

ABORTION IN US POLITICS : SOME REFLECTIONS

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I. INTRODUCTION

In the process of last US election for the election of the President, various ways emerged to gain leverage by one party over the other. Issue of abortion was one of them and is now again prominently appearing in formulating policies of the new administration.

There is wider apprehension that President Trump's administration is planning to bar nearly all abortions at Veterans Affairs medical facilities, overturning a Biden-era policy that provided such access to pregnant women. Thus, pregnant Veterans would not be allowed to get abortions performed at the facilities of Veterans Affairs hospitals even in the cases of rape, incest or when the pregnancy threatens their health seriously.

Few months after the Supreme Court ended the constitutional right to access to abortion services as a matter of right in 2022 in overturning its earlier decision in *Roe v. Wade*¹, the Biden administration changed the rule by allowing for the first time, to provide abortion services for veterans and eligible family members in limited circumstances, including in states where access to abortion services was banned. According to Veterans, such policy change was essential.

Recently, Trump administration called the 2022 rule change inappropriate and legally questionable. The Trump administration's move to again restrict abortion access has received praise from conservatives who strictly oppose federal funding for abortion services of any kind. However, Veteran Administration responded by emphasizing that it would continue to provide care to pregnant patients in life-threatening circumstances.

Lindsay Church, executive director of Minority Veterans of America, is concerned that if the said new abortion rule takes effect, the Veterans would be highly disappointed and may go to unsafe places to access needed services. However, the proposal also states that the department will continue treating veterans who miscarry or have an ectopic pregnancy, when the embryo implants outside the uterus. Ectopic pregnancies are never viable. The proposal has been floating for months.

It is hoped that Veteran Administration would be back in line with historical norms. Previously, from 1999 to 2022, Veteran Administration excluded nearly all abortions and its counseling for Veterans and their spouses, children and others covered by the department's benefits package. It is now being said that Joe Biden initiated the change for "political purposes" in fact, Biden administration's change of rule to expand abortions through Veteran Administration, was one of the few strategies officials could leverage to protect access to the abortion procedures after the Supreme Court overturned its *Roe v. Wade* ruling. But that protection applied only in rare cases.

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¹ 410 U.S. 113 (1973).

In fact, the changed Veteran Administration rule was a policy level decision of the Defense Department, which can perform or pay for abortions services of its members and their beneficiaries only in cases of rape, incest or to save the life of the mother. Biden-era Veteran Administration had said in 2022 that it was “unconscionable” that Veterans did not have access to these same critical services following their transition to civilian life. The policy was to protect Veterans living in states hostile to access to abortion services, especially in the South, the region that most severely restricted abortion access after *Roe v. Wade* decision was overturned.

In some of those states, lawmakers unhappy with the rule change during Joe Biden Presidency, by threatening that they would punish Veteran Administration workers, who performed abortions not allowed under State law. The Justice Department responded that it would give legal defense to Veteran Administration medical workers, regardless of their location. In 2022, it was guessed that more than 1,000 abortions for Veterans and beneficiaries each year shall be provided under the rule change. Now the Trump administration says in its proposal that the number is much lower, fewer than 150 abortions annually.

More than 100 Democratic lawmakers already sent a letter to Veteran Administration Secretary Douglas A. Collins, pleading with him to keep the earlier policy going. Consequently, Veteran Administration officials had a meeting with the Alliance Defending Freedom, a Christian Legal Organization that strongly opposed abortion. In a written submission, the response was that the Biden rule change was an instance of federal overreach, also stating that increased abortions mean fewer births and that pro-abortion policies place our nation’s labor force and entire economic future at great risk.

II. THE FLORIDA ADVERTISEMENT CONTROVERSY

Before the last presidential election, a group known as ‘Floridians Protecting Freedom’, filed a lawsuit requesting for an injunction to restrain the State of Florida’s Health Department from warning and trying to pressurize local TV stations from not airing an advertisement of the group on the issues of abortion. The Health Department’s order directed the stations to immediately refrain from playing the broadcast of the said advertisement failing which, criminal charges against those broadcasting stations could be initiated.

This advertisement was an indirect attempt to suggest to voters to seek a change in the existing abortion laws by using their right to vote. It advised the people of Florida to vote “yes” on a ballot initiative that would add language to the state constitution allowing abortions until fetal viability. The sought amendment would thus override Florida’s after six-week abortion ban. The campaign’s advertisement depicted a woman, named Caroline, suffering from terminal brain cancer, wished to receive treatment which may extend her life, and therefore required to end her current pregnancy.

The letters from the health department sent to the broadcast stations also added that the description in the advertisement was incorrect and harmful because Florida’s current abortion law makes an exception in case the life of the mother is in danger. It was also impugned that with that kind of advertisement being broadcast, pregnant women may go out of the state to seek

abortion services which could be highly detrimental for their health. Chief U.S. (Federal) District Judge Mark Walker accepted the prayer of the petitioners and issued an injunction against the Health Department's order. While issuing the temporary restraining order, the judge based his order / judgment on the freedom of speech, enshrined in the first amendment² of the American Constitution. While recognizing the fact that the state had been campaigning, opposing the above ballot, and asking for the removal of the said advertisement Caroline, would amount to censorship, thereby, a violation of the First Amendment.

