

A Critical Analysis of Abortion Laws in Global Perspective

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INTRODUCTION

The right to life is a broad and significant right that both men and women can enjoy. The right to a standard of living sufficient for his and his family's health and well-being, including food, clothing, housing, medical care, and essential social services is guaranteed by Article 21 of the Indian Constitution and Article 25 of the Universal Declaration of Human Rights. He also has the right to security in the event of unemployment, illness, disability, widowhood, old age, or other lack of livelihood due to circumstances beyond his control. The same articles also recognize childhood and motherhood. The essential right recognized by the right to privacy is the right to an abortion.¹ There are various religious, ethical, moral and legal aspects that rule over abortion.² Abortion is condemned in all religions. Incorrect knowledge of laws may affect how women enter the health system or seek services, and it likely contributes to the disconnect between official laws and practical applications of the laws that influence women's access to safe, legal abortion services.³

There is a global trend toward the liberalization of abortion laws driven by women's rights, public health, and human rights advocates. This trend reflects the recognition of women's access to legal abortion services as a matter of women's rights and self-determination and an understanding of the dire public health implications of criminalizing abortion. Nonetheless, legal strategies to introduce barriers that impede access to legal abortion services, such as mandatory waiting periods, biased counselling requirements, and the unregulated practice of conscientious objection, are emerging in response to this trend. These barriers

¹ Roe v Wade 410 US 113 (1973).

² Sai Abhipsa Gochhayat, Understanding of Right of Abortion under Indian Constitution <https://efaidnbmnnnibpcajpcgglefindmkaj/https://manupatra.com/roundup/373/articles/presentation.pdf>. (Accessed on 12 Oct. 2024).

³ Assifi AR, Berger B, Tunçalp Ö, Khosla R, Ganatra B Women's Awareness and Knowledge of Abortion Laws: A Systematic Review (2016). PLOS ONE 11(3). <https://doi.org/10.1371/journal.pone.0152224>. (Accessed on 12 Oct. 2024).

stigmatize and demean women and compromise their health.⁴ The experience during a period of two years with a liberalized abortion program in New York City has been reviewed. Data collected in New York City indicate that the number of abortions rose by 40% in the second year compared to the first, more so for non-residents than for residents. Non-residents accounted for almost two-thirds of all abortions performed during the two-year period.⁵

ABORTION LAW APPROACHES IN DIFFERENT NATIONS

The past fifty years have been characterized by an unmistakable trend toward the liberalization of abortion laws, particularly in the industrialized world. Each year, around seventy-three million abortions take place worldwide, according to the World Health Organization (WHO). This translates to about thirty-nine abortions per one thousand women globally, a rate that has stayed roughly the same since 1990. Notably, rates have diverged between countries with fewer restrictions and those with more: Between 1990–94 and 2015–19, the average abortion rate in countries with generally legal abortion (excluding China and India) declined by 43 percent. By contrast, in countries with severe restrictions on abortion, the average abortion rate increased by around 12 percent.⁶

ABORTION LAWS IN UNITED STATES

In the United States, abortion is a divisive issue in politics and culture wars, though a majority of Americans support access to abortion. From the American Revolution to the mid-19th century abortion was not an issue of significant controversy; most held to the traditional Protestant Christian belief that personhood began at quickening, sometime between 18 and 21 weeks. It was legal prior to quickening in every state under the common law.⁷ Many states subsequently passed various laws on abortion until the Supreme Court of the United States decisions of *Roe v. Wade*⁸ and *Doe v. Bolton*⁹ decriminalized abortion nationwide in

⁴ Louise Finer, Johanna B. Fine, “Abortion Law Around the World: Progress and Pushback”, *American Journal of Public Health* 103, No. 4 (April 1, 2013): pp. 585-589.

