

ROE V. WADE: HOW OVERTURNING ONE ABORTION JUDGEMENT CAPSIZED A MYRIAD OF RIGHTS

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ABSTRACT

Bodily autonomy has been one of the major focuses of society in recent times, right to an abortion is one of the plethoras of rights falling under bodily autonomy. Abortion is the induced termination of pregnancy with medical assistance. Recently the supreme court of the united states overturned Roe v. Wade, a landmark judgment on abortion rights. Overturning this landmark judgment not only threatens the bodily autonomy of a woman but also threatens other basic rights of a person such as the right to privacy and the right to same-sex marriage. Such a decision by the US Supreme Court doesn't only impact America but also the world as a whole.

Keywords: Abortion, Right to privacy, US Constitution.

INTRODUCTION

In the June of 2022, the honorable supreme court of the United States of America presented its judgment on Dobbs v. Jackson Women's Health Organization. In the fore mentioned case the respondent- Jackson women's health organization, an abortion clinic, challenged Mississippi's gestational act which prohibited induced abortion of an unborn human being of the gestational age of more than 15 weeks except in case of a medical emergency or severe fetal abnormalities, stating that it violated the supreme court's precedents on establishing a constitutional right to abortion, in particular, Roe v. Wade and Planned Parenthood of Southeastern Pa v. Casey.¹ In its judgment, the Supreme Court with a majority of 6-3 authenticated the constitutional validity of Mississippi's Gestational act and overruled Roe and Casey with a majority of 5-4.

It is essential to understand that the right to an abortion is derived from the right to privacy which falls under the 4th amendment of the US constitution. By Overturning Roe the Supreme Court indirectly takes away the right to privacy and the substantive due process clause of the constitution which protects certain fundamental rights from government infringement even

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¹ Dobbs v. Jackson Women's Health Organization [2022] 19-1392

when procedural protections are present. Due to this, many other landmark judgments which establish numerous rights are also taken away from the people.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Presently, the people of the USA live under the constitutional system established in 1788. However, this was not the original system of American governance. Previous to this, the country was governed by the Articles of Confederation and Perpetual Union between States.² This document only lasted for 10 years as it was deemed highly ineffective due to an absence of a judicial system and inadequate representation. The present constitution was written during the Philadelphia convention in Philadelphia, Pennsylvania in 1787. This marked the commencement of several changes made to the American system of governance over several years. The first ten amendments to the US constitution were ratified in 1791 famously known as the bill of rights. This listed 10 rights guaranteed to every American citizen. For the scope of this article, we will only focus on the 4th and 5th Amendments.

THE 4TH AMENDMENT

The fourth amendment states that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.³

The fourth Amendment was based on the idea that ‘each man's house is his castle’⁴ a concept based on English law. This was added to limit the power of the government. The framers of the constitution saw how the British colonial authorities used ‘general warrants’ to raid places, homes, papers, etc without limits as evidenced by *Entick v Carrington* (1765) and writs of assistance. They used these writs as a search warrant without any expiration dates which could be used to search spaces without specifying what they were looking for or where they expect to find it.

This forms the basis of the general right to privacy and has also been upheld in the famous *Eisenstadt v. Baird* and *Griswold v. Connecticut* by the Supreme Court. In the judgment for the

² James A. Henretta, Eric Foner, Rebecca Edwards, Robert O. Self, *America's History for the AP Course* (8th ed, Bedford/St. Martin's 2014).

³ U.S Constitution Amendment 4

⁴ *Semayne's case* (1604) 5 Coke 91

latter, Justice Douglas affirmed that the court can confer a right to privacy by looking at different sections of privacy protected by the constitution.⁵

THE 5TH AMENDMENT

It states no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.⁶

This amendment lists four different things, the most important (for the scope of this article) being the due process clause. The due process clause has been interpreted several times by the courts into two types- procedural and substantive. Procedural due process means that everyone should be given the opportunity to be heard in an unfair and just manner whereas substantive due process entails that any legislation made by the government should be reasonable and not arbitrary.⁷

This due process clause has paved the way for people to have numerous rights. It allowed for interracial marriages (*Loving v. Virginia*), abortion (*Roe v. Wade & Planned Parenthood of Southeastern Pa v. Casey*), and same-sex marriages (*Obergefell v. Hodges*).

HOW DID THE SUPREME COURT KILL ROE AND CASEY?

The respondent - Jackson Women Health Organization had challenged that The Mississippi gestational act was unconstitutional as it took away a woman's constitutional right to an abortion to which the Supreme Court had simply stated that the constitution provided no such right and that the judgment in *Roe* and *Casey* is flawed.