In response to the judge's decision, Lauren Brenzel, campaign director of the 'Yes on 4' ballot initiative, called it a 'crucial victory'. Florida's Protecting Freedom group stated in their lawsuit that not only a preliminary injunction to prevent the Health Department from threatening TV stations be issued but the Department should also be liable for payment of punitive damages for a violation of the right, of the petitioners, to free speech. Moreover, the cease-and-desist letters were an escalation of a broader State campaign to use public resources and government authority to attack the people's ballot initiative, which is illegal to begin with.

In 1975, in India, similar arguments were presented by a politician, late Mr. Raj Narain, while challenging the election³ of the then Indian Prime Minister, Mrs. Indira Gandhi, which led to her disqualification for indulging in electoral malpractice by the Allahabad High Court. The principles of electoral ethics and constitutional morality seem to be the same in India and the US. It is interesting to note that the Health Department's attorney, John Wilson, resigned after a week of sending the letters in question to the TV stations. Abortion is a state subject in the US and every state of the Union of USA has its own local laws and provisions, for gaining access to abortion services. Like Florida, many other states (14 of them) have similar restrictions on accessing abortion services of the state.

To change the local constitution and to facilitate access to abortion services till 24 weeks of pregnancy, is a crucial issue in this fight besides of course the American women's individual rights and freedom to decide about their own motherhood.

III. TEXAS CASE: LIZELLE GONZALEZ AND PRIVACY RIGHTS

It is interesting to observe the fall out of another case from the state of Texas. Lizelle Gonzalez, a Star County, Texas, resident, filed a civil rights complaint, wherein the hospital staff passed on information about her abortion, her private information, to prosecutors and the county sheriff, whereby, she was charged with murder.⁴ The facts are that Gonzalez admitted that she went to a hospital emergency in January 2022 after having taken 'Cytotec estrogen 400 mcg', also known as "misoprostol", one of the two abortion pills to have an abortion at 19 weeks of pregnancy. The state of Texas has several abortion related restrictions. However, it is not a crime for a woman to abort herself. The abortion ban alludes to and concerns anyone, including a

² Constitution of the United States, amend. I.

³ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

⁴ Nadine El-Bawab "A woman who took an abortion pill was charged with murder. She is now suing prosecutors", *ABC News*, available at: <https://abcnews.go.com/US/woman-abortion-pill-charged-murder-now-suing-prosecutors/story?id=112300737&utm> (last visited on Apr 23, 2024).

physician, who helped her in getting aborted. The state law places civil and criminal penalties on anyone who aids a woman in obtaining abortion care, except when the life of the mother is at risk. Gonzalez' allegations are that the prosecutors and the sheriff violated her Fourth and Fourteenth Amendment rights and sought over \$1 million in damages in her suit. Two prosecutors, District Attorney Gocha Allen Ramirez and District Attorney Alexandria Lynn Barrera, as well as Starr County Sheriff Rene Fuentes and the Starr County, are all respondents in the lawsuit. On examination, no contractions were found and a fetal heart rate, so Gonzalez was discharged from the hospital and told to come back later. She was discharged in less than an hour. When she complained of abdominal pain and vaginal bleeding, and was taken in by the hospital. A caesarean section was performed on detecting absence of fetal cardiac activity. As per reports, she delivered a stillborn child.

Gonzalez further stated that the hospital staff gave her private medical information to the state prosecutors and the sheriff, which lead to her arrest, thereby, violating federal privacy laws.⁵ According to the plaintiff, the district attorney's office and the Starr County Sheriff's Office had agreements with a local hospital to report such types of cases. She further claimed that there are other women, whose health information was also shared for the purpose of investigations and conviction.

It is her claim that two district attorneys and the Starr County's sheriff gave false and misleading information to the grand jury to secure an indictment against her. As a result, she was arrested in April 2022 and held in jail for two nights. After furnishing bond of \$500,000, she was released. Two days thereafter, all charges against her were dismissed. Gonzalez suffered huge humiliation which has permanently affected her standing in the community, as a result of the wrong arrest and indictment.

On the grounds of claiming absolute immunity against the individual claims against them, Ramirez and Barrera have sought to have the suit dismissed because action was taken as part of the judicial phase of criminal proceedings. The Sheriff claimed that he has 'qualified immunity' and stated there was claim against his office and not against him. However, the suit ended in a settlement of the claims.

Here is another instance of an attempt to legally manipulate the norms related to the abortion pill. It is interesting to note that some anti-abortion groups along with some doctors, filed a motion to appeal against the lower court's decision before the Supreme Court to restrict access to the permitted drug being used as an abortion pill, which was however opposed by Joe Biden's administration and sought to retain the wide access to the drug.

The said matter was heard by a nine-judge Constitutional Bench and their decision was unanimous in rejecting the plea.⁶ They rejected the review petition of these anti-abortion groups for setting aside the order of a lower court of Texas. The Constitutional Bench opined that the petitioners had initially petitioned in the state of Texas in 2022, they lacked the locus for initiation of their motion and to establish how they are adversely affected by the FDA's orders, allowing

⁵ *Ibid.*

⁶ *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024).

access to the said abortion pill. This was an appeal petition against the Texas lower court's order, rejecting their plea of seeking to ban and change the US Food & Drug Administration's (FDA) order declaring the use and access to the pregnancy termination pill, 'Mifepristone', to be legal. This drug is being prescribed and is also easily available.

