

Integrating Reproductive Justice Approaches in the Human Rights Framework: A Comparative Analysis of the U.S.A., India, and Indonesia

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ABSTRACT: Sexual health and reproductive rights have become instrumental in defining the constitutional horizons and constitutionalism thereof of a country. In this context, *Roe v. Wade* emerged as an authority on the issue of abortion, bodily integrity, and sexual health which traveled in various jurisdictions. The paper purports to explore the underlying complexities and challenges in asserting reproductive rights by undertaking a comparative study of the constitutional and legal framework in the U.S.A., India, and Indonesia. The research work carried out is socio-legal, the social realities to elaborate social phenomena about existing legal facts, and the author assessed and analyzed the status of reproductive rights in the U.S.A, India, and Indonesia through a comprehensive analysis of case laws decided by constitutional courts of these countries. The global debate on women's reproductive rights, championed by feminists, emphasizes the urgent need to eradicate gender stereotypes for true equality. Despite progress, many countries still face challenges due to religious, cultural, and socio-economic biases. Access to contraceptives, abortion rights, and information remains limited. Promoting equal parenting and raising awareness are crucial. Legal mechanisms, like *Roe v. Wade*, have advanced reproductive rights, but regressive rulings like *Dobbs* pose threats. The demands of diverse communities, including same-sex couples, require revisiting legal frameworks. Constitutionalizing these rights and allocating funds for awareness and healthcare are vital steps. Governments must address child marriage and provide inclusive sex education, prioritizing reproductive health as a fundamental human right.

KEYWORDS: Constitutionalism; Reproductive Rights; Sexual Health.



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HOW TO CITE:

Tripathi, Neha & Anubhav Kumar, "*Integrating Reproductive Justice Approaches in the Human Rights Framework: A Comparative Analysis of the U.S.A., India and Indonesia*" (2024) 4:1 Jurnal Kajian Pembaruan Hukum 75-120. DOI: <<https://doi.org/10.19184/jkph.v4i1.46509>>.

Submitted: 01/02/2024 Reviewed: 20/02/2024 Revised: 28/02/2024 Accepted: 29/02/2024

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I. INTRODUCTION

*“The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health.”*¹ The term “reproductive rights” refers to a collection of human rights that address issues of sexual and reproductive health, including the freedom of an individual to make decisions about abortion, childbirth, contraception, and sterilization.² Within developing nations, the adoption of the reproductive rights framework entails a broader discourse from its original focus, relating to abortion, contraception, and childbirth to include breast and cervical cancer, maternal mortality, prenatal and obstetric care, and adolescent and postmenopausal health.³ The discourse relating to reproductive health is associated with and is also instrumental with respect to policy issues surrounding population, health, women’s representation in the workforce, and identifying developmental goals.⁴ Reproductive rights are equally important from the perspective of protection of the inherent dignity of an individual.⁵ Reproductive health, reproductive rights, and reproductive justice have been highlighted as three main fundamental pillars for fighting reproductive oppression, as identified by the Asian Communities for

¹ Advocatekhøj, “X Vs. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi | Latest Supreme Court of India Judgments | Law Library”, online: *AdvocateKhøj* <<https://www.advocatekhøj.com/library/judgments/announcement.php?WID=15605>>.

² Erdman and James Cook, “International Encyclopedia of Public Health” (Oxford: Academic Press, 2008) at 532.

³ Vijayan K Pillai and Guang-Zhen Wang, “Reproductive Rights in Developing Countries: An Assessment of Regional Variations” (1999) 13 *Michigan Sociological Review*, at 10–27.

⁴ Rob Kitchin and Nigel Thrift, “International Encyclopedia of Human Geography.” Online: Science Direct <<http://www.sciencedirect.com:5070/referencework/9780081022962/international-encyclopedia-of-human-geography>>.

⁵ Rebecca Cook, “International Human Rights and Women’s Reproductive Health.” *Studies in Family Planning Review*, Number 2, (1993), at 73–86. Online: <https://doi.org/10.2307/2939201>.

Reproductive Justice.⁶ The right to reproductive self-determination, the right to services, information, and education related to sexual and reproductive health, and the right to equality and non-discrimination are three main attributes of reproductive rights.⁷ The United Nations Charter's preamble allows for the reaffirmation of belief in fundamental human rights and gender equality.⁸ The Universal Declaration of Human Rights uses the term "human beings" to establish that all people are born free and equal in dignity and rights. Additionally, Article 2 grants everyone the right to rights and freedoms without making any distinctions based on a person's sex. These provisions pertain to human rights in general and do not specifically or expressly mention women's rights as such.⁹

The highest attainable standard of health is guaranteed by Article 12 of the International Convention on Economic, Social, and Cultural Rights. General Comment No. 14 of the CESCR elaborates that the right to health includes access to health-related education and information, including sexual and reproductive health. The World Conference on Human Rights in Vienna in 1993, which declared that women's human rights are an inalienable, integral, and indivisible part of universal human

⁶ Asian Communities for Reproductive Justice "Report of Asian Communities for Reproductive Justice, A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice." (2017) Online: <https://forwardtogether.org/tools/a-new-vision/>

⁷ Julia Gebhard and Diana Trimino, "Reproductive Rights, International Regulation, Max Planck Encyclopedia of Public International Law", (2012) Online: <https://www.corteidh.or.cr/tablas/r16912.pdf>.

⁸ United Nations Charter, 1945. "We The Peoples Of The United Nations, Determined To Save Succeeding Generations From The Scourge Of War, Which Twice In Our Lifetime Has Brought Untold Sorrow To Mankind, And To Reaffirm Faith In Fundamental Human Rights, In The Dignity And Worth Of The Human Person, In The Equal Rights Of Men And Women And Of Nations Large And Small....."

⁹ Universal Declaration of Human Rights, 1948 "Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".

rights, further supported the 1979 Convention on the Elimination of All Forms of Discrimination Against Women as a significant step toward acknowledging the universality of human rights.¹⁰ Yet, even after years of the adoption of the convention coupled with numerous human rights instruments, gross violations of women's rights remain universal.¹¹

Needless to state, with a strong human rights framework and discourse being developed in the last few years, there have been significant changes in the policy-making and implementation processes, which demands affirmative steps be taken towards protection, implementation, and realization of human rights including health, privacy, non-discrimination, freedom from ill-treatment or violence based on gender and access to adequate information amongst others.¹² Many violations with respect to women's rights are distinctively connected to being female, based on belonging to a particular gender.¹³ The concept of human rights has been interpreted and applied broadly to address violations against women, primarily due to their gender. This understanding has thus, significantly changed the understanding of policy matters in both domestic and international law, demystifying the notion that women's subordination is justified due to public/private distinctions.¹⁴

The violations pertain to the realization of sexual and reproductive freedoms. The violations with respect to sexual and reproductive health remain rampant including but not limited to; denial of access to quality health services, access to information regarding sexual and reproductive health, forced sterilization and abortions without informed consent, and female genital mutilation.

¹⁰ Vienna Declaration and Programme of Action, 1993 "The World Conference on Human Rights in Vienna".

¹¹ World Health Organization, "Sexual health, human rights and the law", Online: <<https://www.who.int/publications-detail-redirect/9789241564984>>.

¹² Ann M Starrs et al, "Accelerate progress—sexual and reproductive health and rights for all: report of the Guttmacher–Lancet Commission" (2018) 391:10140 *The Lancet* 2642–2692.

¹³ Bunch, Charlotte. "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights." (1990) *Human Rights Quarterly Review*, Number 4, at 98.

¹⁴ M. Pentikäinen, "Applicability of the Human Rights Model to Address Concerns and the Status of Women." (1999), 17. Online: <<https://tiedekirja.fi/sv/applicability-of-the-human-rights-model-to-address-concerns-and-the-stus-of-women>>.

Considering the limitation of the research study, the authors have chosen jurisdictions of the U.S.A., India, and Indonesia because of the following parameters: firstly, the authors would like to establish the factor of overturning *Roe v. Wade* and wanted to draw clear attention towards Western liberal constitutional discourse; secondly, India is considerably a stable constitutional democracy in South Asia and often credited with the activist judiciary, the authors wanted to specifically study the socio-legal challenges impending in the country; thirdly, Indonesia has its unique challenges with respect to the ascertainment of reproductive rights and freedoms, the authors wanted to draw clear attention towards three distinct jurisdictions by underlining the violations and challenges pertinent to the issue at hand, especially in the aftermath of overturning *Roe v. Wade* by United States Supreme Court and its probable impact on other comparative jurisdictions.¹⁵

II. METHODS

The research work carried out is socio-legal delving into the social realities to elaborate social phenomena in relation to existing legal facts and formulations. The authors have assessed and analyzed the status of reproductive rights in the U.S., India, and Indonesia through a comprehensive analysis of case laws decided by the constitutional courts of these countries. The research is specifically centered on the recent decision of the Supreme Court of the United States overturning *Roe v. Wade* and in the case of India, the focus centers around a more proactive and feminist approach employed by the Supreme Court of India.¹⁶ In the case of Indonesia, the authors have focused on the role of courts in counteracting issues of child marriages, uncontrolled reproduction, problems relating to childbirth, poverty, abortions, and sexually transmitted diseases by balancing the extremities of public-private discourse supported through constitutional mechanisms. The data collected and analyzed is through

¹⁵ Dipika Jain, “The Overturning of *Roe v. Wade* as a Form of Post-Colonialism | Jurnal Perempuan dan Anak” (2023), online: <<https://ejournal.umm.ac.id/index.php/JPA/article/view/23616>>.

secondary sources including but not limited to books, articles, newspapers, reports, and others.

