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Right to Abortion in India and the US

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What can the US judicial overturning of Roe v Wade tell us about reproductive decision-making and the law in India? Our histories might be different, yet they intersect with each other, and our goals are ultimately the same.

The overturning by the United States Supreme Court of the 1973 judgement in *Roe v. Wade*, which had upheld the right of American women to have an abortion, will have enormous repercussions for the future of reproductive rights in the US. It is one of multiple [regressive judgments](#) by the American judiciary that in the span of weeks during June 2022 weakened civil rights across the board in the US. But what of its possible consequences elsewhere? Beyond expressions of solidarity with people — and especially women — in the US, how ought we approach the issue from our location?

What are the stakes for reproductive justice in India, namely, our ability to make decisions about how and when to have children, our ability to make choices freely in our sexual and reproductive lives and “without fear of violence from other individuals or the state” (Ross 2011)?

In light of the overturning of *Roe v Wade*, we can see how the law is often a precarious way to exercise the ability to decide when and how to have children, or not have them. In India, this decision-making ability is somewhat available to us through the law. However, our history of population control—through which access to abortion services is available in India—highlights the same challenges we see with *Roe v Wade*. In other words, there are multiple structures of power that influence the decision to have or not have children, and that create barriers to accessing abortion services in particular. Ultimately, we see that the language of bodily autonomy or privacy is the only avenue through which the law can make access to abortion easier. But as India’s experience shows us, even this language does not address the political, economic, and social structures of power that directly impact reproductive decision-making.

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In the past, the impact of *Roe v Wade* on the Global South has already been seen in terms of the anti-abortion conditions attached to American federal foreign aid, which include restrictions on using US aid funds to carry out abortions (Helms Amendment, 1973) or to conduct biomedical research on abortion (Biden Amendment, 1981). In fact, NGOs receiving US aid (or the sub-grantees of such NGOs) are prohibited from using *any* funds, even from non-US sources, to do any abortion-related work (Mexico City Policy, 1984; known as ‘Protecting Life in Global Health Assistance’ since 2017; see CRS Report 2020). There is thus direct, longstanding evidence that the domestic landscape of abortion access within the US impacts access to abortion in the rest of the world, particularly the vast majority of countries in the developing world that depend on US development aid.

While abortion access in several other Third World countries is primarily mediated by American foreign aid, this is only partially true in India. Historically, in the area of abortion access, India has had very little dependence on foreign assistance, which has insulated this service from a sudden loss of financial resources. At the same time, however, India has also experienced disproportionate donor influence, both through bilateral agencies and private philanthropies, in the area of family planning. The resources for family planning services, both ideological and financial, dwarf those available to abortion services, leading to indirect influence on abortion services and access. India thus has a distinct and complex history that has yet to be sufficiently acknowledged in global public discourses on the subject of abortion. Abortion access in India has emerged from (and continues to be a part of) our population control apparatus, which has its roots in the colonial period but took its clearest shape at Independence.

Comparative analyses of the American and Indian landscapes of abortion discourse and practices therefore need to be approached with care. There are major contrasts here that have not been sufficiently highlighted. Two years before *Roe v Wade* made history in the US in 1973, access to abortion services in India was mandated in 1971. Abortion services were integrated into maternal health services without any opposition or even much discussion. By contrast, access to abortion in the US has been constantly under attack and has been a powerful emotive issue in electoral politics.

But focusing on this contrast alone is misleading because, in reality, actual access to services in both countries have hitherto come through completely different, even opposing, mechanisms. The dominant framework of ‘the right to choice’ that fuelled demands in countries like the US, fall much more obviously short in contexts such as ours.

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Unlike in the US, in India access to abortion was not achieved through social movements for greater access to the full continuum of reproductive health care, but because abortion was one of multiple methods of curbing population size. Moreover, it is not well known that even though India was one of the first countries to allow abortion under specific circumstances, abortion is legal only under specific circumstances in India. The Medical Termination of Pregnancy (MTP) Act, 1971 is structured as a series of exceptions to the pre-existing colonial laws that criminalised abortion (IPC Sections 312-316).

A wealth of scholarship has demonstrated clearly that abortion was made legally permissible in India under specific conditions because of the powerful connections drawn between development, modernisation, and population size. This developmentalist discourse took hold in the beginning of the 20th century and remains influential in global and national policy forums to this day, albeit in less blatantly coercive forms. Concern for population size was itself driven by a larger 20th century panic in the Global North — led by the US — about the poor, ‘overpopulated’, fast-breeding (and, needless to add, non-White) countries of the Third World.