IV. SUPREME COURT DECISIONS AND LEGAL PRECEDENTS

In 2022, two years ago, the American women's constitutional right to abortion was repealed by setting aside the *Roe v. Wade*⁷, and the fundamental right to have access to abortion services was taken away. It was in the matter of *Dobbs v. Jackson Women's Health Organization*, the US Supreme Court set aside the *Roe v. Wade*⁸ decision, which had previously guaranteed a constitutional right to abortion.

In *Roe v. Wade*,⁹ the Supreme Court decided that abortion as a fundamental right was protected by the right to privacy guaranteed by the 14th Amendment. However, the government retained the power to regulate or restrict abortion access depending on the stage of pregnancy.

It is stated that after the decision of *Roe v. Wade*, the maternal mortality was significantly reduced. Records state that 39 women are said to have died from unsafe abortions in 1972. In 1975, only three women succumbed to death. In 1965, around 35% of pregnant women died due to unsafe abortions. Now with increased use of technology, only 0.2 per cent of the pregnant women need to be hospitalized due to abortion related complications.

While considering the matter of *Dobbs v. Jackson Women's Health Organization*, the US Supreme Court set aside the *Roe v. Wade* decision which had guaranteed abortion as a constitutional right. After this decision, some state constitutions, independently protect abortion rights or otherwise, they made changes by enacting laws in conformity with the spirit of this 2022 decision.

In *Roe v. Wade*, the Supreme Court decided that the right to privacy implied in the 14th Amendment, protected abortion as a fundamental right. However, the government retained the power to regulate or restrict abortion access depending on the stage of pregnancy and the governing policies of the state in this regard.

*Roe v. Wade*¹⁰ decision significantly reduced maternal mortality. A total of 39 women is known to have died in 1972 on account of unsafe abortions and in 1975, only three. In 1965, number of deaths due unsafe abortion services were very high because abortion was not legal in those days. Now the situation is said to be different and there is hardly any hospitalization on account of abortion related complications.

⁷ *Supra* note 1.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

The US Supreme Court passed many decisions before setting aside *Roe v. Wade*, in accordance while deciding the case of *Dobbs v. Jackson Women's Health Organization*¹¹. Some of them are:

- i. In 1976, in the matter of *Planned Parenthood v. Danforth*,¹² the Supreme Court negated the law, requiring spousal consent for abortion.
- ii. In 1979 in the matter of *Maher v. Roe*¹³, the Supreme Court permitted States to exclude abortion services from Medicaid coverage.
- iii. In 1979, in the matter of *Colauti v. Franklin*¹⁴, the Pennsylvania law was declared unconstitutional that required physicians to try to save the life of a fetus that might have been viable. was declared to be unconstitutional.
- iv. In 1980, in the matter of *Harris v. McRoe*¹⁵, the Supreme Court upheld the Federal law on Hyde Amendment, prescribing Federal funding abortions, except when necessary to save the life of the mother or when pregnancy was a result of rape or incest.
- v. In 1981, in the matter of *L v. Mathewson*, in case of minor girl, living with parents, the law requiring notice to be sent to parents was upheld.
- vi. In 1983, in the matter of *City of Akron v. Akron Centre for Reproductive Health*¹⁶, the Supreme Court set aside lots of limitations and restrictions on abortion, like waiting period, parental consent without courts permission and a ban on abortions outside of hospitals after the first trimester.
- vii. In the matter of *Thornburgh v. American College of Obstetricians & Gynecologists*¹⁷, the Supreme Court set aside the law, requiring informed consent to include about fetal development and alternatives to abortion.
- viii. In 1989, in the matter of *Webster v. Representative Health Services*¹⁸, Justice Rehnquist upheld rules requiring doctors to first test the viability of the fetus after 20 weeks in the case of a state employee participating in abortion services, state funding to be refused.
- ix. In 1991, in the matter of *Rust v. Sullivan*¹⁹, the law banning the use of some Federal funds for abortion referrals or counseling was declared legal.
- x. In 2000, in the matter of *Hill v. Colorado*²⁰, the Supreme Court declared it legal, the law permitting protests and leafletting close to an abortion clinic.
- xi. In 2000 also, in the matter of *Stenberg v. Carhart*²¹, the Supreme Court set aside the ban on the dilation and extraction of abortion procedure in Nebraska.
- xii. In 2007, in the matter of *Gonzales v. Carhart*²², a ban on the dilation and extraction of abortion procedure was upheld.

¹¹ 597 U.S. 215 (2022).

¹² 428 U.S. 52 (1976).

¹³ 432 U.S. 464 (1977).

¹⁴ 439 U.S. 379 (1979).

¹⁵ 448 US 297 (1980).

¹⁶ 462 U.S. 416 (1983).

¹⁷ 476 U.S. 747 (1986).

¹⁸ 492 U.S. 490 (1989).

¹⁹ 500 U.S. 173 (1991).

²⁰ 530 U.S. 703 (2000).

²¹ 530 U.S. 914 (2000).

²² 550 U.S. 124 (2007).