III. WOMEN RIGHTS ARE HUMAN RIGHTS

In order to comprehend the development of women's rights and the relationship between women's rights and human rights, it is necessary to go back in time and recognize the politically significant series of events that took place during the fight for women's rights recognition.¹⁷ The 1993 Vienna Convention adopted the motto "Women's Rights are Human Rights," which was based on the notion that men and women have equal rights and dignity and that this idea is further concretized by the promotion and defense of human rights under the auspices of the United Nations.¹⁸ Mary Wollstonecraft's book titled "*Vindication of the Rights of Women*" in 1792 which was published in response to the natural rights of man theory is attributed as the beginning of women's rights discourse, however, the traces and genesis of the debate have also been found in early Fifteenth Century French literary works.¹⁹

John Stuart Mill stated in an essay titled "The Subjection of Women" published in 1869 that it is important to investigate whether women should be allowed to pursue their natural vocation in the private realm or whether they should be treated as equal partners with men in both private and public life.²⁰ Historian Gerda Lerner has noted that women's lack of awareness of women's history had a detrimental impact on their intellectual growth and caused them to become overwhelmed by feelings of their inadequacy.²¹ Radical feminism has associated oppression for centuries with biological constructs; Shulamith Firestone stated in 1970 that women cannot be free until they are freed from the tyranny of reproduction because

¹⁷ Fraser, Arvonne "Becoming Human: The Origins and Development of Women's Human Rights." (1999) Human Rights Quarterly Journal, Volume 21, Number 4, at 853-906.

¹⁸ Mahesh, "Women Rights are Human Rights: A Legal Study in Indian Perspective" (2020).

¹⁹ Joan Kelly, "Women, History, and Theory", (University of Chicago Press, 1984), at 65-66.

²⁰ John Stuart Mill, "The Subjection of Women" (M.I.T. Press, 1970).

²¹ Gerda Lerner, "The Feminist Consciousness: From The Middle Ages To Eighteen-Seventy." (New York: Oxford University Press, 1993), at 60-64.

oppression starts with bodies and is predicated on women's ability to procreate.²²

With the advancement in scientific technology, the age of survival for women drastically increased, and with educational, health, and other facilities being extended to more and more women, the age of marriage and subsequently the age of reproduction also advanced.²³ Women from marginalized communities have distinct challenges with respect to access to sexual and reproductive health services often coupled with poverty, illiteracy, lack of infrastructural facilities, and social ostracization, seclusion, and discrimination based on race, caste, or religion.

IV. FEMINIST CONSTITUTIONAL THEORY

With the development of feminist legal theory, feminist constitutional theory has gained perspective and produced a more inclusive methodology of understanding constitutional principles by challenging the conventional methods of interpreting the Constitution. During the first wave of feminism, the right to equality and the right to vote were prioritized; in the second, socioeconomic rights were guaranteed; and in the third, intersectional and multi-perspectival feminism emerged with discourse surrounding sexual independence and a stronger emphasis on reproductive rights.²⁴ What Ran Hirschl called Juristocracy has seen a tremendous expanse in the power of courts to decide issues concerning the interpretation of constitutions, cases like *Griswold v. Connecticut* and *Roe v. Wade* had paved a pathway for other constitutional courts in comparative jurisdictions to follow suit.²⁵

²² Joan W Scott, "Gender: A Useful Category of Historical Analysis" (1986) 91:5 *The American Historical Review* 1053–1075.

²³ Grant, "The Demographic Promise of Expanded Female Education: Trends in the Age First Birth in Malawi." (2015), at 409-438.

²⁴ Snyder, R. Claire. "Who Is Third-Wave Feminism? A New Directions Essay." (Signs Press, 2008) Volume 34, Number. 1, at 96.

²⁵ Ishwara Bhat, "Methodology of Feminist Legal Research | Idea and Methods of Legal Research | Oxford Academic", online: <<https://academic.oup.com/book/41749/chapter-abstract/354163749?redirectedFrom=fulltext&login=false>>.

Women have generally neither written nor agreed to constitutions argue proponents of feminist constitutionalism and that powerful men have written constitutions as if women did not exist nor participated in peace-making processes after the conclusion of the war, it was assumed often that liberalism was enough to satiate the needs of women folk, however, more recently, women have had some voices in the constitutive processes, with few exceptions, men have largely interpreted constitutions.²⁶ In order to have an active engagement with a society that is acknowledged as unequal on the grounds of sex and gender, as well as in interaction with all the salient inequalities, Feminist constitutionalism necessitates the inclusion of women's equality as a central theme in the constitutional document and as a fundamental aspect of the social structure.²⁷

Feminist discourse on constitutionalism would explore the question of whether the law and the state, which are fundamental instruments, are hegemonically male in manner and mechanism that necessitate further examination of their contents.²⁸ However, it is often critiqued that the Constitution protects against public violations and not private violations. Yet, today we have varieties of constitutionalism, unlike the traditional notion of liberal constitutionalism, which necessitates the idea of reading rights broadly as an implied restriction against state excesses.²⁹

V. HUMAN DIGNITY, SELF-DETERMINATION AND REPRODUCTIVE RIGHTS

One of the central values upon which the Canadian Charter of Rights and Freedoms, 1982 was founded is based on the attribute of making fundamental decisions for oneself without state interference. Justice Wilson's concurring opinion in the case of *R v. Morgentaler* emphasized

²⁶ Beverley Baines, Daphne Barak-Erez, and Tsvi Kahana. "Feminist Constitutionalism. Global Perspectives." (Cambridge University Press, 2012).

²⁷ Charine A. MacKinnon, "Are Women Human? And Other International Dialogues", (2006). online: JSTOR, <https://doi.org/10.2307/j.ctvjnrvc>.

²⁸ Beverly Baines and Ruth Rubio-Marin. "The Gender of Constitutional Jurisprudence" (Cambridge University Press, 2004) at 97.

²⁹ Aaron Xavier Fellmeth, "Feminism and International Law: Theory, Methodology, and Substantive Reform" (2000) 22:3 Human Rights Quarterly 658-733.

that “respect for human dignity” was central to the abortion issue. Additionally, in the Abortion I Case in Germany, the Federal Constitutional Court (FCC) ruled that pregnancy is a part of a woman's intimate relationship, which is legally protected by the German Basic Law. This right to self-determination should also be viewed in the context of human dignity. The Federal Constitutional Court subsequently established with authority in the Abortion II decision that the pregnant woman's human dignity and her right to life, personality, and physical integrity backed the availability of abortion.³⁰ The Brazilian Supreme Court invalidated the ban on access to abortion in situations of anencephalic fetuses by highlighting the aspect of gestational discomfort, suffering, and frustration in the context of such pregnancies, based on the principle of human dignity.³¹ In 2016, the Colombian Constitutional Court ruled that the Constitution guarantees women's minimal rights to access abortion care.

Citing concerns about human dignity, the Court overturned the criminalization of abortion in three situations: (1) where a woman becomes pregnant as a result of rape; (2) when a pregnancy involves a non-viable fetus; and (3) when the woman's life or health is in danger.³² The High Court of Australia has recognized related claims connected to reproductive rights, including freedom from involuntary sterilization, based on the fundamental concept of human dignity.³³

The concern for human dignity implies attributing limitations on the freedom of the State to restrict access to legal abortion and prohibits state parties from any action infringing “dignity and the physical and mental integrity of the individual”, additionally, the International Covenant on Civil and Political Rights, 1966, prohibits “cruel, inhuman, and degrading”

³⁰ Donald Kommers “The Constitutional Jurisprudence of the Federal Republic of Germany” (Duke University Press, 1997), at 351.

³¹ Diniz D. “Selective Abortion in Brazil: The Anencephaly Case Development World Bioeth”. (2007), at 64-67.

³² Colombian Constitutional Court, Decision C-355/2006.

³³ JWB and SMB (Marion's case), “Department of Health and Community Services v.” (1992), at 175 – 218.

treatment as stated by the Human Rights Committee.³⁴ Access to legal abortion services in case restricted would immediately contradict the guarantee under Article 7 of personal dignity and integrity because carrying a baby to term would cause the woman considerable bodily and psychological harm.³⁵ Therefore, the relationship between human dignity and physical and psychological health—rather than just human dignity and individual liberty or decision-making autonomy—is relevant. The right to human dignity, as a constitutional value that supports the right to access abortion, is still under-theorized in comparative constitutional scholarship, particularly in relation to women’s health, integrity, and autonomy.³⁶

As an alternative to theories that view economic growth as the primary indicator of a country or region’s quality of life, Rosalind Dixon and Martha Nussbaum propose the Capabilities Approach (CA), an approach to quality of life assessment and theorizing about basic social justice. Additionally, the Capabilities Approach maintains that the most important question to ask when comparing societies and evaluating them for their decency or justice is, “What is each person able to do and to be?”³⁷ In developing countries, the capabilities approach could broadly address the social bases of health including marginalization and poverty, on one hand, and claims for social justice on another, however, the claims regarding reproductive health might seem to be individualistic. The interplay between different legal change mechanisms and the reciprocal influence of

³⁴ UN Human Rights Committee (HRC), “Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment.” (10 March 1992) CCPR General Comment No. 20: Article 7, online: <https://www.refworld.org/docid/453883fb0.html>.

³⁵ Karen Noelia Llantoy Huaman v. Peru, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

³⁶ Anna Kharina Mangold, “Feminist Constitutionalism. Global Perspectives”, *International Journal of Constitutional Law*, (2013), Vol.11 1124–1129 : Feminist constitutionalism is rethinking the aspects of constitutional law that would address and reflect feminist experience and thoughts and the term is used in contrast with “constitutional law” and approach – constitutional law and gender or constitutional law and feminist theory, as the relationship between constitutional law and feminism can be explored by examining, challenging and redefining the idea of constitutionalism from feminist perspective.