⁵ J Pakter, D O'Hare, F Nelson, and M Svirig, *Two Years' Experience In New York City With The Liberalized Abortion Law-Progress and Problem*, *American Journal of Public Health* 1973 (June), 63 (6), 524-535. <https://doi.org/10.2105/AJPH.63.6.524>

⁶ <https://www.cfr.org/article/abortion-law-global-comparisons>. (Accessed on 25 Oct. 2024).

⁷ Reagan, Leslie J. (2022) [1997]. *When Abortion Was a Crime: Women, Medicine and the Law in the United States, 1867–1973* (1st ed.).

⁸ 410 U.S. 113 (1973).

⁹ 410 U.S. 179 (1973).

1973. The *Roe* decision imposed a federally mandated uniform framework for state legislation on the subject. It also established a minimal period during which abortion is legal, with more or fewer restrictions throughout the pregnancy.¹⁰ The abortion-rights movement advocates for patient choice and bodily autonomy, while the anti-abortion movement maintains that the fetus has a right to live. In June 2022, the U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization*¹¹ overturned *Roe v. Wade*, opening the door for states to ban abortion outright.

As of 2024, Many States have a right to abortion in their state constitutions, either explicitly or as interpreted by the state supreme court. As of 2024, Alaska, Arizona, California, Colorado, Illinois, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Ohio, Vermont, and Wyoming have a right to abortion in their state constitutions, either explicitly or as interpreted by the state supreme court. And others protect abortion under state law. Abortion is banned in 13 States of US. The state constitutions of Alabama, Louisiana, Tennessee, and West Virginia explicitly contain no right to an abortion.¹²

ABORTION LAWS IN UNITED KINGDOM

Abortion in the United Kingdom is de facto available under the terms of the Abortion Act 1967 in Great Britain and the Abortion (Northern Ireland) (No.2) Regulations 2020 in Northern Ireland. The procurement of an abortion remains a criminal offence in Great Britain under the Offences Against the Person Act 1861, although the Abortion Act provides a legal defence for both the pregnant woman and her doctor in certain cases. Although a number of abortions did take place before the 1967 Act, there have been around 10 million abortions in the United Kingdom.¹³ This means that, currently, abortions can only be carried out legally up to 24 weeks, must be approved by two independent doctors and performed only in an NHS hospital or a place approved by the Secretary of State. Abortions not meeting these strict conditions may be treated as a criminal offence.¹⁴ England, Scotland and Wales are falling behind a range of

¹⁰ <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html>. (Accessed on 25 Oct. 2024).

¹¹ 597 U.S. 215 (2022).

¹² *Supra* Note 14.

¹³ <https://fullfact.org/law/factchecking-campaigning-leaflets-abortion/>

¹⁴ [https://www.lshtm.ac.uk/newsevents/expert-opinion/uk-abortion-law-what-you-need-know#:~:text=Abortions%20across%20England%2C%20Wales%20and,by%20the%20Secretary%20of%20State](https://www.lshtm.ac.uk/newsevents/expert-opinion/uk-abortion-law-what-you-need-know#:~:text=Abortions%20across%20England%2C%20Wales%20and,by%20the%20Secretary%20of%20State.). (Accessed on 15 Oct. 2024).

countries that have modernised their abortion laws. In 2019, Northern Ireland and the Isle of Man removed abortion offences from criminal law, a process known as decriminalisation. This led to speculation that other parts of the UK may follow. The Republic of Ireland, New Zealand, Australia, Canada and Sweden are all examples of countries which have already removed abortion offences from their criminal law.¹⁵

ABORTION LAWS IN JAPAN

Abortion in Japan is allowed under a term limit of 22 weeks for endangerment to the health of the pregnant woman, economic hardship, or rape. Chapter XXIX of the Penal Code of Japan¹⁶ makes abortion de jure illegal in the country, but exceptions to the law are broad enough that it is widely accepted and practiced.¹⁷ If a woman is married, consent from her spouse is also needed to approve abortions for socioeconomic reasons, although the rule doesn't apply if she is in a broken marriage, suffering abuse, or other domestic issues. Despite the partner's consent not being necessary for unmarried women and women who were impregnated by abusive partners or through rape, many doctors and medical institutions seek a signature from the man believed to have made the woman pregnant for fear of getting into legal trouble, rights advocates say.¹⁸ In April 2023, medical abortion was approved in Japan for pregnancies up to 9 weeks of gestation. The Japanese health ministry approved an abortifacient from British pharmaceutical company Linepharma.