Here it is important to point out that during the period between *Roe v. Wade*²³, decision and of *Dobbs v. Jackson*, lots of churning took place on the issue of right to abortion. In 1992, in the matter of *Planned Parenthood of Southeastern Pennsylvania v. Casey*²⁴, petitioner filed a motion to repeal the *Roe v. Wade* judgment. Anti-abortion groups were vocal to seek from conservative Supreme Court judges, who they expected would set aside the decision made in *Roe v. Wade*. The anti-abortion activists were happy when Justices Anthony Kennedy, Sandra Day O'Connor, and David Souter, were appointed, they were certain that now needful would be achieved. In 1988 and 1989, the state of Pennsylvania enacted some new provisions on abortion services, to make it difficult to access, like the need for parental consent, spousal notification, a compulsory waiting period and an expanded informed consent process. The Planned Parenthood of Southeastern Pennsylvania group challenged the law and every one hoped that the constitutional right of abortion granted by the *Roe v. Wade* ruling would be done with. However, it was not so and thus the constitutional right to abortion was not disturbed.

However, the Court did replace trimester-by-trimester doctrine with a weaker level of protection and upheld elements of the Pennsylvania law, which did not unnecessarily affect the right to abortion. The petitioners pleaded to overrule *Roe v. Wade* but the court declined.

In a separate judgment by Justices O'Connor, Kennedy, and Souter explained that, it is correct that the judgments of the Supreme Court are relied upon in other such matters but to disturb a constitutional right, a strong cogent reason is needed to justify abandoning of *stare decisis* (the notion that precedents should be upheld), for such an intervention. No Supreme Court decision can be eternal. Citizens have accordingly organized their healthcare after the 1973 decision to have the right to abortion. In this matter court also recognized the right of equality of some to participate in the developmental and economic process of the country, if they are not able to get rid of the unwanted pregnancies.

In 2018, the state of Mississippi, banned abortions after 15 weeks of gestation period, except if it was defined as a medical emergency. The anti-abortion and pro-abortion groups found it to be a challenge. Jackson Woman's Health Organization, was the sole abortion provider in the state and it contested the said ban²⁵. In the state of Texas, the court allowed the abortion ban. Now the conservative process had started their campaign and it culminated in setting aside of *Roe v. Wade*²⁶ decision.

In some cases, these measures seek to overrule their state courts' interpretations of the constitutional provisions. In others, there has been no court decision regarding the constitutional right to abortion. Other states have, in contrast, moved to expand or cement abortion rights, including through constitutional amendments.

²³ *Supra* note 1.

²⁴ 505 U.S. 833 (1992).

²⁵ Emily Sullivan "U.S. Judge Strikes Down Mississippi Law That Bans Abortions After 15 Weeks" *NPR*, Nov. 21, 2018, available at: <https://www.npr.org/2018/11/21/669878629/u-s-judge-strikes-down-mississippi-abortion-ban?utm> (last visited on Apr 22, 2024).

²⁶ *Supra* note 1.

Dobbs matter also leaves a long list of unanswered practical questions. Can states ban women from traveling to obtain an abortion? How will they police the importation and use of abortion drugs? How will state courts handle the slew of “trigger laws by anti-abortion statutes” designed to come into effect upon the overturning of *Roe*? Just as *Roe* set off years of legal uncertainty over the precise boundaries of abortion rights, *Dobbs* has launched a long period of uncertainty over the power of states to restrict abortion in the absence of those rights. The three dissenting justices argued that the majority’s ruling was:

- a. Based on personal political opinions, not the constitutional law;
- b. It went against legal precedent, a bedrock of US legal decisions that was affirmed in *Roe v. Wade* in relation to other closely related rights, which were reaffirmed in *Casey v. Planned Parenthood* ²⁷.
- c. It violated a long list of human rights, particularly women’s human rights.

Some state constitutions independently protect abortion rights. However, after the *Dobbs* decision, the states were able to reframe their abortion laws, in conformity with the repealed decision, resulting in restricting the abortion and reproductive rights. At present, in the US Supreme Court, six judges are conservative and three are not, and that is how they were able to smoothly review the decision of *Roe v. Wade* in 2022. It is significant to note that in this matter, the key deliberated article of the US Constitution is the Fourteenth Amendment, which states that:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

V. PUBLIC HEALTH AND ETHICAL IMPLICATIONS OF ABORTION BAN

The hidden implications herein are that the unborn child has rights too. Here, it is important to mention that though Donald Trump has said that he would not sign a federal abortion ban, and would veto one, even if passed by Congress. He made statements in support of I.V.F., in spite of opposition from some Republicans. Some anti-abortion activists hope that reversal of Federal guidance, which prescribe that even states with bans must allow doctors to provide abortion in cases of medical emergency; using administrative agencies to ban abortion pills; and using Federal executive powers to achieve the anti-abortion movement’s ultimate aim of recognizing “fetal parenthood” in the Constitution. These actions would not need Congressional role and could be managed by Federal bureaucracy appointed by Donald Trump. Even if this was to be challenged in the court, the conservative judges, could take care of those challenges and make abortion more difficult, if not illegal, and override the state abortion rights ballot measures, which states have passed.

²⁷ 505 U.S. 833 (1992).

The anti-abortion activists need to pay attention to the misery of women meeting death in view of restrictions and stringent laws. Here are some examples:

- i. Josseli Barnica, 28 years old, was seven weeks pregnant and went to HCA Houston Healthcare Northwest, Texas due to medical complications in an accurate state of pain and misery. The pregnancy did not survive and on September 3, 2021, she lost all hopes of the birth of the child. During the complications, it was found that the fetus was about to come out, its head pressed against her dilated cervix; a miscarriage was in progress, as per hospital records. Actually, after such diagnosis, the delivery should have been speeded, her uterus should have been cleaned immediately to prevent a deadly infection. According to several doctors, who studied the records, no appropriate medical services were made available.