³⁷ Rosalind Dixon and Martha Nussbaum, “Abortion, Dignity and a Capabilities Approach.” (Cambridge University Press, 2012).

constitutional choices on the dynamics of internal social movements are recurring themes in today's debates. Constitutional choices and their repercussions are historically specific and highly contingent.³⁸

VI. NEGATIVE VERSUS POSITIVE RIGHTS

Since judicial power has recently expanded through the entrenchment of rights, an analysis in this regard is pending. The constitutionalization of rights is the result of nations engaging in fundamental constitutional reforms, and today, almost every constitution contains a bill of rights and establishes some form of judicial review.³⁹ The reproductive rights policies are relevant and critical in advancing maternal health outcomes.⁴⁰ The term "reproductive rights" is relatively new, and despite extensive discussion at the International Meeting on Women and Health which was held in Amsterdam in the year 1984, its influence seems to be very limited. Nevertheless, the World Conference on Human Rights which was held in Vienna in 1993, and the World Conference on Women which was held in Beijing in the year 1995, made it abundantly evident that reproductive rights and reproductive health are positively correlated.⁴¹

It has been emphasised by various feminist scholars that lower socio-economic status leaves them with few choices in respect of various reproductive processes including intercourse, contraception, and gestation.⁴² Gender inequality is a result of unequal distribution of power across genders, which influences the level of protection and guarantee

³⁸ Mayeri, Serena. "Constitutional Choices: Legal Feminism and the Historical Dynamics of Change." Volume 92, Number 3 (California Law Review, 2004), at 755-839.

³⁹ Hirschl, Ran. "'Negative' Rights vs Positive Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order." (2000) *Human Rights Quarterly*, Volume 22, Number 4, at 98.

⁴⁰ Sudhinaraset, Vilda, Gipson, Bornstein, Wallace. "Women's Reproductive Rights Policies and Adverse Birth Outcomes: A Ste-Level Analysis to Assess the Role of Race and Nivity Stus" (2020), at 787-795.

⁴¹ Ruth Dixon-Mueller, "Populion Policy and Women's Rights: Transforming Reproductive Choices, Praeger Publishers." (Harvard University Press, 1993).

⁴² Nair and Kirb "A decade After Cairo: Women's Health in a Free Market Economy." (Indonesia Journal Generation Student, 2006) at 13.

accorded to reproductive rights.⁴³ Social Development and Gender equality are integral structural co-relates of reproductive and sexual rights, wherein social and cultural participation is an important function of social development.⁴⁴ With the improvement in social participation, there is an increase in individual substantive freedoms and capabilities, therefore, there is a positive relationship between levels of social development and reproductive rights.⁴⁵ Removing disparities of gender inequality through gender empowerment in developing nations is a Millennium Development Goal, intending to foster the expansion of opportunities to realize social and personal choices.⁴⁶ Women's rights in general and reproductive rights in particular can be enhanced through improving gender equality.⁴⁷

VII. SEXUALITY, GENDER CONSTRUCTS AND THE LAW

Since judicial power has recently expanded through the entrenchment of rights, an analysis in this regard is pending. The constitutionalization of rights is the result of nations engaging in fundamental constitutional reforms, and today, almost every constitution contains a bill of rights and establishes some form of judicial review.⁴⁸ The segment would include contemporary discourse on the Right to sexual privacy; theories of sexuality; policies that discriminate based on sex and sexual orientation; government censorship of sexually explicit art; discrimination by private entities, primarily employers, based on sex, sexual orientation, or gender identity

⁴³ Clark, "Three Faces of Women's Power and Their Reproductive Health: A Cross-National Study." (International Review of Modern Sociology, 2006), at 35-52.

⁴⁴ Mohan, Brij. "Social Exclusions: Challenges for New Social Development." (2010) Journal of Comparative Social Welfare. (2007), 69-79. Online: 10.1080/17486830601099986.

⁴⁵ Ruger JP. "Combining HIV/AIDS in Developing Countries". (2004), British Medical Journal 17;329(7458), 21-22.

⁴⁶ Mayra Buvinic, "Promoting Gender Equality", (2006) International Social Science Journal, 51(4), 567-574.

⁴⁷ Pillai and Radha Gupta, "Reproductive Rights Approach to Reproductive Health in Developing Countries." (2011), Global Health Action.

⁴⁸ Hirschl, Ran. "'Negitive' Rights vs Positive Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order." (2000) Human Rights Quarterly, Volume 22, Number 4, at 98.

and expression; and state control of family relationships, including marriage, custody and adoption.

Justice John Marshall Harlan in the case of *Hoyt v. Florida*, stated that “despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life.”⁴⁹ Ruth Bader Ginsburg has famously argued that reproductive rights might best be granted based on sex equality rather than merely relying on the right to privacy.⁵⁰ Gender is a contested concept, and the Beijing World Conference, 1995, adopted the idea of gender equality, however, gender is construed as a social category that does connote the possibility of change, unlike sex, however, gender remains synonymous with women in international discourse.⁵¹

In the field of constitutional law, gender remediates legally constructed barriers that perpetuate vulnerabilities of women and hence, further inequalities, on the other hand, gender inclusivity may create legal conditions that would enable women’s agency through equal processes.⁵² Catherine Mackinnon argued that gender crimes essentially happen because of gendered and sexualized roles, and stereotypes and socially assigned to groups based on sex, she further, contented that they must be understood as “criminal forms of sex discrimination: crimes of sex inequality.”⁵³

1. Understanding the term “Reproductive Rights”

⁴⁹ Mayeri, Serena. “Constitutional Choices: Legal Feminism and the Historical Dynamics of Change.” *California Law Review*, vol. 92, no. 3, (2004), at 755–839.

⁵⁰ Ruth Bader Ginsburg, “Thoughts on Autonomy and Equality in Relation to *Roew*.” (1985), *Wade*, 63 N.C.L. Revision 375.

⁵¹ Brenda Cossman, ‘Gender Performance, Sexual Subjects, and International Law’ (2002) 15 *Canadian Journal of Law and Jurisprudence*, at 281-282.

⁵² Thomas Müller, “Global Constitutionalism in Historical Perspective: Towards Refined Tools for International Constitutional Histories.” (2014), at 71 - 73.

⁵³ Charine A MacKinnon.” *Creating International Law: Gender as Leading Edge*.” (2013), at 36.

Over a period of time, the human rights understanding that has developed has not only elaborated and focused on the right to sexual and reproductive health as an integral part of the right to health but has also laid emphasis on elaborating their meaning and content.⁵⁴ The right to sexual and reproductive health, like other human rights, is universal, interdependent, and indivisible.⁵⁵ The Committee on Economic, Social and Cultural Rights in terms of General Comment No. 14, recommended states to undertake integrated gender perspectives in relation to health policies which would promote the creation of a better environment, irrespective of gender biases, and emphasize the emerging need to develop and implement a comprehensive national plan and strategy with specific focus on promotion of women's right to health ranging throughout their life span.⁵⁶ So, the right to sexual and reproductive health presupposes the obligation of states to eliminate barriers with respect to the availability of contraceptives, decriminalize sexual and reproductive health services like abortion, and also have access to autonomous and informed decisions regarding reproductive health.⁵⁷

The Programme of Action adopted at the International Conference on Population and Development, Cairo, 1994 explains that the term reproductive health “*is a state of complete physical, mental and social well-being and not merely the absence of any disease or infirmity, in all matters relating to*

⁵⁴ Committee on Economic, Social and Cultural Rights Forty-fifth session, Summary record of the 49th meeting, Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/466/41/PDF/G1046641.pdf?OpenElement>

⁵⁵ United Nations Human Rights Office of High Commissioner, “Reproductive Rights Are Human Rights A Handbook For National Human Rights Institutions” online : <https://www.ohchr.org/sites/default/files/Documents/Publications/NHRIHandbook.pdf>

⁵⁶ CESCR General Comment No. 14: The Right to the Highest attainable Standard of Health (12), Online: Document E/C.12/2000/4), <https://www.refworld.org/pdfid/4538838d0.pdf>

⁵⁷ Human Rights, <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>. The Right to health includes both freedoms and entitlements: a) Freedoms include right to control one's health and body (example sexual and reproductive rights) and b) Entitlements include right to a system of health protection that gives everyone equal opportunity to enjoy highest attainable standards of health.

the real productive system and its functions and processes.”⁵⁸ Further, the term reproductive health care has been defined as the “constellations of methods, techniques, and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems, which also includes sexual health, the purpose of which is enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.”⁵⁹

Based on a human rights approach, the term reproductive health is not merely confined to a state where disease is absent, it also implies that people have the ability to reproduce along with the right to regulate their fertility and to enjoy and practice sexual relationships. It incorporates women going through pregnancy and childbirth, safely, infant and child survival coupled with growth and healthy development so that the regulation of fertility is achieved without any health hazards, and that the people are safe in having sex. The Indian Supreme Court in the matter of *X v. Principal Secretary, Health and Family Welfare Department, Government of National Capital Territory of Delhi*, stated that women should be accorded freedom and autonomy to decide and assert their reproductive choices completely free from any sort of coercion or violence and that these decisions are intrinsically linked to wider political, social and economic structure, however, societal barriers find reinforcement by way of legal barriers restricting women’s right to access abortion, with respect to reproductive autonomy the Court remarked that it is only the consent of woman that matters (except in case of minor and mentally ill where consent of the guardian is required) and that the extra-legal requirements have no basis in law.⁶⁰

⁵⁸ Reproductive Rights and Reproductive Health, Chapter VII, “A, Programme of Action – Adopted the International Conference on Population and Development” (1994), ICPD Cairo, online: https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf.

