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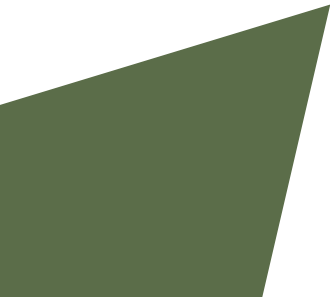
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**Comparative Analysis of Abortion Laws with Reference To USA, India, and
Ireland**

Vibha V & Adhish Anilkumar Kulkarni

ABSTRACT

Abortion is an ancient and universal medical practice. Throughout history, it has taken different forms in various socio-political and cultural contexts. Laws on abortion across the globe vary; in certain countries, it is made available to women on request, while in others it is outlawed completely. The liberalization of abortion is a matter of intense controversy and, though in certain circumstances it is well established, yet in others, it is challenged. Some justify that access to abortion is a human right, a woman's right over bodily integrity and autonomy, a sexual and reproductive right, and also a right to health keeping in mind the dangers of illegal abortions, while others condemn the very concept of abortion in the name of the embryo's or the unborn's right to life. Abortion since decades has been an extremely controversial subject. While many people believe and agree that it is a right vested with the women to choose whether or not she elects to continue with the pregnancy, others hold opinions led by religious, political, emotional, and personal factors that make them believe that having an abortion is morally as well as legally wrong. At the end of the day, it all boils down to a variety of upbringings, ethics, political alignments, religious backgrounds, and various other factors that play a role in the formation of opinions.

There is a number of attributes, which determine the nature of abortion laws across the globe. These factors majorly include geographical and political views, rights of women, rights of the embryo, and various other factors. This paper revolves around abortion laws in three nations, which are driven by extremely distinguished, believes, cultures, political and moral views.

1. INTRODUCTION

Abortion is one of the most controversial subjects in modern society. The concept of abortion includes a number of complex questions concerning ethical, moral, legal, medical, philosophical, and religious issues related to the deliberate ending of pregnancy before normal childbirth.

Public opinions have always been polarized in this regard; they have strong feelings with respect to both for as well as against this subject. Abortion is among political and moral issues on which the society is genuinely split. Their opinions on this controversial issue have remained unchanged since 1995. There are two primary ethical and legal questions related to the abortion debate, which has divided the opinion of the public for generations:

1. Are abortions morally wrong?
2. Should they be banned or made legal?

Although these questions seem to be straightforward, they are more complex than considered. There are two separate camps when referred to abortion i.e. the pro-choice and pro-life respectively. Group of people who favor the “pro-choice” stance supports the right of women to choose whether she carries a pregnancy to term or not. They think that abortions are both morally as well as legally acceptable.

People who hold the strict religious “pro-life” perspective think that abortions under any circumstance are wrong because the fetus has the right to life and we should treat it the same way as any other human being.

Religion plays a major role in the debate regarding the morality and legality of abortion but there are many non-religious issues as well. Mentioned below are the important ethical and legal issues, involving the rights of women and the rights of a fetus.

- Is fetus a human being and does it have the fundamental legal right to live?
- Does the life of a human being begin at its very conception?
- Should the fetus be considered a separate being or should it be considered as a part of its mother?
- Should the fetus’s right to life be given priority over that of the woman’s right to bodily integrity and autonomy?
- Under what circumstances is it acceptable to terminate a pregnancy?
- Can the termination of a fetus be considered equivalent to murder?

- Is it a better option to abort an unwanted child or to allow it to be neglected by its parents?
- Can adoption be considered as an alternative to termination of pregnancy?
- Is it possible to strike a balance between the rights of a mother and those of a fetus?

A lot of arguments in favor of this procedure are based on respect for women's reproductive rights¹.

“Pro-choice” camp argues that a woman is a human with her own rights and not a mere fetus’ carrier².

They believe that governmental or religious authorities should not limit a woman's right to control her own body. Besides, the fetus cannot be regarded as a separate entity because it cannot exist outside a woman's womb.

Opponents of this procedure argue about respect for all forms of life, be it foetus’ right to life. and further argue that it is Actually the kill of an innocent human being³.

3. ABORTION AND ITS TYPES

Abortion is when a pregnancy is put to an end so that it doesn't result in childbirth. It is also known as “termination of pregnancy”⁴. An abortion may only be carried out up to the 24th week of the pregnancy without any external risk caused to both the mother as well as the unborn.

Abortions are legal in most of the nations across the globe, but the laws vary.