She relentlessly pleaded with the doctors to help her while suffering in pain and agony for 40 hours but to no avail. She delivered three days later and died of an infection. Under the strict abortion laws in Texas, doctors are prohibited from stopping the heartbeat of a fetus.

- ii. Two Georgia women could have been helped to survive by giving them timely and efficient abortion services. Suffering families of these unfortunate women did speak of their pain at political meetings.

The anti-abortion activists contend that such laws protect life, both of the fetus and the mother. These suffering women did not want an abortion. Actually, doctors are hesitant of providing treatment in such cases for fear of prosecution, which may lead to prison time, fines, (99 years in prison and fines of \$100,000), humiliation, and destroying their own lives.

According to more than a dozen medical experts and doctors, who reviewed such cases, medical records and autopsy records, Barnica's life could have been saved. After reviewing the four-page summary, containing the timeline of care of the hospital, they all agreed that requiring Barnica to wait to deliver until after there was no detectable fetal heartbeat, in fact violated professional medical standards because it could allow time for an aggressive infection to become firm. According to them, there was a good chance Barnica could have survived, if an intervention was made earlier.

Texas, like all other states, has a committee of maternal health experts to review such deaths. These experts, in good numbers, are OB-GYNs and maternal-fetal medicine specialists from all over the country. Apart from them, the committee includes researchers of prestigious institutions, doctors who regularly handle miscarriages, and experts who have served on state maternal mortality review committees and held posts at national professional medical organizations. After going through the records, they recommend ways to prevent such tragedies in the future. However, the committee's reports on individual cases are not made public. The committee has not yet completed their scrutiny of the cases of the year 2021. On further enquiry, members affirmed that they had as not yet reached up to examining the case of Barnica's death.

- iii. A similar situation arose in 2012 in Ireland, when 31-year-old, Savita Halappavnar, died of sepsis c, when the hospital, refused to clean her uterus, on miscarriage of a 17-week pregnancy. The public outcry on Savita's death under these horrible circumstances was so intense and persistent that the country had to change its strict ban on abortion.

With regard to so many deaths in the United States due to lack of appropriate laws and consequently, deficiencies in the availability of efficient abortion services leading to deaths, people including political leaders, supporting anti-abortion laws need to take up the call for reforms of these norms and regulations.

VI. COMSTOCK ACT AND FEDERAL ABORTION REGULATION ATTEMPTS

The court could turn to Comstock Act of 1873, an easy way to solve the matter. Anti-abortion activists are pushing harder to the enforcing the Comstock Act. This Act has been inactive but is still valid. This was enacted in 1873 and it makes a federal crime to send or receive materials ‘designed, adapted, or intended’ for ‘obscene or abortion-causing’ purposes. This law would also criminalize the delivery or receipt of medical instruments used in abortion.

As understood by the anti-abortion lobby of lawyers, the Act could be used to criminalize buying or selling medications used in gender-affirming treatment or to prevent H.I.V infections which New York based lawyer Mitchell and colleagues in the anti-abortion movement have tried to ban.

A document called, ‘Lincoln Proposal’ was prepared by the group known as ‘Americans United for Life’ in 2021, which was like President Lincoln’s way of asserting his constitutional powers to abolish slavery, despite the Supreme Court’s affirmation in the matter of Dred Scott. They plan to advise Donald Trump to issue an executive order recognizing preborn persons as constitutional ‘persons’ entitled to the fundamental human rights of due process and equal protection of the laws as enshrined in the Fourteenth Amendment of the American Constitution.

A number of states limit abortions to a maximum of six weeks into pregnancy, usually prior to when the fetus could survive if removed from the womb. For comparative purposes, the youngest child thought to have survived a premature birth in the United States was Curtis Means, born on July 5, 2020, in Birmingham, Alabama, at a gestational age of 21 weeks and one day. Moreover, due to the Hyde Amendment, many states’ health programs which poor women rely on for their health care, do not cover abortions. According to the ACLU, only 17 states-- as of 2023 cover it.

What is likely to emerge from this picture is an America, where in some states, women with unwanted pregnancies would be able to get abortions. However, to do so, they would need access to information about abortion providers in the more liberal states, and also develop the skills and discipline to keep their plans completely secret.

Kamala Harris, also contesting for the US presidency at that time, seriously made out a case against all those, including Republican officers of the administration for meddling with women’s rights. She strongly condemned them for trying to bring in a nationwide ban on abortion. She also clarified that court’s ruling on preserving the use of abortion pill does not change her plans at all to continue to fight for reproductive freedom.

It is clear that if abortion is banned, health issues of women would be a cause for severe concern. In Texas, there are huge pregnancy related complications. In the state of Florida,

considering the Amendment IV, no access to abortion services will be available till pregnancy is of six weeks. Medically, it has been asserted that many women may not be able to ascertain that they are pregnant in that short period of six weeks.