⁵⁹ *Supra note.*

⁶⁰ *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT (Delhi)*, 2022 LiveLaw (SC) 809: “The Court also extended the right to unmarried woman and remarked th prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period

Further, in the matter of *Meera Kaura Patel v. Union of India*, the petitioner has challenged the validity of Section 4 (3) (i) of the Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 contending that the age restriction of 35 years is a restriction on reproductive rights of women and regarding the judgment in *X v. Principal Secretary, Health and Family Welfare Department, Government of National Capital Territory of Delhi*, the provision would not stand judicial scrutiny.⁶¹

VIII. REPRODUCTIVE JUSTICE: A COMPARATIVE STUDY OF JUDICIAL APPROACH

A. United States of America

In *Dobbs v. Jackson Women's Health Organisation*⁶², the United States Supreme Court overturned the landmark decision of *Roe v. Wade*⁶³ and *Planned Parenthood of Southeastern Pennsylvania v. Casey*⁶⁴, revoking the right to abortion.⁶⁵ Jackson Women's Health Organisation had challenged the constitutional validity of the Mississippi Gestational Act which prevented abortion beyond fifteen (15) weeks except in cases of serious medical ailment or severe fetal abnormalities.⁶⁶ The United States Supreme Court held that the Constitution does not confer a right to abortion and

would fall foul of the spirit guiding Article 14. The law should not decide the beneficiaries of a state based on narrow patriarchal principles about what constitutes "permissible sex", which create invidious classifications and excludes groups based on their personal circumstances. The rights of reproductive autonomy, dignity, and privacy under Article 21 give an unmarried woman the right of choice on whether or not to bear a child, on a similar footing of a married woman."

⁶¹ Bachpan Bachao Andolan, "Writ Petition", online: Bachpan Bachao Andolan <<https://bba.org.in/writs/>>. "Writ Petition", online: *Bachpan Bachao Andolan* <<https://bba.org.in/writs/>>.

⁶² *Dobbs v. Jackson Women's Health Organisation*, (2022), 42 S. Ct. 2228.

⁶³ *Roe v. Wade*, 410 U.S. 113 (1973).

⁶⁴ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

⁶⁵ See, Kaufman R, Brown R, Martínez Coral C, Jacob J, Onyango M, Thomasen K. Global impacts of *Dobbs v. Jackson Women's Health Organization* and abortion regression in the United States. *Sex Reproduction Health Matters*. 2022 December;30(1):2135574

⁶⁶ Bertha Alvarez Manninen, *A Critical Analysis of Dobbs, Jackson Women's Health Organization and the Consequences of Fetal Personhood*, (Cambridge Quarterly of Healthcare Ethics, 2008), at 1–11.

that the authority to regulate abortion is returned to people and their elected representatives.⁶⁷ North America during the period from 1600-1900, frequently practiced abortions wherein the tribal societies used black roots and cedar roots to induce abortions. During the colonial period, however, the legality of abortion varied from colony to colony dependent upon the practices prevalent in the European country that controlled the colony, wherein British colonies considered abortion legal provided they were legal in cases performed before quickening and in French colonies abortions were performed in spite being illegal, additionally, Spanish and Portuguese colonies considered abortions illegal.⁶⁸

Irrespective of the fact that until the mid-1800s abortions were perceived as socially unacceptable, they were not declared illegal in most of the states, further, in the late 1860s, many states passed anti-abortion laws, however, these laws were difficult and ambiguous to impose and enforce.⁶⁹ Although abortion was legalized in the 1970s, many women were forced to choose illegal abortions due to financial constraints imposed by the Hyde Amendment or the lack of access to services in many areas. Following that, stronger laws criminalizing abortions were passed and vigorously enforced, which led to a rise in the number of women using illegal abortion services.⁷⁰ The Supreme Court's involvement with reproductive health wherein the constitutional right to marital privacy in respect of use of contraceptives was established can be traced back to *Griswold v. Connecticut*.⁷¹ In *Griswold v. Connecticut*, the United States Supreme Court held a Connecticut birth

⁶⁷ Coverdale, Gordon, Beresin, E.V. et al. Access to Abortion After Dobbs v. Jackson Women's Health Organization: Advocacy and a Call to Action for the Profession of Psychiatry, (2023), at 1-6 .

⁶⁸ Acevedo, "Abortion in Early America, Women Health", (Summer Press, 1979) Volume 4, Number 2, at 67.

⁶⁹ For further discussions see, Kunins H, Rosenfield A. Abortion: a legal and public health perspective, (Annu Review Public Health, 1991) at 82.

⁷⁰ Sauer "Attitudes to Abortion in America, 1800-1973." *Population Studies*, vol. 28, no. 1, 1974, pp. 53-67; Rossi, Alice and Bhavani Sitaraman. "Abortion in Context: Historical Trends and Future Changes." *Family Planning Perspectives*, Volume 20, Number 6, (1988), pp. 273-301. Also see, Samuel W. Buell, *Criminal Abortion Revisited*, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2798&context=faculty_scholarship.

⁷¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

control statute that prohibited the use of contraceptives by couples who were married as unconstitutional on the touchstone of the constitutional right to privacy as engrained under the U.S. Constitution. Further in *Eisenstadt v. Baird*, the Supreme Court upheld the right of unmarried couples to use contraceptives.

1. *Roe v. Wade*, 410 U.S. 113 (1973)

The case dealt with a class action suit brought about challenging the constitutional validity of Texas criminal abortion laws, which prevented abortion except in case of a medical emergency where it is imperative to save the life of a pregnant mother.⁷² The due process clause of the Fourteenth Amendment, which guards against state action infringing on the right to privacy, including the right to terminate a pregnancy, is violated, according to the United States Supreme Court, because state abortion laws disregard the aspect of pregnancy for pregnant women and other allied interests.⁷³ The court further stated, that even though the state cannot override such right yet has a legitimate interest to protect the interests of both the pregnant mother as well as the potentiality of probable human life, whereby it reaches the state of compelling interest at various stages of pregnancy culminating into a term pregnancy.⁷⁴

The Court in furtherance of the aforementioned point held: (a) For the stage before the approximation of the first trimester, the judgment must be best left to the attending physician of the pregnant woman; (b) For the stage after the end of the first trimester, the State, in the interest of the health of the mother, may regulate the abortion procedure in ways that are reasonably related to maternal health; (c) For the stage subsequent to the viability of the fetus, the state in the interest of potentiality of human life,

⁷² *Roe Wade and the Right to Privacy*, Center for Reproductive Rights, Online: https://reproductiverights.org/sites/default/files/documents/roeprivacy_0.pdf.

⁷³ Uerling, Donald "Supreme Court Rulings on Abortion: *Roe v. Wade* and Selected Progeny" (2006), *Journal of Women in Educacional Leadership* at 189.

⁷⁴ Mary Ziegler, *The Framing of a Right to Choose: Roe v. Wade and the Changing Debe on Abortion Law*, (2023), *Law and History Review*, at 281–330.

regulate and even proscribe abortion except when necessary, in appropriate medical judgment, for the protection of life or health of the mother.⁷⁵

2. *The Aftermath of Roe Judgment*

In the aftermath of the *Roe* decision, within the backdrop of heightened political pressure, the states began to enact laws that directly or indirectly reversed the decision of the United States Supreme Court in *Roe v. Wade*.⁷⁶ States adopted laws that required married women to seek consent from their husbands for having an abortion and in case of young women to have consent from their parents, the policy alterations also restricted abortion coverage in State-aided medical insurance and state-employee health programs, banned abortion in public hospitals and ban on particular abortion methods.⁷⁷ In the years following 1976, Congress passed laws banning the use of Medicaid and federal funds for almost all abortions.

In the case of *Planned Parenthood v. Danforth*, the Supreme Court examined several issues, including the constitutionality of the laws requiring parental and spousal consent and outlawing the use of saline amniocentesis as a method of abortion after 12 weeks of pregnancy. The Supreme Court upheld the *Roe* decision, however, with respect to saline amniocentesis, the majority opinion declared it unconstitutional as not being in consideration with maternal health, Justice Burger in the judgment sided with the minority decision.⁷⁸ The weakening of the *Roe* decision started in the backdrop of political pressure mounting on the federal judiciary, as a result, judges who were in the majority of the *Roe* decision started to abandon the ratio of the judgement in other suits that followed, like, in the judgment of *Harris v. McRae*, Chief Justice, Burger along with

⁷⁵ *Roe v. Wade*, 410 U.S. 113 (1973), 163-165. Hontz, Jenny, and Estelle Rogers. "25 Years Ler: The Impact of 'Roe Wade.'" *Human Rights*, Volume 25, Number 2, (1998), at 8-11.

⁷⁶ Mary Ziegler, *Beyond Backlash: Legal History, Polarization, and Roe Wade*, *Wash & Lee Legal Review*, (2014) at 70.

⁷⁷ Berer M. *Abortion Law and Policy Around the World: In Search of Decriminalization*. *Health Human Rights*, (2017) at 13-27.