- 61 countries across the world, allow abortions without any restrictions.
- 26 countries ban abortions altogether, without any exceptions.
- The remaining countries allow abortions with certain restrictions, such as to save the mother's life or protect her health⁵.

¹ Neil McIntosh, [Introduction to the abortion debate](http://www.bbc.co.uk/ethics/abortion/legal/introduction_1.shtml), (Nov 06 2014 01: 48 PM), http://www.bbc.co.uk/ethics/abortion/legal/introduction_1.shtml.

² Jason Burry, [Abortion](https://grademiners.com/blog/abortion-research-paper-examples), (Dec 10 2015 10:45 AM), <https://grademiners.com/blog/abortion-research-paper-examples>.

³ Id.,

⁴ Dr. Josh, [What is Abortion?](https://www.bpas.org/abortion-care/considering-abortion/what-is-abortion/), (May 05 2017 05:00 PM), <https://www.bpas.org/abortion-care/considering-abortion/what-is-abortion/>.

⁵ Stephanie Watson, [What are different types of Abortion](https://www.healthline.com/health/types-of-abortion), (Dec 06 2018 12:25 PM), <https://www.healthline.com/health/types-of-abortion>

Abortion is legally allowed in the United States during the first and second trimesters of pregnancy. Most of the abortions are done during the first trimester of pregnancy. The first trimester is the first 12 weeks of pregnancy. Some nations allow abortions until the 24th week, which is at the end of the second trimester. Other nations prohibit it after 20 weeks. Third-trimester abortions are often done only if the mother's or the baby's life is endangered.

Types of Abortion on the Basis of Trimester

I. Medical abortion

A medical Abortion is performed through the consumption of two medications in the form of a pill namely mifepristone (Mifeprex) and misoprostol (Cytotec). These two pills work together to end a pregnancy. This method can be carried out within the 10th week of pregnancy⁶.

II. Surgical abortion

A minor procedure to remove the pregnancy Medical and surgical abortions can generally only be carried out up to 24 weeks of pregnancy⁷.

III. Ethotrexate and Misoprostol

Methotrexate and misoprostol (MTX) are abortion methods that can be used during the first 7 weeks of pregnancy only Methotrexate is a cancer drug. Just the way it stops cancer cells from multiplying, it stops cells in the embryo from multiplying as well. Misoprostol then contracts the uterus to put out its contents.

This method is longer than mifepristone and misoprostol, and it is very rarely used_for planned abortions. Doctors mainly use it for women who have a pregnancy outside their uterus, i.e. an ectopic pregnancy. An ectopic pregnancy can be life-threatening if not terminated⁸.

⁶ Id.,

⁷ EA Schaff, Methotrexate and Misoprostol for early abortion, (Mar 05 1996 10:00 AM), <https://www.ncbi.nlm.nih.gov/pubmed/8900553>.

⁸ Sia George, Vacuum Aspiration, (Apr 10 2010 05:20 PM), <https://www.bpas.org/abortion-care/abortion-treatments/surgical-abortion/vacuum-aspiration/>.

IV. Vacuum Aspiration

Vacuum aspiration is done during the first trimester that is within the first twelve weeks or during the early second trimester (12 to 16 weeks) of pregnancy. It is also known as suction aspiration.

Some people choose vacuum aspiration as the main method for termination of pregnancy. In most cases, this method has opted if a medical abortion fails to end their pregnancy⁹.

V. Dilation and Evacuation

Dilation and evacuation are abortion procedure that is used in the second trimester, usually after the 14th week of pregnancy.

It is recommended for someone who has delayed getting an abortion, or for someone who chooses to end a pregnancy because the fetus has a severe abnormality or medical problem, which could not have been detected during the initial weeks of pregnancy¹⁰.

VI. Induction Abortion

Induction abortion is done during the second trimester of pregnancy. It may be an option if the mother has past the 24th week of pregnancy and can no longer get a Dilation and evacuation procedure¹¹.

VII. Late-term abortions

Late-term abortion can have different meanings. Some consider an abortion 'late-term' if performed after the 20th week of pregnancy. Others say it is when it is performed during the third trimester. Yet it is considered late when the fetus is viable, meaning when the fetus could survive outside the womb.

⁹ Watson, *Supra* Note 5.

¹⁰ Watson, *Supra* Note 5.

¹¹ Obos, Induction Abortion, (Apr 02 2014 09:45 Am), <https://www.ourbodiesourselves.org/book-excerpts/health-article/induction-abortion/>.

Late-term abortions are rarely practiced in the United States. Most of the states have banned or restricted them, except in cases where the mother's life is in danger¹².