⁵ *Griswold v. Connecticut* 381 U.S. 479 (1965)

⁶ U.S Constitution Amendment 5

⁷ Aman Tehlan, 'Due process vis-a-vis procedure established by law' (2021) Lawbeat <<https://lawbeat.in/columns/due-process-vis-vis-procedure-established-law#:~:text=Substantive%20due%20process%20means%20that,a%20free%20and%20fair%20trial.>> accessed 10 February 2023

While acknowledging that there are certain unenumerated rights provided by the constitution that are so consequential that the courts cannot infringe upon them no matter how much procedural due process is given, Justice Alito in his opinion stated that the constitution's text does not refer to abortion. The majority believe that the test for an unenumerated right is to see if the right is deeply rooted in the nation's history and tradition or not and according to Justice Alito, abortion does not pass the test for an unenumerated right. He also stated that the court's decision in *Roe*, as modified by *Casey*, was 'egregiously wrong' and cited 30 other cases where the court has overturned precedents, killing *Roe* and *Casey*.

HOW DOES THIS THREATEN OTHER RIGHTS

In his concurrence, Justice Thomas stated that there is no such thing as the substantive due process at all and that in future cases we should consider all of the court's substantive due process precedents including *Griswold*, *Lawrence*, and *Obergefell*.⁸ Although these concurrences have no legal weightage, they can act as suggestions for future judgments. Such orthodox concurrences and judgments pave way for future orthodoxy ideologies to creep into the nation's legal history.

The judgment further states that women have no right to privacy when it comes to abortion, severely stunting the country's protection of privacy.⁹ It is no surprise that conservative judges would make such a decision that sets bodily autonomy and women's rights decades behind. In fact, Thomas J. Dillon (a renowned attorney in the 1970s) famously said in 1973 that a woman only has one-third of her rights when it comes to pregnancy and abortion.

THE GLOBAL IMPACT

It is not uncommon for people to think that since all of this is happening in the United States, the outside world will not experience any ripples, but people seem to forget that when America sneezes the whole world catches a cold. Even things as small as social media trends from the US make ripples into the world, so a decision as big as outlawing abortion will cause waves throughout. There are still countries like Afghanistan where women are not allowed to receive an education, and Iran, where women cannot leave their houses without a hijab, and Qatar where being gay, is a criminal offense, and when a world superpower like the USA reverses

⁸ *Dobbs v. Jackson Women's Health Organization* [2022] 19-1392

⁹ Amy Gajda, 'How Dobbs threatens to torpedo privacy rights in the US' (2022) *Wired* <<https://www.wired.com/story/scotus-dobbs-roe-privacy-abortion/>> accessed 13 February 2023

such a landmark judgment that's not only harmful to a woman's individual rights but also takes away basic human rights as a whole can be very detrimental to the global society.

The first amendment of the bill of rights states that there shall be no state religion¹⁰ but the idea of outlawing abortion claiming that "it is not rooted in the history and tradition of the country" simply preaches the Christian idea of pro-life. There are several countries that do not have a state religion but cater especially to one particular religion, if a country such as the United States of America, which is always lauded for its free speech and equality, takes such a step it just makes it okay for other countries to do the same. People are dying in countries like Iran to fight for their rights but such a decision by the US Supreme Court just sets back women's progress several decades back.

THE INDIAN IMPACT

In India, abortion rights are quite lenient allowing abortion up to 24 weeks into pregnancy but it is no surprise that there are still a lot of conservative members in the parliament with whom the idea of abortion does not sit right. India is one of the countries which has prioritized individual rights while not disrespecting communal rights as evidenced by the Sabarimala temple case where a woman's individual right to enter the temple was prioritized over communal rights.¹¹ Nonetheless, there are still people who believe that women are inferior to men. Women are still not allowed to enter certain places if they have an ongoing menstrual cycle. This just shows we as a country are not still as progressed as we thought we might be. Making such fallacious decisions by the US Supreme Court just makes it easier for the orthodox leaders here to cite these instances in solidifying their point. Fertility companies in the anti-abortion states of America also moved their fertilized eggs out of their facilities and the Supreme Court's decision on abortion could also have far-reaching consequences for in vitro fertilization as well.¹² This can also trigger anti-surrogacy activists in India to push for making surrogacy even more difficult in the country than it already is.

¹⁰ US Constitution amendment 1

¹¹ Indian Young Lawyers Association and Ors. vs. State of Kerala and Ors. ((2017) 10 SCC 689)

¹² Raghu Malhotra, 'Explained: What Overturning Roe v. Wade possibly means for IVF Procedures' (2022) The India Express <<https://indianexpress.com/article/explained/explained-what-overturning-roe-v-wade-possibly-means-for-ivf-procedures-7992443/>> accessed 15 February 2023

CONCLUSION

This decision by the US Supreme Court, in the words of Justice Alito himself, is egregiously wrong. Not only does it sets US privacy rights decades back but also threatens other basic rights which cannot just impact America but the world as a whole. As a superpower and one of the most influential democracies in the world, American lawmakers and judicial officers should realize that they hold a sense of responsibility towards the developing and underdeveloped countries of the world. Passing such orthodox judgments validates other nations to pass conservative rights undermining the status of women and minorities the society.