VII. GENDER POLITICS AND WOMEN VOTERS

Many voters in the US identified abortion as their top election issue. However, all other issues still may outrank abortion in many swing states, nevertheless, it is very important. It cannot be gauged, how important it can be, unless it is planned to overturn the *Roe v. Wade*.²⁸ It is more likely that when abortion is on ballot, more women are likely to come out to the polls. As was seen previously and in the last election, with women issues on the agenda, more and more women participate in the election process. The situation was same in India in 2019 election, for Muslim women regarding the issue of Triple Talaq.²⁹

Considering the promise, Muslim women heavily voted in favor of Mr. Narendra Modi and his party, Bhartiya Janta Party (BJP) in the states of Bihar, Uttar Pradesh and Gujrat and in some pockets of other states. Normally, they had always voted as per their husbands' suggestion and / or that of the community's collective decision, as who to vote for. The change in their voting pattern resulted in a thumping majority of the BJP because it would delete by law the evil tradition of Triple Talaq and that kind of process of divorce would be legally banned. And it was. However, it is a different matter as to how the changed law on the issue has been stipulated to operate. It is being strictly operated with the provision of punishment of three years for defying but no alternative provision for maintenance so divorced women has been made, on the husband is sent to jail. As a result, now most Muslim women do not agitate even when they are victims of such un-Islamic way of divorce by the tradition of Triple Talaq.

According to PhD research scholar, Layla Brooks from Emory University, abortion can be a powerful incentive for more women to go to the polls. While analyzing data from the 2022 midterms, she revealed that women vote in larger numbers, if abortion is a major election issue and when an abortion-related measure is on the ballot.

To assess the genuine desire of Donald Trump's change of his stand before the election, on abortion, is an interesting aspect of this presidential contest. He seems to defy the mandate of his party in this regard. The Republican Party's agenda has always been to restrict abortion. However, statements coming earlier from Donald Trump indicated a shift from this deep-rooted stand.

Donald Trump and his party were in aficionado on account of reproductive rights. Many voters thought that Donald Trump's non-strong mindedness and shifting approach cannot be trusted and relied upon. He made pro-abortion statements in order to somehow win pro-abortion voters. It was feared that this kind of approach may alienate some Republican voters. People know that he takes pro-abortion stand and does to ease the situation and may not stick to it later, especially on the issue of abortion.

²⁸ *Supra* note 1.

²⁹ If the husband makes an announcement in front of two witnesses to divorce his wife (utters the word Talaq thrice in one go), the divorce becomes valid.

In 1999, while identifying himself as a democrat, Donald Trump said on a TV show on reproductive rights, 'Meet the Press', that "I am very pro-choice." Later by 2016, he became a confirmed Republican and said he was against abortion. He said at a presidential debate:³⁰ *"I am pro-life, and I will be appointing pro-life judges."* He fulfilled his commitment and appointed three such justices to the Supreme Court. He has also claimed credit for the repeal of Roe v Wade decision.

According to many election strategy watchers, Trump's assertion that he would be "great for women and their reproductive rights", has no takers. He cannot be relied on the matters of women's healthcare related reliefs. Donald Trump had often been claiming that the 2020 election was stolen from him, which is said to have given rise to January 6 Capitol attack.³¹ The ethics of political morality seem to have fallen and hopefully will not continue to be so.

In 2023 and 2024, Donald Trump was found liable in civil proceedings for sexual abuse, defamation, and financial fraud. In May 2024, court also found Trump guilty on 34 felony counts of falsifying business records, thereby, becoming the first former U.S. president to be convicted of crimes. Apart from many, two issues have emerged very controversial and strongly emphasized, from that of his opponent Kamala Harris, they are immigration and abortion.

Most surveys indicated that Donald Trump was struggling hard to rally female voters. In order to win back some voters on the question of reproductive rights, could be hard for the Republican Party on the whole, so with shifting claims, he could possibly appeal to gullible voters or may have totally opposite results. He has often been ambiguous, especially on the subject of reproductive rights and in politics. Kamala Harris also made her stand on abortion access, of paramount importance.

Kamala Harris chose governor of Minnesota, Tim Walz, her running mate and Donald Trump chose D. Vance, who has served since 2023 as the United States' junior senator from Ohio. He is an out spoken opponent of abortion. He is a sort of reassurance for conservatives for claiming to be "strong pro-life policies". With the heat of election, the issue of abortion gained immense controversy in the US. The number of women voters comprise approximately of 51 percent of the population; therefore, women's vote was likely to be a deciding factor. Former President Barack Obama has pleaded vehemently with black men to support Kamala Harris. Except in one of the crucial swing states, Vice President Kamala Harris seemed to have a good amount of support from women, a positive sign for her. Somehow the last election had the streaks of turning into girl versus boy. Michelle Obama and Beyonce had vehemently endorsed Kamala Harris' candidature.

Former president, Bill Clinton had also supported Kamala Harris. He has pleaded with people to support her candidature for US Presidency wholeheartedly. There was a large number of other well-known women voters who stood in solidarity with Kamala Harris. A survey published by Emerson College found that Harris enjoyed a lead among women voters in six states, *i.e.*,

³⁰ Samantha Cooney, "The Mixed-Up History of Donald Trump's Abortion Stance(s)" *Time*, Oct. 21, 2016, *available at*: <https://time.com/4538293/donald-trump-partial-birth-abortion-third-debate/> (last visited on May 23, 2024).

³¹ Brian Duignan "January 6 U.S. Capitol Attack" *Britannica*, Aug. 04, 2021, *available at*: <https://www.britannica.com/event/January-6-U-S-Capitol-attack> (last visited on Mar. 25, 2024).

Georgia, Michigan, Pennsylvania, Wisconsin, Nevada, and North Carolina. However, the state of Arizona, seemed to support Donald Trump.