⁷⁸ For further discussions, *Roe v. Wade and the Right to Privacy*, Center for Reproductive Rights, Online: https://reproductiverights.org/sites/default/files/documents/roeprivacy_0.pdf

Justice Stewart and Justice Powell joined by Justice White and Justice Rehnquist, held that states are not obligated to fund medically necessary abortions and that denial Medicaid funding does not interfere with woman's freedom to choice and does not carry constitutional entitlement to financial resources for availing full range of protected choices.⁷⁹

In *Bellotti v. Baird*, the Massachusetts law that required parental consent in case of minors was held to be unconstitutional on basically two grounds: firstly, the pregnant minor should be able to establish that she is capable of making independent decisions or it would be in her best interest if abortion is performed under the guidance of her physician; secondly, the requirements lead to an absolute and arbitrary prohibition, by mandating involvement of parents which might not be in the best interest of the child, even when she is capable of making an independent decision.⁸⁰ Further, in *Akron v. Akron Center for Reproductive Health*, the dissenting opinion of Justice O'Connor joined by Justice White and Justice Rehnquist opined that the regulations imposed on abortion throughout pregnancy are unconstitutional unless they unduly burden the right to abortion, which came up as the first articulation of undue burden test.⁸¹

In *Webster v. Reproductive Health Services*, the constitutional validity of Missouri law wherein the preamble of statute stated that "the life of each human being begins at conception" was challenged, the Supreme Court maintained that the Due Process Clause under the United States Constitution did not require states to enter into the matter relating to

⁷⁹ Copelon, Rhonda and Law, Sylvia Ann, 'Nearly Allied to Her Right to Be' - Medicaid Funding for Abortion: The Story of Harris McRae (2010), *Womens & The Law Stories*, Elizabeth M. Schneider, Stephanie M. Wildman, (Foundion Press, 2011) Online: <https://ssrn.com/abstract=2178231> at 207.

⁸⁰ *Bellotti v. Baird*, 443 U.S. 622 (1979). For further discussions see, Guggenheim, Martin (2002) "Minor Rights: The Adolescent Abortion Cases." *Hofstra Law Review*: Vol. 30: Iss. 3, Article 1. Hofman, Brenda D. "The Squeal Rule: Stutory Resolution and Constitutional Implications: Burdening the Minor's Right of Privacy." (*Duke Law Journal*, 1984) Volume 1984, Number 6 at 57.

⁸¹ *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983). The trimester system as creed by the decision in *Roe*, under which a woman's life and health must predomine even after fetal viability, was further upheld in cases like *Colautti v. Franklin*, 439 U.S. 379 (1979) and *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986).

abortion and thereby did not create any affirmative right to governmental aid in the pursuit of constitutional rights, additionally, it was also stated that the “Court wouldn’t be revisiting the essential parts of the Roe decision by upholding viability requirements emphasizing that the State has an interest in protecting potential life before pointing of viability.”

3. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)

The case pertains to the constitutional challenge brought about with respect to the validity of amendments introduced to the Pennsylvania Abortion Control Act, 1982.⁸² The Act requires women seeking abortion must be given certain information 24 hours prior to performing of abortion, in addition, the act mandates in case of minors, to have informed consent of parents and in case of failure to obtain parental consent, the same can be bypassed by judicial intervention, and in case of married women to have consent of her husband.⁸³ However, in case of a medical emergency, the Act exempted compliance with the above-mentioned requirements. The Court maintained the issue as that of liberty rather than of privacy, and that the state has an interest in protecting the potential life of the fetus and the health of the woman. The court further agreed with the decision of the United States Supreme Court in Roe in the aspect of the point of viability.⁸⁴

The court rejected the rigid trimester distinction as laid down in the case of Roe, and with respect to pre-viability, the court affirmed earlier decisions upholding a woman’s right to abortion, further, with respect to post-viability, the Court held that the State has a compelling interest to protect

⁸² *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Also see, Whitman, Christina B. “Looking Back on *Planned Parenthood v. Casey*.” *Mich Law Review*, Number 7 (2002) at 96.

⁸³ Halva-Neubauer, Glen, and Sara Zeigler. “Promoting Fetal Personhood: The Rhetorical and Legislative Strategies of the Pro-Life Movement after *Planned Parenthood v. Casey*.” *Feminist Formations*, Volume 22, Number 2, 2010, at 23.

⁸⁴ Also see, Gans, David H. “Stereotyping and Difference: *Planned Parenthood v. Casey* and the Future of Sex Discrimination Law.” *The Yale Law Journal*, Volume 104, Number 7, (1995), Page 906.

the potential life and abortion may be regulated except where necessary to protect the life or health of the mother.⁸⁵ In *Stenberg v. Carhart*, following the decision of Casey, the constitutional validity of Nebraska law that prohibited any partial-birth abortion was challenged, it was held that criminalization of partial-birth abortion is unconstitutional on the ground that the law places an undue burden on women's rights to abortion and does not allow for exceptions in case of health emergency.⁸⁶ In *Gonzales v. Carhart*, the constitutional validity of the Partial-Birth Abortion Act was challenged, the Supreme Court upheld the validity on the ground that the law did not impose an undue burden on the right to abortion and that the Act applies only to intact D&E method and did not to the more common D&E method.⁸⁷

Further in, *Burwell v. Hobby Lobby* (2014), the Patient Protection and Affordable Care Act, wherein it was provided that employment-based group health care plans must necessarily provide certain kinds of preventive care like FDA-approved contraceptive methods, was constitutionally challenged as it did not provide any exemption in case of the for-profit institution as in this case Hobby Lobby Stores Inc., which was a national arts and crafts chain, who argued that the requirement of employment-based group health care plan covering contraceptives is violative of "Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act, 1993."⁸⁸ The Court through the majority opinion held

⁸⁵ L. Doyle, "Planned Parenthood of Se. Pa. v. Casey: Adopting The Unduly Burdensome Standard", Mercer Law Review, Volume 717 (1993), 80.

⁸⁶ Joersz, Mandy "Abortion & (and) Birth Control - Right to Abortion & (and) Regulation Thereof: The United Supreme Court Invalides a Stute Banning Partial Birth Abortions." North Dakota Law Review: Vol. 77: No. 2, Article 5, at 690.

⁸⁷ *Gonzales v. Carhart*, 550 U.S. 124 (2007). Partial-Birth Abortion Ban Act defined the term "partial birth abortion" as any abortion in which the deh of the fetus occurs when "the entire fetal head or any part of the fetal trunk past the navel is outside the body of the mother." Further, the dissenting opinion of Justice Ginsburg disputed the majority opinion which was claimed to be based on affirmation of decisions delivered in Roe and Casey. Justice Ginsburg sted th the court's hostility to right Roe and Casey secured is not concealed.

⁸⁸ *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014). The Equal Employment Opportunity Commission sted in 2000 th any insurance th includes a prescription drug component cannot exclude birth control and th doing so would be in violion of the Civil Rights Act of 1964. In 1978, the United Stes Congress declared th any

that the statutory requirement forces the religious corporation to fund what they consider to be against their religious principles or thereafter, face a significant amount of fines, which creates a substantial burden that is not the least restrictive method of justifying governmental interest, it was further held that exceptions, as it applies in cases of non-profit organizations, should also apply in cases of for-profit organizations like Hobby Lobby in the instead case, however, the court cautioned that the judgment would only apply in relation to contraceptives.⁸⁹ The United States Supreme Court in the matter of *Whole Woman's Health v. Hellerstedt*, 2015⁹⁰, declared two provisions of Texas law, that required physicians performing abortions to have admitting privileges at a nearby hospital and additionally, required abortion clinics in the states to have facilities similar to an ambulatory surgical center, as unconstitutional on the ground of the requirements constituting an undue burden on access to abortions.⁹¹

discrimination based on pregnancy would be considered sex discrimination. Furthermore, when President Obama signed the Affordable Care Act of 2010 into law, it mandated that birth control be included in health care plans. However, many people objected to this requirement, claiming it violated their religious beliefs. Additionally, in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), the US Supreme Court affirmed the constitutionality of Patient Protection and Affordable Care, which imposed financial penalties on those who did not have health insurance. President Obama then reaffirmed in 2015 that all covered organizations must offer at least one of the eighteen FDA-approved methods of female birth control, which include: surgical sterilization, implantable rods, copper intrauterine devices, progestin-containing IUDs, injections, shots, oral contraceptives with estrogen and progestin, oral contraceptives with progestin only, oral contraceptives known as extended or continuous use that delay menstruation, patches, vaginal contraceptive rings, diaphragm, sponge, cervical caps, female condoms, spermicide, emergency contraception (Plan B/morning-after pill), as well as emergency contraception.

⁸⁹ Sue Ganske, Burwell, Hobby Lobby Stores, Inc. - The U.S. Supreme Court Holds the Religious Freedom Restoration Act Trumps the Affordable Care Act, 31 *Journal Health Law and Policy* 1 (2015) at 150.

⁹⁰ Hirsh Shah, *Aftermath of the Hobby Lobby Decision: Implications for Women in the Workforce*, *Auctus: The Journal of Undergraduate Research and Creative Scholarship*, Virginia Commonwealth University, 2016, Online: https://scholarscompass.vcu.edu/auctus/50?utm_source=scholarscompass.vcu.edu%2F50&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁹¹ Pruitt, "To recognize the tyranny of distance: A special reading of *Whole Woman's Health*" *Journal Environment and Planning A: Economy and Space*, (2019) at 70.

