, expand access to reproductive healthcare, and align domestic laws with evolving international human rights standards. By framing abortion as an essential aspect of gender equality and reproductive justice, the paper advocates for a global shift toward recognizing and protecting women's rights as human rights.

1. Introduction

Human rights are often presumed to apply universally to everyone everywhere equally, without exception on the basis of caste, creed, race, gender etc. However, this assumption could not be further from the reality we witness today. By virtue of their identity, each human's rights are protected differently under the international legal framework as well the domestic ones. More frequently than not, laws of the land conveniently exclude women's rights from their core principles. This may be because since the beginning of time, power structures have been created and dominated by men, who have imposed their authority over the rest of us. A male-centric framework deemed itself capable of making decisions regarding fundamental issues on women's rights, whether it came to their working rights, voting rights or even rights over their own body.

When the State, or any authority, claims power to govern a person's bodily rights, it consequently commits one of the gravest infringements on human rights, by stripping individuals of their very autonomy and agency. Any such event that has resulted in the loss of personal choice and decision-making power has consistently been met with severe protests from those affected directly as well those who seek to uphold human rights. One such significant wave of protests arose in response to the 2022 overturning of *Roe v. Wade*¹ (herein after referred to as *Roe*) in the United States, reigniting the centuries-old struggle that women embarked for seeking control over their own reproductive rights. Overturning of the landmark judgement met with severe resistance, with human rights organizations around the world issuing statements addressed to the White House, high-profile celebrities speaking up in condemnation of the Court's decision, and women worldwide coming along to engage in discussions around State's control over their reproductive choices.

With the overturn of *Roe*, came into picture the recriminalization of abortion in the U.S. The 1973 landmark decision had done remarkable wonders for women across the nation by recognizing that a woman's right to privacy includes her very choice to terminate a pregnancy. The ruling had thereby stressed the importance of safeguarding women's reproductive rights and finding criminalization of abortion as unconstitutional. However, with *Dobbs v. Jackson Women's Health Organization*² which overturned *Roe*, the State has now overstepped its

¹ *Roe v Wade* 410 U.S. 113 (1973).

² *Dobbs v Jackson Women's Health Organization*, 597 U.S. 215 (2022).

authority by encroaching upon women's decision-making agency. While it is tough to solely blame a single entity for such a draconian ruling on part of the Court, some of the primary reasons could be society's obsession with strict binary gender roles system. Despite the heights of modernization that nations may have achieved, most of society is still rooted in a deeply patriarchal and dated mindset that regards women primarily as instruments of reproduction. By denying women their reproductive rights, society effectively reduces them to a subhuman status, seizing control over their autonomy in life-defining choices.

Society's perspective often equates womanhood solely with motherhood, as though a woman's identity and worth are intrinsically tied to her reproductive abilities, thereby reducing their roles to child-bearers and caregivers alone. While some nations, such as Iraq and Malta, have instituted total bans on abortion, others, like Canada and Australia, permit legal abortions within specific gestational limits. In the U.S. however, abortion rights vary significantly across states, some states like the New York State supports access to abortion, while more conservative states like Texas impose strict bans. Furthermore, abortion rights are frequently politicized in the States, with U.S. Senate leaders and Supreme Court justices, particularly those aligned with the Republican party, often enacting policies that restrict reproductive rights as opposed to those affiliated with the Democratic party. The lack of national, let alone global, consensus on abortion underscores an urgent need to stress the value of reproductive autonomy and reproductive privacy as essential components under the framework of women's rights.³

There is need to look at women's rights in coherence with the various fundamental rights provisions. For example, the US constitution under its Fourteenth Amendment guarantees right to privacy under the broader right to liberty for its citizens. By reversing *Roe*, the Court has acted in contravention with such rights, thereby opening up several pathways for severe restrictions on women's rights, equality, and health. This reversal may bring significant and far-reaching consequences, such as restricted access to abortion even in cases of miscarriage, compelled travel across state lines for emergency care, psychological harm caused to women and girls who carry unwanted pregnancies to term etc. Additionally, from a practical standpoint, criminalizing abortion does not eliminate it; rather, it pushes the practice underground, increasing risks of unsafe procedures that may result in severe health

³ Lance Gable, 'Reproductive Health as a Human Right' (2011) 60 SSRN Electronic Journal.

complications such as infections, haemorrhage, reproductive trauma, or even maternal death.⁴

2. Why do we need Abortion Rights: The International Human Rights Framework

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) mandates that States recognize the right of everyone to the highest attainable standard of physical and mental health. While this provision does not explicitly mention reproductive rights, the Committee's General Comments have clarified that the Covenant's intent is to protect women's reproductive rights. For instance, General Comment 14 outlines "the right to control one's health and body," linking it to both the right to health and to freedom from discrimination and harmful cultural practices that endanger reproductive health. The Special Rapporteur on the Right to Health further emphasized that forced pregnancies are "fundamentally and inherently inconsistent with the right to health." Through its provisions and interpretive comments, the ICESCR establishes a legal foundation for reproductive health rights, carrying a clear implication of protecting bodily autonomy. General Comment 22 from the Committee on Economic, Social and Cultural Rights (CESCR) emphasizes that States must ensure affordable, accessible, and high-quality abortion services as part of their healthcare obligations, asserting that these rights include freedom from violence, coercion, and discrimination in reproductive decisions.