Women who have a medical abortion are required to stay in the hospital for the abortion to be confirmed by the prescribing physician. Any other person who is not a certified gynaecologist or obstetrician who aborts a fetus using abortifacients that is not approved by the Japanese Health Ministry will be penalized. Abortions are not covered under Japanese insurance. Surgical abortions can cost between 100,000 yen and 200,000 yen; the total cost of the abortion pill and a medical consultation would be around 100,000 yen, according to the NHK. Since the approval of the Mefeego pill pack in April 2023, the government conducted a survey that concluded there were no severe side effects and complications as a result of the newly approved medication. In August 2024, the Ministry of Health announced it is now

¹⁵ Sally Sheldon and Kaye Wellings (eds), *Decriminalising Abortion in the UK: What Would It Mean?*, Policy Press, 2020, 176 pp., Open Access, ISBN 9781447354024. (Accessed on 15 Oct. 2024).

¹⁶ <https://www.cas.go.jp/jp/seisaku/hourei/data/PC.pdf>. (Accessed on 15 Oct. 2024).

¹⁷ Id. Articles 212-216.

¹⁸ Nakagawa, Satoko (March 15, 2021). "No consent from spouse needed for abortion in broken marriages in Japan: ministry". *The Mainichi*.

considering the expansion of medical abortion to outpatient clinics that can coordinate inpatient facilities in the case of emergencies.¹⁹

ABORTION LAWS IN FRANCE

France has had abortion legal since 1975, and on March 4, 2024, it became the first country to enshrine abortion rights in its constitution. French lawmakers on March 4, 2024 overwhelmingly approved a bill to enshrine abortion rights in France's constitution, making it the only country to explicitly guarantee a woman's right to voluntarily terminate a pregnancy. The historic move was proposed by President Emmanuel Macron as a way to prevent the kind of rollback of abortion rights seen in the United States in recent years, and the vote during a special joint session of parliament drew a long-standing ovation among lawmakers. The measure was approved in a 780-72 vote in the Palace of Versailles. Abortion enjoys wide support in France across most of the political spectrum and has been legal since 1975.²⁰

ABORTION LAWS IN GERMANY

Abortion in Germany is legal on demand during the first 12 weeks of pregnancy upon condition of mandatory counselling. The same goes later in pregnancy in cases that the pregnancy poses an important danger to the physical or mental health of the pregnant woman. In the case that the abortion is because of a rape, counselling is not mandatory. The woman needs to receive counselling, called *Schwangerschaftskonfliktberatung* ("pregnancy-conflict counselling"), at least three days prior to the abortion and must take place at a state-approved centre, which afterwards gives the applicant a *Beratungsschein* ('certificate of counselling'). Doctors provide medication to cause the abortion, and observe to ensure there are no negative reactions to the medication. Abortion is illegal under Section 218 of the German criminal code, and punishable by up to three years in prison (or up to five years for "reckless" abortions or those against the pregnant woman's will).²¹ Section 218a of the German Criminal Code, called *Exception to liability for abortion*, makes an exception for abortions with counselling in

¹⁹ <https://www.theguardian.com/world/2023/apr/29/japan-approves-abortion-pill-for-the-first-time>.

²⁰ <https://www.thehindu.com/news/international/france-becomes-the-only-country-to-explicitly-guarantee-abortion-as-a-constitutional-right/article67914799.ece> (Accessed on 10 Oct. 2024).