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In India, interest in limiting population size and curbing future growth had been in existence since the late colonial period, first within the colonial government, and then in the Indian government upon Independence. From very early on there was a strong focus on reducing fertility rates and meeting demographic targets, which, in turn, led to incentive-based family planning programmes and also the forced sterilisations of 1975–77. Thus, as Mytheli Sreenivas’s recent book shows us, the US-led global discourse on population control did not cause, but merely aided the establishment of India’s own initiatives to curb population size. India’s political leadership and elite used American political interest and financial support to set up research centres to study population and health, with demographers and health experts and economists, who helped draft the 1971 MTP Act.

India’s continued interest in abortion as a population control measure rather than as an expansion of reproductive rights is seen in how amendments to the act tend to expand medical oversight rather than focus on the rights of the abortion-seeker. The actual deployment of the act also shows this. For example, abortion seekers require the consent of husbands or fathers. Medical providers continue to make abortion hard to access for unmarried women, leaving the abortion seeker in a grey zone.

A comparative analysis of abortion access and discourse in India and the US that focuses only on legal permissibility is thus insufficient and misleading when trying to understand why depending on the law will always fall short in achieving reproductive justice.

In India, this is made clearer by certain issues that are specific to our context. Firstly, our access to abortion is mired in our history of coercive population control. Secondly, abortion became a site for troubled conflicts over gender inequality with the discovery of medically mediated technologies that resulted in gender-biased sex-selection. The problem of ‘missing women and missing girls’ from the 1980s conflated gender inequality and abortion through ‘sex-selective abortion’ (and this also ignores the sex-selective pregnancies that are carried to term). Finally, there has been a continued lack of significant feminist organising around abortion access. The burden of these developments on the ground have been primarily carried by gynaecologists, public health activists, NGOs, and other development bodies that are invested in sexual and reproductive health and rights, more broadly.

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Within the arena of abortion, feminist organising has primarily focused on sex-determination and the abortion of female foetuses, which led to the enactment of the Pre-Conception and Pre-Natal Diagnostic Techniques (PC-PNDT) Act of 1994. As many have emphasised, one of the unintended consequences of the PC-PNDT Act has been to increase the barriers to abortion access rather than to have achieved greater gender equality.¹ Concrete conditions of this kind shape the meaning of ‘choice’ with respect to abortion. Thus, as

Black women and other women of colour in the US have argued time and time again, the framework of legal rights and the ‘choice’ to have an abortion versus protecting the ‘life’ of a foetus — which is the primary fulcrum of abortion debates there — cannot fully encapsulate people’s life experiences and reasons for having an abortion.

While none of what has been said so far may be new information, it nonetheless bears repeating so that we may better understand the obstructions to reproductive justice that are in place here. The question we have to ask ourselves is, as legal safeguards for rights are being repealed or weakened, how do we move forward in our fight for reproductive justice from this moment, either in the US or in India?

On the one hand, the overturning of *Roe v Wade* is one of many rulings that have weakened rights in the United States. On the other hand, in India, while the government has announced [amendments to the MTP Act expanding the window within which abortion can be sought](#) (which were made with minimal civil society input) the space for dissent against the state is being reduced, and minority communities are continually made more vulnerable to repression by the state and by violence by their fellow Indians. While they might seem unrelated to each other on the surface, we know that all of these developments are connected to each other and that the granting of some rights may be as harmful as the violation of others.

Looking at the international context, we must use setbacks like the reversal of *Roe v Wade* not only to reflect on our circumstances at home, but also to build sharper analyses of the causes of our setbacks.

The first task, then, is to develop and disseminate an accurate and context-sensitive understanding of abortion not as a stand-alone issue, but as one among many issues that obstruct reproductive justice in India. The greater part of this responsibility falls on those of us who are scholars, human rights defenders, activists, and journalists, who are invested in the ideals of sexual and reproductive health and rights, and are actively working towards achieving them. As [the manifesto of the Sistersong Collective](#) states, reproductive justice cannot be achieved without understanding how it is embedded in larger economic, political, and social structures.

Looking at the international context, we must use setbacks like the reversal of *Roe v Wade* not only to reflect on our circumstances at home, but also to build sharper analyses of the causes of our setbacks. This work is more urgently needed now to bolster collective resistance to attacks on legal protections for human rights, civil rights, and reproductive rights both at home and abroad.

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Footnotes:

1 Evidence of which can be found in the work of the Asia Safe Abortion Partnership, the CommonHealth network, Population Council, and several other SRHR NGOs and researchers.

References:

Blanchfield, Luisa (2020). 'Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy.' Washington DC: Congressional Research Service.

Ross, Loretta. "Understanding Reproductive Justice," 2011. sistersong.net

Sreenivas, Mytheli (2021). *Reproductive Politics and the Making of Modern India*. Seattle: University of Washington Press,