These are the various types of abortions performed across the world subject to the circumstances and trimesters of the pregnancy.

4. ABORTION INCIDENCE ACROSS THE GLOBE

The situation of induced abortion has reported changed over the past few decades. Below mentioned are the updated information on the incidence of abortion worldwide, the laws that regulate abortion, and the safety of its provision. It also takes into consideration unintended pregnancy, its relationship to abortion, and the impact that both have on women and couples who increasingly want smaller families and more control over the timing of their births¹³.

- As of 2010–2014, an estimated 36 abortions occur each year per 1,000 women aged 15–44 in developing regions, compared with 27 in developed regions. The abortion rate declined significantly in developed regions from 1990–1994; however, no significant change occurred in developing regions.
- By far, the rapid decline in abortion rates has occurred in Eastern Europe, where the use of effective contraceptives has increased drastically; the abortion rate has also descended significantly in the developing sub-region of Central Asia. Both the sub-regions constitute the former Soviet Bloc states where the availability of modern contraceptives increased after their political independence, which showcases how abortion rate decreases when the use of effective contraceptives increased.
- Abortions occur frequently even in the two most restrictive categories of nations (banned outright or allowed only to save the woman's life) as in the least-restrictive category (allowed without restriction as to reason), about 37 and 34 per 1,000 women, respectively.
- Commonly across the world, 20–24-year-old women tend to have the highest abortion rate of any other age-group, and the bulk of abortions are accounted for by the women in their twenties.

¹² Watson, *Supra* Note 5.

¹³ Susheela Singh, Abortion Worldwide 2017 Uneven Progress and Uneven Access, GUTTMACHER 08, 13 (2018).

- Adolescent abortion rates in countries in developed regions are fairly low (e.g., 3–16 per 1,000 women aged 15–19) and have been declining steadily in many of these countries; comparable data are unavailable for developing regions¹⁴.

5. ABORTION LAWS ACROSS THE WORLD

- Laws fall along a continuum from the prohibition to permit abortion without any restriction as to the reason. As of 2017, approximately 42% of women of reproductive age residing in 125 nations where abortion is highly restricted (prohibited altogether or allowed only to save a woman's life is endangered).

- The vast majority (93%) of countries with such highly restrictive laws are in developing regions. In contrast, broadly liberal laws are found in nearly all countries in Europe and Northern America, as well as in several countries in Asia.

- Nonetheless, some countries with broadly liberal laws have increasingly added restrictions that chip away at access to legal procedures; these include the United States and several countries in the former Soviet Bloc or zone of influence.

- Since the year 2000, around 28 countries across the globe have changed their abortion laws, all but one expanding legal ground to allow abortions to protect a woman's right to health, for socioeconomic reasons or without restriction as to the reason. Moreover, around 24 nations included at least one of three additional grounds which are in the cases of rape or incest, or when the fetus is diagnosed with a grave anomaly.

- Implementing access under expanded legal grounds can take many years; however, with political will, change can be achieved much more quickly¹⁵.

6. LEGALITY OF ABORTION IN USA

In the United States, abortion was legalized in all 50 states by the Supreme Court in the year 1973, in the famous *Roe v. Wade*¹⁶ decision. The supreme court grounded abortion rights in a constitutionally-derived right to privacy. Although there is no mentioning of an explicit right to privacy in the American Bill of Rights, it was enlisted as a constitutional right in two prior court

¹⁴ Id.,

¹⁵ Singh, *supra* note 13.

¹⁶ *Roe v. Wade*, 410 U.S. 113 (SCOTUS: 1973).

decisions that legalized birth control i.e. *Griswold v. Connecticut*¹⁷, and *Eisenstadt v. Baird*¹⁸ in 1965 and 1972 respectively. These precedents aided the *Roe v. Wade* ruling.

Abortion Before *Roe v. Wade*

Until the late 19th century, abortion was legal in the United States before “quickening,” the point at which a woman could first feel movements of the fetus, typically around the fourth month of pregnancy¹⁹.

Some of the initial regulations related to abortion were enacted during the 1820s and 1830s and dealt with the sale of dangerous drugs that women consumed in order to induce abortions. Despite these regulations and the fact that the consumption of these drugs could prove fatal to women, they continued to be advertised and sold. In the late 1850s, the newly established American Medical Association began to call for the criminalization of abortion, partly in an effort to eliminate doctors’ competitors such as midwives and homeopaths²⁰.