Abortion rights are intertwined with broader human rights, such as physical and mental integrity, right to life, liberty and security, freedom from inhumane treatment, privacy, and equality. In *Mellet v. Ireland*⁵, a landmark case, Ireland's failure to provide post-abortion care was ruled a serious violation of one's rights under Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which protects one against cruel, inhuman, or degrading treatment, as well as Article 17, which safeguards privacy. This judgment revealed the discriminatory treatment faced by those who choose abortion in cases of fatal fetal abnormality, contrasting with the support provided to those experiencing stillbirth. The ratio, along with General Comment 22, stresses the need for states to decriminalize abortion, liberalize restrictive laws, and ensure safe, accessible abortion services and quality post-abortion care for all women. However, the United States has not ratified the ICESCR, thereby avoiding obligations to provide essential health services. This lack of commitment allows States to

⁴ Human Rights Watch, 'Human Rights Crisis: Abortion in the United States after Dobbs' (*Human Rights Watch* 18 April 2023) <<https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs>>.

⁵ *Mellet v Ireland*, UN Doc CCPR/C/116/D/2324/2013, IHRL 4106 (UNHRC 2016).

impose subjective moral standards, limit reproductive autonomy, and perpetuate stigma and discrimination against women for the reproductive choices they make.

2.1 Autonomy

One of the most considerable consequences of criminalizing abortions anywhere is the severe hit it takes on an individual's bodily and decisional autonomy, effectively denying those who with reproductive abilities their very agency, dignity, privacy, and equality. The right to decide if, when, and how many children to have has long been recognized as a woman's right by the United Nations (UN), notably in the International Conference on Population and Development (1994) and the UN Conference on Women (1995). The reproductive rights framework, as outlined by Lance Gable, underscores the importance of preserving these fundamental human rights aspects related to reproduction, thereby advocating for individuals' freedom to make autonomous reproductive choices without interference from the government or external entities.

Article 1 of the American Declaration guarantees the right to "life, liberty, and the security of his person," a right that includes reproductive freedom as a core component of personal integrity, stressing that decisions around pregnancy are among the most intimate choices a person can make about their own body. Women's autonomy over their lives is deeply tied to their "ability to control their reproductive lives," thereby urging protection for the physical and psychological integrity of pregnant individuals from any undue interference. General Comment No. 22 on the right to sexual and reproductive health (Article 12 of ICESCR) also affirms the right to make independent and responsible decisions, free from violence, coercion, or discrimination, about one's body and reproductive health. Additionally, Article 5 of the American Declaration, which supports the right to respect for private and family life, is closely tied to reproductive autonomy.

Restricting a woman's choices, such as through abortion bans, encroaches on individual privacy in family planning decisions, thereby highlighting the need for greater freedom from arbitrary influences by the government or third parties.⁶ The *Tysiāc v. Poland*⁷ case illustrates

⁶ Mischa Gureghian-Hall, 'Abortion Rights in International Law: The Inter-American Human Rights System and a Post-Roe v. Wade America' (*Ssrn.com* March 2022) <<https://ssrn.com/abstract=4101586>> accessed 26 October 2024.

⁷ *Tysiāc v Poland*, Application no. 5410/03 (2007).

the harm of restrictive abortion laws. The case covers a Polish law which only permitted abortion when there was a clear danger to the woman's life or in cases of non-consensual conception. In this case, the victim, who suffered from severe myopia, was denied an abortion despite the grave and impending risk to her vision, ultimately costing her eyesight. This was deemed a violation of Article 8 of the European Convention on Human Rights (ECHR), which protects respect for private life. Thereby, the Court affirmed that abortions fell under scope of privacy.

2.2 Discrimination

The Human Rights Committee affirms that States party to the International Covenant on Civil and Political Rights (ICCPR) should not enact anti-abortion measures that violate a pregnant woman's or girl's right to life. States must ensure effective, safe, and legal access to abortion when the life or health of the pregnant individual is at risk, or when continuing the pregnancy is causing her substantial pain or suffering. This perspective was echoed in the *KL v. Peru*⁸ case, where a 17-year-old was forced to carry a pregnancy to term despite the fetus having diagnosed of anencephaly, a fatal disease. The Human Rights Committee ruled that denying her access to a legal abortion violated fundamental human rights, including her right to privacy and special protection as a minor. The Committee also recognized that the severe mental suffering resulting from the inability to obtain a legal therapeutic abortion amounted to torture, and cruel, inhuman, and degrading treatment inflicted on her and that her rights should have been protected.