²¹ https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html (Accessed on 10 Oct. 2024).

the first trimester, and for medically necessary abortions and abortions due to unlawful sexual acts (such as sexual abuse of a minor or rape) thereafter.²²

ABORTION LAWS IN CHINA

Abortion in China is legal at all stages of pregnancy and generally accessible nationwide. Abortions are available to most women through China's family planning program, public hospitals, private hospitals, and clinics nationwide. China liberalized its abortion law in the 1950^s and promoted the practice under its one-child policy, which was enacted in 1979 in an effort to curb population growth by restricting families to one child. The policy, under which abortion services were made widely available, came with severe coercive measures—including fines, compulsory sterilization, and abortion—to deter unauthorized births. China raised this long-standing limit to a two-child policy in 2016, along with other incentives to encourage population growth amid a rapidly aging population. In 2021, it increased the limit to three children, and China's State Council issued guidelines on women's development that called to reduce "non-medically necessary abortions."²³

ABORTION LAWS IN UNITED ARAB EMIRATES

The UAE has taken a significant step in liberalizing its stance on abortion with the introduction of Cabinet Resolution No. 44 of 2024 regarding the determination of permissible abortion cases. Effective as of June 21, 2024, this Resolution marks a notable departure from the previous restrictive laws, expanding the circumstances under which abortion is now permissible. The new Resolution introduces three additional scenarios where abortion is legal:²⁴

- (a) Non-consensual Pregnancy: If the pregnancy is a result of an act committed against the woman's will, without her consent, or with forced or unreliable consent—in other words, as a result of rape.
- (b) Incestuous Pregnancy: If the person who impregnated the woman is a family member or a *muhram* (such as a father, brother, uncle, or grandfather).

²² *Ibid.*

²³ <https://www.asiapacific.ca/publication/china-fight-reproductive-rights>. (Accessed on 5 Nov. 2024).

²⁴ <https://www.lexology.com/library/detail.aspx?g=6cd6ff2-b5fe-4e63-b275-aea87210977d> (Accessed on 5 Nov. 2024).

- (c) Spousal Request: Abortion is also possible at the request of both spouses, subject to approval by a specialized medical committee.

Before this Resolution, the UAE's abortion laws, governed by the Medical Liability Law²⁵, were highly restrictive. Abortion was only permitted under two conditions:

- (i) Threat to the Mother's Life: If the pregnancy posed a serious threat to the life of the mother.
- (ii) Fetal Abnormalities: If severe fetal abnormalities were confirmed by medical reports, and the pregnancy had not exceeded 120 days.

So, with this new Resolution, the UAE has broadened the permissible cases, reflecting a more progressive stance. This change aims to protect women's health, safety, and stability by providing clear guidelines and expanding the conditions under which abortion is allowed.

ABORTION LAWS IN BANGLADESH

In Bangladesh, abortion is illegal except to save a woman's life, though menstrual regulation (MR) is permitted. MR involves the use of manual uterine aspiration or Misoprostol (with or without Mifepristone) to induce menstruation up to 10–12 weeks from the last menstrual period. Despite the availability of safe and legal MR services, abortions still occur in informal settings and are associated with high complication rates, causing women to then seek post abortion care (PAC).²⁶ Bangladesh does not recognize abortion as a reproductive right of women. Instead, women might face punishment for "voluntary miscarriage". The menstrual regulation procedure and menstrual regulation with medication (MRM) give the option to women to get rid of unplanned pregnancies. However, the existing laws do not permit women to opt for abortion.

Bangladesh does not recognize "abortion" as a right, in fact, it considers abortion as an offence. The Penal Code 1860 uses the term "miscarriage" instead of "abortion" to deal with different types of pregnancy termination cases.²⁷ Section 312 of the Penal Code 1860 states: "Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with

²⁵ Federal Decree-Law No. 4 of 2016.

²⁶ <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01123-w>. (Accessed on 20 Oct. 2024).