4. *Dobbs v. Jackson Women's Health Organisation*, 42 S. Ct. 2228 (2022)

In *Dobbs v. Jackson Women's Health Organisation*, 2022, the United States Supreme Court while deciding on the constitutional validity of the Gestational Age Act, remarked that the U.S. Constitution does not accord the right to abortion and the same is neither deeply rooted in constitutional history nor is an essential component of "ordered liberty", further, regulation and prohibition of abortion are governed by the same standard of review as any other health and safety measures.⁹² The Supreme Court considered five factors while deciding to over-rule the earlier decisions in *Roe* and *Casey*:

- a) **The nature of the Court's error:** The decision in *Roe* was egregiously wrong and the same had been perpetuated by the decision in *Casey*.⁹³

⁹² For further discussion, see, Kaufman R, Brown R, Martínez Coral C, Jacob J, Onyango M, Thomasen K. Global impacts of *Dobbs v. Jackson Women's Health Organization* and abortion regression in the United States. *Sex Reprod Health Meters*. 2022 Dec;30(1):2135574, The devastating impact of this decision falls hardest on people in the United States who already face discriminatory obstacles to health care, particularly Black, Indigenous, and other people of colour, people with disabilities, people in rural areas, young people, undocumented people, and people who are low-income or living in poverty. Even with *Roe* in place, abortion access has always been a struggle for many. For instance, at the federal level, a legislative provision called the Hyde Amendment has banned federal funding for abortion in most circumstances since 1976, and as a result low-income people with public health insurance – who are disproportionately women of colour – are unable to use insurance for this health care procedure. About three-fourths of all abortions in the U.S. are sought by patients who are poor or have low incomes.

⁹³ See generally, Bertha Alvarez Manninen, *A Critical Analysis of Dobbs v. Jackson Women's Health Organization and the Consequences of Fetal Personhood*, *Cambridge Quarterly of Healthcare Ethics* 1–11 (2023), The justices argued that the right to privacy is controversial because such a right is not explicitly mentioned in the Constitution. Indeed, Justice Clarence Thomas wrote, in his concurring remarks, that other Supreme Court decisions based on the right to privacy (*Obergefell v. Hodges*, which legalized same sex marriage throughout the United States, *Griswold v. Connecticut*, which legalized contraception for married couples, *Eisenstadt v. Baird*, which legalized contraception for unmarried couples, and *Lawrence v. Texas*, where the courts invalidated anti-sodomy laws throughout the country) should be "reconsidered... we have a duty to 'correct the error' established in those precedents." Justice Samuel Alito argued that the court cases used to defend *Roe* and *Casey* are not successful because "abortion is different because it

- b) **The quality of the reasoning:** a) the Court elaborated that without any basis in constitutional text, history, or precedent, the decision in *Roe* imposed rules for pregnancy that were divided into trimesters which could generally be found in statute or regulation; b) the Court further stated that the term “potential life” and competing interests theory looked like a sort of explanation that might be expected from a legislative body; c) the distinction between pre-viability and post-viability is arbitrary and has not found much support among philosophers and ethicists who have attempted to justify a right to abortion; d) *Casey* decision refused to reaffirm or reject the trimester system as devised in *Roe* decision.
- c) **Workability:** The “undue burden” test has created a lot of conflicts and the “line between” permissible and unconstitutional restriction “has proved to be impossible to draw with precision.”⁹⁴
- d) **Effect on other areas of law:** The earlier decisions in *Roe* and *Casey* have led to distortion of many important but unrelated legal doctrines.⁹⁵
- e) **Reliance Interests:** In the *Casey* decision, the traditional reliance interests were not implicated because getting an abortion is generally an “unplanned activity” and on the other hand, “reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.”⁹⁶

Justice Sotomayer in the dissenting opinion further remarked that the result of the decision would be a curtailment of women’s rights and of their status as free and equal citizens, taking away the right to abortion would destroy

destroys wh *Roe* termed ‘potential life’... none of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion.”

⁹⁴ Jeffrey Hannan, *Dobbs v. Jackson Women’s Health Organisation and the Likely End of the Roe v. Wade Era*, *Duke Journal Of Constitutional Law and Public Policy*, Volume 17, at 281-302.

⁹⁵ Gutbrod, Elena, “*Dobbs v. Jackson Women’s Health Organization.*” *The Reporter: Social Justice Law Center Magazine*, (2022), Volume 2022, Article 4 at 88.

⁹⁶ Sarah Parshall Perry and Thomas Jipping, *Dobbs v. Jackson Women’s Health Organization: An Opportunity to Correct a Grave Error*, *The Heritage Foundation*, Online: <http://report.heritage.org/lm293>.

individual plans and expectations and thereby diminish women's opportunities to participate fully and equally in the Nation's political, social and economic life.⁹⁷ However, it was also established that "dismantling the dicta of *Roe* and *Casey* decisions is not that easy as the Court has linked the right as recognized in these cases with other settled freedoms involving bodily integrity, familial relationships, and procreation. The right to terminate pregnancy arose out of the right to purchase and use contraception and in addition, those rights have led more recently, to rights of same-sex marriage and intimacy, and these all are parts of the same constitutional fabric, protecting autonomous decision-making over the most personal of life decisions."⁹⁸

The majority opinion relied heavily upon the originalist method of constitutional interpretation to support the view that the United States Constitution must be interpreted and read as a foundational charter as it was viewed at the time of ratification, however, the dissenting opinion highlighted that reliance on originalist interpretation would mean that those responsible for drafting of original Constitution, including the Fourteenth Amendment did never perceive women as equals and recognize women's rights and that the originalist interpretation consigns women to second-class citizenship.

The dissenting opinion remarked, "*With sorrow—for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection—we dissent.*"⁹⁹

⁹⁷ Elizabeth B. Harned and Liza Fuentes, Abortion Out of Reach: The Exacerbation of Wealth Disparities After *Dobbs v. Jackson Women's Health Organization*, Online: <https://www.guttmacher.org/article/2023/01/abortion-out-reach-exacerbation-wealth-disparities-after-dobbs-v-jackson-womens>.

⁹⁸ Maril, Robin S, When it Happens Here: Reproductive Autonomy, Fascism, and *Dobbs v. Jackson Women's Health*, (2023), *Pace Law Review* at 70.

⁹⁹ See generally, Coverdale, J., Gordon, M.R., Beresin, E.V. et al. Access to Abortion After *Dobbs v. Jackson Women's Health Organization*: Advocacy and a Call to Action for the Profession of Psychiatry. *Acad Psychiatry* 47, 1–6 (2023), as of August 25, 2022, nine states have banned abortion, four states have banned abortion 6 weeks after the last menstrual period, and one state has banned abortion 20 weeks after the last menstrual period. According to the Guttmacher Institute, it is estimated that 58% of women in the USA of reproductive age live in a state "hostile to abortion rights." When states prohibit abortion, women's decision-making as to whether to continue their pregnancy to

B. India

The Constitution of India guarantees equality to its citizens as echoed through Article 14 of the Constitution read with the Preamble of the Indian Constitution. The Supreme Court of India over the years has delivered notable judgments asserting women's reproductive rights. Legislature and executive have played vital roles in safeguarding women's rights, but the Indian judiciary, particularly the Supreme Court and High Courts, has played a crucial role while considering the diversity and personal laws by providing significant interpretations of women's reproductive rights. The Supreme Court of India in the year 2018 reaffirmed its dedication to gender equality and autonomy with two significant rulings: *Navtej Johar v. Union of India* and *Joseph Shine v. Union of India*.¹⁰⁰

These cases emphasize the legal duty of the courts to declare legislation that promotes discriminatory stereotypes and infringes upon women's sexual independence, particularly their ability to make decisions about reproduction, as invalid. In India, the acknowledgment of reproductive rights has progressed, surpassing mere parity and non-discrimination. The Supreme Court's rulings in *Navtej Johar* and *Joseph Shine* have profound implications in recognizing abortion as an inherent entitlement for women in India. Reproductive rights are essential for the independence, physical well-being, and self-respect of pregnant individuals, and they have a significant impact.¹⁰¹ The denial of individuals' reproductive autonomy not only infringes against their fundamental rights but also exposes them to discriminatory intervention in other areas of human rights, which include life, liberty, security, health, and freedom from ill-treatment and torture.

viability and term is negated. Also see, Aarika Bhaumik, "Curtails Women's Status as Free and Equal Citizens": SCOTUS Liberal Judges Dissent "With Sorrow" From Majority Decision Nullifying Abortion Rights, Online: <https://www.livelaw.in/top-stories/curtails-womens-status-as-free-equal-citizens-scotus-liberal-judges-dissent-with-sorrow-from-majority-decision-reversing-abortion-rights-202305> .

¹⁰⁰ *Navtej Johar v. Union of India*, AIR 2018 SC 4321. *Joseph Shine v. Union of India*, AIR 2018 SC 4898.

¹⁰¹ *Ibid.*

In the prominent 2007 legal matter of *Samar Ghosh v. Jaya Ghosh*, the Supreme Court critically scrutinized the situation where a married lady terminated her pregnancy without her husband's agreement, resulting in his seeking a divorce based on psychological harm. The court agreed that an independent choice to end a pregnancy might be deemed as cruelty, hence approving the divorce. This highlights the judiciary's acknowledgment of the infringement upon fundamental and human rights through the denial of reproductive rights. Reinforcing this position, the Supreme Court, in 2009, upheld the constitutional protection of reproductive autonomy in the significant ruling of *Suchita Srivastava*.