Gender equality demands that women's distinct health needs are addressed, with services tailored to their specific life cycles. Article 2 of the American Declaration guarantees equality before the law, moreover non-discrimination is a peremptory norm in international law. These principles require the elimination of both direct and indirect discrimination, promoting both formal and substantive equality. Substantive equality ensures that practices, laws, and policies do not perpetuate but rather alleviate the systemic disadvantages women face in exercising their right to sexual and reproductive health. Gender-based stereotypes such as that women are subordinate to men or should primarily fulfil caregiving and reproductive roles alone are massive obstacles to achieving substantive gender equality which includes rights to sexual and

⁸ *K.L. v Peru*, Communication No. 1153/2003, UN doc CCPR/C/85/D/1153/2003 (2005).

reproductive health. Restricting access to abortion constitutes discrimination against women and girls, violating their rights to equality and freedom from gender-based discrimination.

The Working Group on Discrimination Against Women (WGDAW) notes that in countries where abortion is restricted or unavailable, safe termination of pregnancy becomes a privilege accessible mainly to the wealthy, while women with limited resources are often forced to seek unsafe alternatives. This creates severe discrimination against economically disadvantaged women, disproportionately affecting those in poverty and rendering safe abortion a privilege reserved for the rich alone. Therefore, human rights must be established to protect the ability of everyone to exercise these rights, ensuring equal protection of all and safeguarding women everywhere against coercion and discrimination.

2.3 Pro-choice v. Pro-life

The Internet is sharply divided into two main teams, identifying as “Pro-choice” and “Pro-life”, which essentially reflect stances on abortion: supporting or opposing it respectively. Beyond the oversimplification of such arguments, the term “Pro-choice” is often misleading, as it may be perceived that it is centred on a mere “choice” alone when in reality it centres on the individual’s right to life and autonomy over their body. Separating “choice” from “life” implies a false dichotomy, overlooking that they are interdependent. The debate typically revolves around assessing abortion in terms of the fetus’s “right to life from conception” versus the woman’s right to make choices about her body. However, human rights protections apply to individuals existing after birth. In this debate, it is the woman that has had an established existence, with recognized rights, long before the fetus has even developed or even conceived.

Anti-abortion advocates often overlook the severe consequences of forced pregnancy and motherhood on both the woman and child, advocating exclusively for fetal life. Notably, the Convention on the Rights of the Child does not grant rights to the fetus before birth. In General Comment 36 on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee clarified that States must prioritize the pregnant woman’s right to life by rejecting measures such as criminalizing pregnancies in unmarried women or penalizing those seeking abortion. Such arguments reinforce the precedence of woman’s rights

over fetal rights, signalling the legal jurisprudence's inclination towards a pro-choice stance.⁹ In the case of *LC v. Peru*¹⁰, a young girl who became pregnant because of repeated sexual abuse attempted suicide, resulting in a spinal injury that left her paraplegic and in urgent need of surgery. However, due to her pregnancy, the surgery was delayed, and she was denied an abortion; ultimately, she miscarried. This delay led to irreversible paralysis, leaving her in need of lifelong care. The Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) reiterated that the rights of pregnant women including their privacy and autonomy, should take precedence over protecting fetal life, settling the debate of choosing pro-choice over pro-life.

3. Way Forward

In General Recommendation 35, the Committee on CEDAW identified the criminalization of abortion, along with the delay or denial of safe abortion and post-abortion care, as not only infringements on women's sexual and reproductive health rights but also as "forms of gender-based violence that may amount to torture or cruel, inhuman, or degrading treatment." Following the U.S. Supreme Court's decision to overturn *Roe* on July 1, 2022, the Committee urged the United States to honour its obligations under the CEDAW, emphasizing that access to reproductive rights is essential to the autonomy of women and girls and to their freedom to make personal decisions about their bodies and lives, free from discrimination, violence, and coercion. The Centre for Reproductive Rights underscores that recognizing the right of women and girls to choose whether to carry a pregnancy to term is foundational to realizing their human rights. When human rights bodies affirm this right, they strengthen the global movement toward gender equality. These normative advancements have the potential to drive significant change at a global level, influencing laws, policies, and judicial decisions. This shift can pave the way for broader moral acceptance of abortion as a critical element of women's reproductive autonomy, ultimately expanding women's access to essential reproductive health services and helping empower women in their personal and public lives.

⁹ Marge Berer, 'Challenging the US Supreme Court's Majority Ruling on *Roe v. Wade* at the International Human Rights Level' (*Health and Human Rights Journal* 21 June 2023) <<https://www.hhrjournal.org/2023/06/challenging-the-us-supreme-courts-majority-ruling-on-roe-v-wade-at-the-international-human-rights-level/>>.

¹⁰ *L.C. v Peru*, Communication No. 22/2009 (2011).