²⁷ <https://www.dhakatribune.com/bangladesh/laws-rights/269795/age-old-law-restricts-women%E2%80%99s-right-to-abortion-in>. (Accessed on 25 Oct. 2024).

imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.” Section 316 states: “Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” The law states that a woman who causes herself to miscarry is within the meaning of this section. Abortion is the intentional termination of pregnancy, whereas a miscarriage is when an embryo or foetus dies before the 20th week of pregnancy.²⁸

ABORTION LAWS IN PAKISTAN

Abortion is referred to as ‘*Isqat-e-Haml*’²⁹ and ‘*Isqat-e-Janin*’³⁰ in Pakistan’s Penal Code³¹ under articles 338, 338A, 338B, and 338C. According to Articles 338 and 338(B), termination of a pregnancy is a punishable crime, unless it is caused under ‘good faith’, or to save the life of the woman through the ‘necessary treatment’ to her. In any cases otherwise, abortion can lead to imprisonment for three or more years, dependent upon whether it was caused with or without the consent of the woman. Analysis of abortion laws in Pakistan reveals that there is very little compatibility between abortion policies in Pakistan who is member of the United Nations since 1947 and abortion rights proposed by the UN. As previously mentioned, the UN has undoubtedly stated abortion and the legalization of abortion as a human right for women. However, policies in Pakistan are inclined towards its illegality, except for cases that involve ‘good faith; or ‘necessary treatment’. Additionally, state laws are ambiguous and do not define terms like ‘good faith’ and ‘necessary treatment.’³²

²⁸ <https://www.dhakatribune.com/bangladesh/laws-rights/269795/age-old-law-restricts-women%E2%80%99s-right-to-abortion-in> (Accessed on 15 Nov. 2024).

²⁹ Isqat-e-haml is the termination of a pregnancy when the child's organs are not yet formed. It is considered isqat-e-haml if a woman is caused to miscarry when it is not done in good faith to save her life or provide necessary treatment.

³⁰ Isqat-e-Janin is a term used in Pakistan's Penal Code to describe the termination of a pregnancy after some of the child's limbs and organs have developed.

³¹ Act XLV of 1860.

³² <https://blogs.lse.ac.uk/humanrights/2022/03/22/abortion-laws-in-the-islamic-republic-of-pakistan-to-what-extent-do-social-policies-cater-to-human-rights/#:~:text=In%20turn%2C%20Isqat%2De%2D,necessary%20treatment'%20to%20her.> (Accessed on 15 Nov. 2024).

ABORTION LAWS IN INDIA

In September 2021, the Medical Termination of Pregnancy (Amendment) Act of 2021 came into force, extending the upper gestational limit for abortion from 20 to 24 weeks. Although the amendment did not recognise abortion on demand as a pregnant person's right, it was heralded as the next step in making Indian abortion laws more progressive. The amendment was a response to the Indian courts receiving requests to access safe medical support from many women with unwanted pregnancies beyond the permissible gestation period. In September 2022, the Supreme Court granted a petitioner permission to terminate her 22-week pregnancy in a *X v Principal Secretary*. In a decision that was celebrated among reproductive rights advocates, the Court found that any distinction made between the rights enjoyed by a person based solely on marital status is unconstitutional. Additionally, it recognised the unmet needs of marital rape survivors in situations of unwanted pregnancies