The case pertained to a young woman, aged 19 to 20, who had mild to severe intellectual difficulties. She was sexually assaulted while living in a government-operated welfare facility and consequently became pregnant. Referring to its ruling in the very landmark case of *Suchita Srivastava*, the Supreme Court recognized that a woman's ability to make decisions about reproduction is encompassed under the fundamental guarantee of personal liberty under Article 21. This particular case, which was based on the principles of a woman's right to privacy, dignity, and control over her own body, was the foundation for the Supreme Court to use the very concept of reproductive rights to acknowledge such rights for women so that they can make the choices regarding reproduction.¹⁰²

Without a doubt, the capacity of a woman to make choices pertaining to reproduction is seen as a fundamental aspect of 'personal liberty' as outlined in Article 21 of the Constitution of India. In the *Puttaswamy* case, the primary verdict, backed by most of the judges, along with two addendum opinions by Justices Nariman and Chelameswar, reaffirms the Supreme Court's previous recognition of reproductive rights as outlined in Article 21. They regard a woman's decisions regarding the length of her pregnancy as issues of personal privacy. The plurality ruling determined that women's 'intimate personal choices, including those related to reproduction,' are protected under decisional privacy. Justice Nariman contends that the "ability to end a pregnancy" is covered by considerations related to privacy, whilst Justice Chelameswar maintains that a woman's ability to decide

¹⁰² *Suchita Srivastava v. Chandigarh Administration*, AIR 2010 SC 235.

whether to give birth or terminate her pregnancy falls inside the realm of private matters.

In 2012, the Madhya Pradesh High Court, in the case of *Sandesh Bansal v. Union of India*, recognized that the ‘inability of a woman to bear pregnancy and childbirth’ violated her fundamental right to life as stated in Article 21.¹⁰³ Regarding the *Hallo-Bi v. Halima* case, the Madhya Pradesh High Court ruled that a woman's reproductive choices are essential to her liberty. Furthermore, the court stated that incarcerated women do not need permission from prison authorities to exercise their rights.¹⁰⁴ The Supreme Court has ruled that a woman does not need to seek the consent of her spouse to proceed with an abortion. This is consistent with progress in global human rights, as United Nations (UN) treaty monitoring bodies and experts have called on countries to remove barriers to abortion, such as the need for spousal consent. In the case of *Ms. X v. India*, the Court has granted permission for abortions that go beyond the twenty-week limit specified in the MTP Act. The Court acknowledges the paramount importance of a woman’s life and health, prioritizing them over any consideration of fetal rights.¹⁰⁵

These cases combined indicate a positive pattern in the Supreme Court and High Courts respecting reproductive rights, specifically related to abortion. The Supreme Court of India and other states High Courts have made notable advancements in recognizing that the denial of reproductive rights involves violations of the fundamental and human rights of pregnant individuals. Yet the merging demands from the LGBTQIA+ community and the hesitance of the Supreme Court to decide on the legality of marriages leaves a lot of questions yet unanswered with respect to access to sexual and reproductive health services in the country. Religious and

¹⁰³ Sandesh Bansal v. Union of India, W.P. (C) 9061/2008.

¹⁰⁴ Supreme Court, “HALLO BI @ HALIMA VS STATE OF MADHYA PRADESH - Supreme Today AI”, online: <<https://supremetoday.ai/doc/judgement/02702010670>>.

¹⁰⁵ Dipika Jain, “Supreme Court of India judgement on abortion as a fundamental right: breaking new ground - PMC”, online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10321178/>>.

cultural beliefs yet dominate the sphere of discourse surrounding women's rights.

3. Indonesia

Within Indonesian society, cultural norms play a defining role in shaping the perception of motherhood as an integral facet of a woman's identity. The term "ibu" (mother) not only encapsulates the role of "motherhood" but additionally embodies the societal ideals of "selflessness," nurturing and performing the responsibilities of a primary caregiver. Those women including individuals who identify as women frequently find themselves under pressure to adhere to these societal expectations, which include the expectation of having numerous children to be deemed as "complete mothers." This cultural belief exerts significant influence, compelling individuals to prioritize having children over their own reproductive choices.

Disparities and inequalities in the pursuit of reproductive rights among Indonesians are not uniform, as various factors contribute to differential positions within society. Socioeconomic status, educational attainment, geographic residence, and cultural or religious convictions serve as pivotal determinants, creating distinct divisions and imbalances among Indonesian women concerning their awareness of and access to Sexual and Reproductive Health and Rights (SRHR).

The rights to abortion in Indonesia are influenced by the predominant Islamic principles in the country. The application of Islamic law is given precedence in various aspects of life, including the contentious issue of abortion. Religious leaders and the influential "Council of Indonesian Ulama or Majelis Ulama Indonesia" (MUI) play a pivotal role in shaping abortion laws, with a growing emphasis on medical and social considerations.¹⁰⁶

The stance taken by MUI, as expressed during the National Congress of Ulama, aligns with Muhammadiyah's position, declaring abortion as

¹⁰⁶ Erlangga Agustino Landiyanto, *Abortion Policy in Indonesia: Rights, Law and Religious Perspectives* (Rochester, NY, 2010).

forbidden due to its perceived destruction of the value of life. This stance also accommodates the views of NU. MUI asserts that Islam prohibits all forms and stages of abortion, including menstrual management, labeling such practices as “haram” unless the mother's life is in immediate jeopardy due to health issues.¹⁰⁷ Consequently, Indonesia leans towards a pro-life standpoint regarding abortion, dictated by religious constraints rather than adopting a pro-choice perspective.

The issuance of Fatwa MUI No. 4/2005 served to reinterpret Islamic law on abortion. According to this religious decree, voluntary abortions are deemed impermissible, although exceptions are made for health emergencies, cases of rape, or genetic defects. While not legally binding, this fatwa significantly influences the religious and social landscape within the Indonesian Muslim community.¹⁰⁸ Examining abortion within the legal framework of Indonesia, specific laws address this sensitive topic. “Law No. 36/2009” and the “Indonesian Penal Code” (KUHP) are the primary legislations regulating abortion, with support from the “Indonesian Medical Doctor Code of Conduct” (IMDCC).¹⁰⁹ KUHP classifies abortion as a criminal offense, imposing penalties based on the roles individuals play in the abortion process. Pharmacists, physicians, and midwives involved in abortion face professional sanctions, and women undergoing illegal abortions may be sentenced to four years in prison. “Law No. 36/2009 on Health” permits abortion in specific circumstances, such as when the life of the mother or fetus is in jeopardy, demonstrating inconsistencies between this law and KUHP.¹¹⁰ The IMDCC further restricts doctors from

¹⁰⁷ Fikri Ariyad and Ali Mahsyar, Abortion by Rape Victim: A Dilemma in the Draft of Penal Code and Indonesian Health Law | Journal of Law and Legal Reform, online<<https://journal.unnes.ac.id/sju/index.php/jllr/article/view/39659>>.

¹⁰⁸ Septia Candra, *Hukum aborsi bagi korban perkosaan menurut Fatwa Majelis Ulama Indonesia No 4 tahun 2005 tentang aborsi dan Undang-undang No 36 tahun 2009 tentang kesehatan* (diploma, UIN Sunan Gunung Djati Bandung, 2019) [unpublished].

¹⁰⁹ Isdian Anggreany, “Urgensi Pelaksanaan Tahapan Persiapan Penyusunan Kontrak oleh Pelaku Bisnis dalam Mengkontruksi Hubungan Bisnis | Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang”, online: <<https://riset.unisma.ac.id/index.php/yur/article/view/5013>>.

¹¹⁰ Zahri Aeniwati and Sri Kusriyah, “Criminal Responsibility towards Criminals of Abortion in Indonesia” (2021) 3:1 Law Development Journal 9–18.

performing abortions solely to preserve the mother's life, emphasizing medical advancements as an alternative.¹¹¹

The decision-making process for abortion in Indonesia is complex, influenced by a combination of formal and traditional legal systems, privacy considerations, societal norms, and reluctance to seek legal and medical assistance.¹¹² Unintended pregnancies, particularly for unmarried women, pose significant challenges, including the lack of family support, societal stigmatization, and the risk of resorting to illegal and unsafe abortion methods. Limited legal options for abortion services exist in Indonesia, as reflected in the prohibitive nature of laws like Law 36/2009 and the Criminal Code (KUHP). Despite exceptions for cases like pregnancy resulting from rape, recent legislative changes, such as the "Sexual Violence Elimination Law," have added hurdles for sexually assaulted women seeking abortion during unwanted pregnancies.¹¹³

Law 36 of 2009 on Health allegedly guarantees the autonomy of individuals to make decisions regarding reproduction. However, the actual experiences of individuals in Indonesia diverge dramatically from the idealistic principles. An evident illustration is the dilemma encountered by numerous married women, whereby the power to determine childbirth is forcefully taken away from them, frequently by spouses who forbid the utilization of family planning techniques. This situation leads to several concerns, such as unplanned pregnancies and a significant absence of self-determination regarding their bodies. Furthermore, healthcare providers in Indonesia often face challenges when advising cesarean sections for those who would get advantages from them. The resistance arises mostly from familial apprehensions, with thoughts that opting for a cesarean delivery might restrict the potential of having children in the future. Conversely,

¹¹¹ Hesti Armiwulan, "Rights to Abortion, Pro-Choice vs. Pro-Life: Case of Indonesia and the USA" (2022) 17:2 International Journal of Criminal Justice Sciences 128–139.

¹¹² Tat Marlina and Duwi Handoko, "Problematika Pemenuhan Hak Menyampaikan Pendapat dan Pelanggaran Terhadap Hak Atas Kesehatan di Indonesia" (2021) 3 Ensiklopedia of Journal 42–53.

¹¹³ *Ibid.*

individuals who opt to remain child-free endure societal scrutiny and censure for their decisions.¹¹⁴

The infringement on the ability of women and gender-diverse individuals to make autonomous and informed decisions entails enduring ramifications for their physical and mental well-being. Individuals who lack the ability to exert authority over their reproductive well-being face an increased susceptibility to health issues associated with their child-bearing and childbirth. Alarming, Indonesia exhibits a significantly high maternal mortality rate compared to other countries in the Association of Southeast Asian Nations (ASEAN), with an alarming number of 189 maternal deaths per 100,000 live births.¹¹⁵ So far, the government of Indonesia has mostly focused on the attribute of “managing reproduction” with the specific goal of attaining successful “population control,” for economic and political reasons. This perspective is seen in policies governing reproduction, such as the family planning program.¹¹⁶ By taking a human rights-based approach to population and development challenges, we recognize and respect the autonomy of individuals in controlling their bodies and sexualities.