There were lots of uncomplimentary utterances too at the time of last election. The running mate of Donald Trump, J D Vance, termed Kamala Harris in the category of “Childless Cat Women”, meaning, thereby, such women, like her, instead of bearing children of their own, love cats. It was a cruel and clothed attack on Kamla Harris’s strong stand on pro-abortion rights.

VIII. KAMALA HARRIS’S BACKGROUND AND ADVOCACY

Abortion has been an issue for a long time in the US between Democrats and Republicans. Their stands are poles apart and have found no acceptable middle path. Mainly in view of their different political ideologies on gender issues. Differences on these issues have further widened with the review and repeal of the previous decision in the case of *Roe v. Wade*³², by the US Supreme Court. Thereafter, the Issue of abortion assumed of huge proportions and became immensely prominent nationally and internationally (the said decision went also before the International Human Rights Forum). This decision has allowed states to pass restrictive abortion bans that prevented in some cases, women from accessing even life-saving reproductive healthcare, resulting in their deaths. With the conflict of ideologies, some happily endorsed the views flowing from the bench, while others found it appalling and unjust because it robbed American women the right to decide for themselves, to go through the pregnancy joyfully or terminate it, depending on their circumstances at that given time.

Both Republicans and Democrats continue to collect sympathies for their take on the issue of abortion. Various Church representatives also got involved in this matter. Internationally, many conservative countries, irrespective of their political ideologies agreed with the repealed decision. However, in Europe, the reactions are mixed. Catholic France made abortion completely legal last year as a matter of policy to grant women the right to make their own choices.³³ Now abortion there is a settled issue once for all for everyone.

On Trump’s win, his proclaimed policies are taking effect not only on the matter of sexual and reproductive health rights (SRHR) but on a whole lot of women issues. Gender equality has also emerged as a sort of bench mark. Average politicians here are far behind their European counter parts in this respect. The whole world is curiously watching, due to many other reasons, like the immigration, investment, tariffs and trade related policies. Participation of skilled personnel, student status, aid to universities, immigration of undocumented people, collaboration in trade, science and technology and role of NATO etc.

Project 2025 has been criticized for advancing a deeply illiberal agenda that would undermine the fundamental motherhood rights of women to decide whether to continue a pregnancy. More than 80 conservative organizations, including powerful Catholic and Evangelical groups, have signed on to support abortion ban.

³² *Supra* note 1.

³³ “France becomes world’s first country to enshrine abortion in constitution” *Al Jazeera*, Mar. 04, 2024, available at: <https://www.aljazeera.com/news/2024/3/4/french-lawmakers-vote-to-enshrine-right-to-abortion-in-constitution?utm%20x> (last visited on May 28, 2024).

It has been stated that President Trump has been closely connected to “Project 2025”. On the other hand, Kamala Harris stood for championing of abortion rights and made it a central focal point of her campaign.

Dangers of President Trump’s administrative policies for women’s and LGBTQIA+ rights were circulating on the down side. Under his previous presidency, laws relating to contraceptive rights, coverage, pay inequities, measures against gender-based and sexual violence, as well as legal protections for LGBTQIA+ people and gender rights were criticized. US funding for international abortion access under the “Global Gag Rule” was stopped. Based on his previous Presidency performance and considering the import of implementation of “Project 2025”³⁴, the gender situation is fearsome.

In India, girls were not valued, more before than now. All parents yearn for a son, who will continue their family line and its name and later would give ‘Water’ (*pind dan*)³⁵ to the deceased ancestors. It is a religious belief of the majority of the Indian population that a son can help them to attain ‘Moksha’ (eternal salvation of the soul) by performing certain religious rituals after their death. Scripturally, daughters cannot perform these rituals of a hard-core patriarchal society and they are considered to be a burden in terms of looking after them from a security point of view and to safe guard and ensure that they remain virgins till they are married. Purity of the physical body is an essential requirement for a proper ritualistic marriage amongst the majority of the Indian population. On the top of that parents are expected to give huge amount of dowry³⁶ at the time of marriage. If not given, often the woman is harassed for not bringing a good fat dowry. Therefore, girls are less welcomed and often little investment is made in their education etc.

In India, marriages are usually arranged by the parents, considering the religion, caste and clan to be associated (with in the same religion) and level of the groom’s education, income earning capacity and employment status etc.³⁷ Dowry, though prohibited by law, yet is hugely in vogue and parents often outdo their capacity to pay it, by borrowing on high rate of interest. Therefore, birth of a girl is a burden in Indian society. Now things are changing but not much. In many cases, girls were killed at birth in rural India, like in the northern state of Punjab and Haryana. The sex ratio is highly uneven so the parents travel to other states to find a bride for their sons, even if they have to pay for it.

In India, abortion became an easy way out after sex determination tests, so instead of killing a newly born girl child, now if the fetus is found to be of a female, is killed in the nip, in the hope of getting a son with the next pregnancy. Such trends may not be rampant in southern parts of India, from where, Kamala Harris’s mother’s family hailed but the birth of a son certainly is always a yearning expectation in a Tamil Brahmin family too. Therefore, passion and zeal for protection of women’s rights and her stand on abortion, has to be understood from that point of view too.

³⁴ Project 25 Explained, *available at*: <https://www.aclu.org/project-2025-explained?> (last visited on Mar. 25, 2024).

³⁵ Mishra Khushboo Ashokkumar, “A Psycho-socio-economic Perspective of Pind Daan Practice: A Systematic Review” 63 *Economic Affairs* 591 (2018).