The judgement held that the decision to carry a pregnancy to term or terminate it is firmly rooted in a woman's right to her bodily autonomy and her ability to choose her path in life. It also recognised that an unwanted pregnancy can have serious negative effects on a woman's life, such as disrupting her education, career, and mental well-being. But in 2023, the positive developments of 2021 and 2022 appear to have been overshadowed by anti-reproductive rights sentiments. A year after the judgement in *X v Principal Secretary*, this pro-rights agenda received a major setback and revealed how much more there is to be done for India to transition into a truly liberal and right-based jurisdiction for medical termination of pregnancies. In *X v Union of India*, a 27-year-old married woman, a mother of two, approached the Supreme Court to seek permission for abortion as per the Medical Termination of Pregnancy Act, 1971. The petitioner discovered her pregnancy at around 24 weeks due to a condition known as lactational amenorrhea, which leads to breastfeeding women not menstruating. After facing initial denial at the health facility, the petitioner promptly went to the apex court to seek access to essential healthcare. In a rather dramatic turnaround of events in the Supreme Court, the arguments for foetal viability and concerns about the rights of the unborn child were heard and given precedence over the reproductive autonomy of the petitioner. Despite fulfilling the legal requirements of mental health concerns, her reproductive rights were measured against a checklist for eligibility for termination beyond 24 weeks and were found wanting. The Court noted that she did not attract Section 3(2B) protections which covered sexual assault survivors, minors, widowed or divorced persons, disabled persons, mentally ill persons, foetal

abnormality or pregnancy during humanitarian crises. She also did not attract Section 5 protections which allow termination of pregnancy in cases where it is necessary to save the life of the woman. Firstly, the Court's understanding of mental illness as a ground for termination was unclear. Despite X's multiple submissions regarding her mental health, postpartum depression and psychosis, suicidal tendencies and tendency to cause harm to herself and her children, the Court refused to permit termination based on these grounds. Secondly, with the petitioner's concerns of suicide considered and rejected, the judgement begs the question—what constitutes a threat to a woman's life?

The judgement suggests that for a full exercise of reproductive autonomy, the woman has to prove the dangers of her circumstance and her absolute *need* for an abortion. With this, the Court effectively went back on its decision in *X v Principal Secretary*, which had recognised a woman's position as the “ultimate decision-maker” on matters of her reproductive choices. India had taken a step forward with the 2021 amendment and the 2022 judgement, but that is not to say that it had moved away from the grounds-based and gestational limits approaches. Notwithstanding the amendment, the MTP Act remains provider-centric and grants decision-making powers to service providers instead of recognising that abortion should be made available at the request of pregnant persons when they need it. The system pits the pregnant person against the pregnancy itself, and we have seen what the outcome of that is in the October 2023 judgement. Here, the Court limited the woman's right to reproductive autonomy by strictly measuring her rights against the eligibility criteria in Sections 3(2B) and 5 of the MTP Act. The legislation and the Court's interpretation ultimately created a framework where a woman's autonomy came to a hard stop at 24 weeks, and was replaced instead by a subjective determination of the circumstances by doctors and judges. Such fragmentation of women's bodies must be challenged, and we need to centre the pregnant person when talking about reproductive rights. Guaranteed rights must translate into guaranteed access, which is only possible if lawyers, judges and doctors have less to decide than the woman whose bodily autonomy is in question.³³

CONCLUSION

³³ <https://www.scobserver.in/journal/abortion-law-in-india-a-step-backward-after-going-forward/> (Accessed on 10 Nov. 2024).

The analysis of abortion laws across various nations highlights the diversity of approaches rooted in cultural, religious, political, and socio-economic contexts. While some countries have embraced progressive frameworks that prioritize women's autonomy and reproductive rights, others maintain restrictive policies influenced by traditional values and moral considerations. This variation underscores the complex interplay between individual freedoms, societal norms, and governmental interventions. In this paper, study reveals that more liberal abortion laws often correlate with improved maternal health outcomes, lower rates of unsafe abortions, and a stronger commitment to gender equality. Conversely, restrictive laws tend to drive the practice underground, increasing health risks and perpetuating inequalities. However, the debate on abortion is far from settled, as it remains a contentious issue shaped by evolving societal attitudes and political landscapes. In conclusion, there is no one-size-fits-all solution to abortion legislation. Policymakers must navigate the delicate balance between safeguarding human rights and respecting cultural diversity. The future of abortion laws will likely hinge on the global community's ability to foster dialogue, prioritize evidence-based policies, and uphold the principles of dignity and choice for all individuals. Further research is essential to explore the long-term implications of these legal frameworks and to advocate for solutions that promote health, justice, and equity.