Indonesian society has experienced a noticeable increase in conservatism in recent years, which has had an impact on different aspects of life, such as family planning and the choice to not have children.¹¹⁷ Conservative viewpoints that are largely influenced by deeply rooted religious and cultural beliefs often prioritize “traditional family values” thereby advocating for larger families. Also, some conservative religious leaders discourage the use of family planning methods, perceiving them as being in

¹¹⁴ Ioannis Mylonas and Klaus Friese, “Indications for and Risks of Elective Cesarean Section” (2015) 112:29–30 *Dtsch Arztebl International* at 489–495.

¹¹⁵ UNFPA Indonesia. “Strengthening Da to Reduce Mernal Dehs in Indonesia.” May 8, 2023. Online: <https://indonesia.unfpa.org/en/news/strengthening-da-reduce-mernal-dehs-indonesia>.

¹¹⁶ Landiyanto, Erlangga Agustino, *Abortion Policy in Indonesia: Rights, Law and Religious Perspectives* (April 2, 2010). Online: SSRN: <https://ssrn.com/abstract=1583403> or <http://dx.doi.org/10.2139/ssrn.1583403>

¹¹⁷ Misbah, and Setyaningrum, *Rising Islamic Conservism in Indonesia Islamic Groups and Identity Politics*, by Leonard C. Sebastian, Syafiq Hasyim, Alexander R. Arifianto, (2022), *Journal of the Humanities and Social Sciences of Southeast Asia* at 90.

contravention and contradictory to the religious teachings and emphasizing solely the religious duty of procreation.¹¹⁸

Nevertheless, there is an unequal distribution of reproductive rights among Indonesians. Indonesian women have discrepancies in their awareness of and access to Sexual and Reproductive Health and Rights (SRHR) due to differences in socioeconomic level, educational achievement, geographic location, and cultural or religious views. Urban inhabitants with elevated levels of education frequently enjoy enhanced access to knowledge and resources pertaining to sexual and reproductive health and rights (SRHR), comprehensive sexual education, and the ability to avail themselves of reproductive healthcare services.¹¹⁹

On the other hand, women, girls, and individuals of diverse genders living in rural or isolated locations, especially teenagers, are marred with difficulties in receiving sexual and reproductive healthcare services and information in a timely manner. Their capacity to exercise their sexual and reproductive rights is constrained by limited infrastructure, a lack of healthcare facilities, and cultural barriers. This leads to less awareness and increased vulnerability to harmful behaviors and norms. Significantly, 42% of Indonesia's populace dwells in rural locales, a substantial portion of whom inhabit underdeveloped regions with limited access to resources, such as sexual and reproductive healthcare.¹²⁰

Unmarried women face particularly hard conditions, coping with societal judgment and legal hurdles that dissuade them from having access to sexual and reproductive health treatments, including options regarding family planning. Single women's rights are greatly affected whereby often lacking the protection provided by the normative frameworks that apply to women

¹¹⁸ Warwick & Donald, "The Indonesian Family Planning Program: Government Influence and Client Choice." *Population and Development Review* 12, Number 3 (1986): 453–90. <https://doi.org/10.2307/1973219>.

¹¹⁹ Bhirawa Anoraga and Minako Sakai. (2023) *From Pemuda to Remaja*. *Indonesia and the Malay World* 51:150, at 23.

¹²⁰ World Bank Open Da. "World Bank Open Da." Online: <https://da.worldbank.org/indicor/SP.RUR.TOTL.ZS?locations=ID>.

who are married. Access to birth control is supported for married couples officially but not in the case of “sexually active unmarried individuals.”¹²¹

Furthermore, adherence to more conservative religious views may uphold and prioritize traditional values, including opposition to having access to contraception and abortion thereby limiting the sexual and reproductive choices available to women. Complex discussions surrounding birth control in Islam often involve differing interpretations, with some perceiving methods like contraception or sterilization as conflicting with religious teachings. Cultural beliefs, such as “banyak anak, banyak rezeki” (having numerous children leads to greater prosperity), further discourage the use of family planning methods, resulting in unplanned pregnancies and challenges in managing and planning families. This underscores how religious views, along with cultural and traditional values, create substantial barriers for those seeking informed choices about their sexual and reproductive health and rights.

The country’s intricate yet diverse social fabric poses a unique challenge for women as gender, sexuality, location, class, age, and religion often intersect. Age, number of children, wealth index, education, and lack of access to information are significant challenges in determining the use of contraceptives. The traditional gender roles that have been assigned to women impose a primary responsibility for childcare and domestic duties that continue to persist as a challenge due to impending societal expectations and are further, reinforced by patriarchal structures, limiting agency in decision-making regarding birth control. Power imbalances often marginalize or silence the voices of women and gender-diverse individuals, exacerbating existing disparities and impeding progress toward strengthening SRHR.

In Indonesia, some passionate activists and organizations strongly support the rights of women to make decisions about their reproductive health. Despite their dedicated efforts, which have resulted in the inclusion of reproductive health services in national health programs, there are still

¹²¹ Alice. “Why Birth Control Remains Just Out of Reach for Most Indonesian Women.” (August 24, 2017) Online <https://www.vice.com/en/article/a33n3g/why-birth-control-remains-just-out-of-reach-for-most-indonesian-women>.

ongoing difficulties that need to be addressed. Conversations regarding contraception, abortion, and sexuality are typically stigmatized due to conservative attitudes, with groups like the Islamic Defenders Front (FPI) and Family Love Alliance (AILA) opposing these rights on religious or traditional family value grounds. Furthermore, isolated and marginalized groups encounter challenges in terms of accessibility due to geographical, infrastructural, and cultural obstacles.

The author advocates for the Indonesian government to implement resolute steps to address gender discrimination in a comprehensive manner. This entails the revocation of discriminatory laws, regulations, and policies targeting women, bringing them in line with international human rights norms, including those outlined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It is crucial for government authorities, such as the Minister for Women's Empowerment, the Minister of Home Affairs, the Minister of Justice and Human Rights, and the Minister of Health, to collaborate with parliamentary commissions to thoroughly review and amend laws, with a particular focus on those enacted during the decentralization process.

Furthermore, the author supports the promotion of initiatives aimed at increasing awareness, emphasizing the acknowledgment of sexual and reproductive rights as fundamental human rights. To do this, it is recommended that extensive reproductive health education programs be included in the national school curriculum. Efforts should focus on promoting programs that specifically emphasize the harmful consequences of discriminatory behaviors on the well-being of women, particularly in rural regions where educational attainment is lowest. To facilitate access to reproductive health information and services, it is imperative to evaluate and modify legislation pertaining to marriage, the penal code, population and family planning, and healthcare, in order to align them with global norms. Moreover, there is a pressing need to legalize abortion to guarantee the provision of safe services, and it is advised that measures be put in place to hold states accountable for safeguarding reproductive health rights. Finally, the author highlights the importance of enacting laws to protect

the labor rights of domestic workers and to enhance their ability to obtain knowledge regarding sexual and reproductive rights.

VI. CONCLUSION

The reproductive rights of women have sparked immense debate worldwide. The feminist approach has spearheaded a new wave, bringing women's issues to the forefront. It is high time to eradicate gender stereotypes from society if we enormously aspire to implement the true spirit of equality. The status of reproductive rights is yet precarious in numerous countries. Religious, cultural, economic, social, and political biases hinder the assertion of sexual and reproductive rights as an attribute of fundamental human rights. Access to contraceptives, medical aid, abortion rights, and easy availability of information remain yet a challenge in countries that place human rights on a high pedestal. There is a renewed need for promoting equal parenting and creating awareness to mitigate the effects of sex stereotypes in society.

Sensitization and awakening coupled with robust legal mechanisms can effectively help in asserting women's rights in general and reproductive rights in particular. *Roe v. Wade* has remained a landmark judgment that had been effectively relied upon by various constitutional courts to develop the jurisprudence surrounding reproductive rights in their respective jurisdictions, however, the repercussions of *Dobb's* judgment remain to be seen in comparative constitutional discourse. The emerging demands from sexually diverse groups especially same-sex couples and other allied communities are also gaining momentum, forcing the need to revive and revisit the discourse surrounding the assertion of sexual and reproductive rights. Constitutionalizing these discourses through appropriate constitutional and legislative amendments and changes, deeply supported through human rights approaches, would lead to better and more effective guarantees in tune with the international human rights regime.

The decision of the United States Supreme Court in *Dobbs* is highly regressive and in complete violation of the international human rights regime, it is going to open Pandora's box and has undone in one stroke

what the feminists and the human rights activists have been asserting for long. There is a revived need to revisit the deliberations centered on the internationalization of constitutional law in light of this development and the issues that the judgment has unearthed. Nations need to accord specifically designated funds every year for undertaking sensitization drives in rural areas and to effectively ensure access to healthcare facilities irrespective of the economic stature of women. Child marriages need to be strictly dealt with by countries in tune with their international obligations. Curriculum design at the school level should focus on imparting inclusive sex education. The state should undertake welfare activities by devising schemes specifically catering to the needs of pregnant women ensuring pregnancy-related assistance and child-care incentive plans. The government and its instrumentalities need to prioritize reproductive health as an integral aspect of fundamental human rights like the right to life and the right to dignity.

ACKNOWLEDGMENTS

None.

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