³⁶ The Dowry Prohibition Act, 1961 (Act 28 of 1961), s. 2.

³⁷ Cultural India, “Arranged Marriage in India – Facts, Customs, Processes & Significance”, *available at*: <https://www.culturalindia.net/weddings/arranged-marriage.html> (last visited on Apr. 20, 2024).

It is true that Kamala Harris is an American through and through, only her mother was an Indian American and father was an African American, therefore, she is qualified to be a black American woman. In the first television debate with her, she was scornfully remarked at her being Indian and said it is not known, where she got 'Harris' from.

IX. MTP ACT AND IMPLICATIONS IN INDIA

Talking of abortion in India, the law, Medical Termination of Pregnancy Act was passed in 1971³⁸ by the Parliament and this Act is applicable to all the parts of India. Thereafter, abortion became legal, except in advanced state of pregnancies, beyond the period of 24 weeks. Even in some of those special cases, courts have allowed pregnancy to be aborted, if it is a matter of endangering the life of the incumbent mother. An unmarried mother is also allowed to abort her unplanned pregnancy.³⁹

In India, unintended pregnancies are a cause for adversely affecting the health and welfare of young women and their children. Association between unintended pregnancy and socio-demographic factors among young female population in India was a subject of intense study during the period from 2015–19, called UDAYA⁴⁰: “Understanding the Lives of Adolescents and Young Adults” conducted in 2015–16. (Wave 1) and 2018–19 (Wave 2) in a highly scientific manner, using univariate, bivariate analysis along with logistic regression model. The results revealed that 40.1 per cent of all currently pregnant adolescents and young adult females reported their pregnancy as unintended (mistimed and unwanted) in Uttar Pradesh at Wave 1 of the survey, which decreased to 34.2 per cent at Wave 2. On the contrary, almost 99 percent of all currently pregnant adolescents in Bihar reported their pregnancy as unintended at Wave 1, which decreased to 44.8 per cent at Wave 2. The socio-demographic factors like age, caste, religion, education, wealth, media and internet use, knowledge and effective contraception highly impacted unintended pregnancies in Bihar and Uttar Pradesh.

Millions of residents of Montana, Arizona, Missouri, Nebraska, Colorado, Florida, Maryland, Nevada, New York, and South Dakota are keen to express how the state they live in, should regulate issues of abortion. Most of the initiatives in these 10 states would allow abortion until fetal viability, if given a chance, which is generally considered about six weeks, or later only in instances when the health of the pregnant woman is at risk.

Freedom of choice advocates' strategy possibly is that if people directly decide to include issues of abortion in their respective state laws, by campaigning, maybe with legislative initiatives, they can bypass the courts. In any case the cause of abortion has a useful political purpose to serve at the time of election. It has already been found that by placing issues of abortion on the ballot, the voter turnout possibly serves the purpose in every state. According to the strategy of political parties, more people will vote who stand for abortion rights as it is always a celebrated election

³⁸ The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971).

³⁹ *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*, MANU/SC/1257/2022.

⁴⁰ Himani Sharma and Shri Kant Singh, “The Burden of Unintended Pregnancies among Indian Adolescent Girls in Bihar and Uttar Pradesh: Findings from the UDAYA Survey (2015–16 & 2018–19)” 81 *Archives of Public Health* 75 (2023).

issue, till the right to access abortion services of American women has not been restored appropriately. It is a human right issue for their wellbeing and development, consequently the development of the country. Let us hope and pray that soon American women's rights of discretionary motherhood would be granted.

X. CONCLUSION

The abortion debate in the United States has moved far beyond a simple question of policy, becoming a defining measure of political identity, governance philosophy, and constitutional morality. The ensuing debates revealed how deeply intertwined reproductive rights are with the nation's political pulse. Donald Trump's shifting approach—from championing the repeal of *Roe v. Wade* to softening his rhetoric under electoral pressure—exposed the tension between ideological purity and political survival. In contrast, Kamala Harris maintained a consistent, vocal defence of abortion access, framing it as a matter of women's autonomy, equality, and healthcare.

The issue's emotional weight was intensified by real tragedies: women denied timely medical care, doctors fearful of prosecution, and the re-emergence of century-old laws like the Comstock Act as tools for federal restriction. These human costs stripped away political abstractions, showing that restrictive laws do not merely shape policy—they change lives, sometimes fatally.

Public sentiment remains divided, but polling shows abortion rights resonate powerfully, particularly with women and younger voters. In swing states, the presence of abortion-related measures on ballots has mobilized turnout, making reproductive rights both a moral cause and a strategic electoral factor. For many, the matter is not just about access to a medical procedure, but about the right to make deeply personal decisions free from governmental overreach. Yet, the country remains fractured, with some states moving to enshrine abortion rights in law and others seeking to ban them almost entirely. This disjointed legal landscape ensures that abortion will remain a battleground for years to come.

What emerges from this turbulent picture is an America at a crossroads: one path leading toward a reaffirmation of reproductive freedom as a national standard, the other toward further fragmentation and restriction. The outcome will not be decided solely in courtrooms or legislatures but at the ballot box, shaped by voters' priorities and values.

Ultimately, the fight over abortion is about more than politics—it is about the nation's commitment to individual liberty, healthcare equity, and the principles enshrined in its Constitution. Whether those commitments will be upheld or eroded will depend on the choices Americans make in the critical years ahead.