Additionally, some groups of nativists, alarmed by the country’s growing population of immigrants, were against abortion as they feared declining birth rates among white, American-born, Protestant women. In the year 1869, the Catholic Church banned abortion at any stage of pregnancy, while in the year 1873; Congress passed the Comstock law, which made the sale and distribution of contraceptives and abortion-inducing drugs through the U.S. mail. By the mid 1880s, abortion was outlawed across most of America.

In the 1960s, during the women’s rights movement, court cases involving contraceptives laid the groundwork for *Roe v. Wade* decision. In the year 1965, the U.S. Supreme Court struck down the law that prohibited the distribution of birth control to married couples, ruling that the law violated their implied right to privacy under the U.S. Constitution. And in the year 1972, the Supreme Court struck down a law banning the distribution of contraceptives to unmarried adults as well. Meanwhile, in the year 1970, Hawaii became the first American state to legalize abortion, although the law was only applicable to the state’s residents. In the same year, New York also legalized abortion, without any residency requirement. By the time of *Roe v. Wade* in 1973, abortion was also legally available in Alaska and Washington as well²¹.

¹⁷ *Griswold v. Connecticut*, 381 U.S. 479 (SCOTUS: 1965).

¹⁸ *Eisenstadt v. Baird*, 405 U.S. 438 (SCOTUS: 1972).

¹⁹ Geoffrey R Stone, *Roe v. Wade: Past, Present and future*, (Oct 25 2016 11:25 Am), <https://harvardlpr.com/2018/03/19/roe-v-wade-past-present-and-future/>.

²⁰ Henry Zack, *Roe v. Wade*, (May 15 2019 02:30 Pm), <https://www.history.com/topics/womens-rights/roe-v-wade>.

²¹ *Id.*,

Status of Abortion After Roe Vs Wade Decision

In the case of *Roe v. Wade*, the Supreme Court provided abortion with the highest degree of constitutional protection. They said that any limitation on a right must be the least restrictive one²². But the Court dropped this decision in the year 1992 in the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey*²³ and held that; restrictions that hamper abortion access are constitutional as long as they are not too risky or overburdened. In the same decision, the Hon'ble Supreme Court eliminated the trimester framework by permitting the states to protect "potential life" and maternal health throughout the pregnancy.

The trimester framework, the 1992 Casey decision, and certain other subsequent Supreme Court cases weakened *Roe v. Wade* and provided a basis on which craft anti-choice laws were crafted. Every year in the USA, multiple anti-abortion bills are introduced in state legislatures. Beginning from the year 2010, anti-choice lawmakers in state legislatures passed various targeted regulations of abortion providers (TRAP) laws. Which aimed at shutting down the reproductive health-care clinics and restrict the access to abortion. These excessive, unnecessary, and costly regulations eventually resulted in most of the states having no abortion clinic.

The first major abortion restriction in the USA happened in 1976 when Congress passed the Hyde amendment prohibiting the utilization of Medicaid funds to pay for poor women's abortions. It was observed that up to one-third of poor women are forced to carry to term in the USA because they could not afford an abortion. For those poor women who did manage to get one, almost half delay their procedure by 2-3 weeks while trying to arrange for the expenses.

Further, the Supreme Court decisions allowed states to require parental consent for teenagers' abortions, prohibit the use of public funds and facilities for abortion, and require viability tests to be conducted after 20 weeks. Many states also made the waiting periods for abortion mandatory, compelling women to visit the clinic at least twice. Others have passed "informed consent" laws that force abortion providers to give anti-choice propaganda to their patients. The latest strategy is to pass fetal protection laws and these laws would require the doctors to tell patients that the fetus will suffer "pain" during an abortion, even though there is no scientific evidence to support the same.

Recent Controversial Abortion Laws Passed by Various US Sates

²² Mark Tushnet, *The Supreme Court on abortion: A survey*, AM Abortion medicine and law 01, 162 (1986).

²³ *Planned Parenthood v. Casey*, 505 U.S. 833 (SCOTUS: 1992).

A wave of abortion restrictions in Alabama, Georgia, Ohio, and other states has led to a nationwide controversy, and this could have just been the start of a prolonged legal battle against *Roe v. Wade* verdict and the future of abortion rights in America.

The state of Alabama passed a law that bans abortion in nearly all cases possible unless the pregnant woman's life is at risk. The doctor who performs an abortion for any other reason could face up imprisonment up to 99 years, and the law does not include any kind of exceptions for cases of rape and incest²⁴.

Georgia, Ohio, and a slate of other states have passed so-called heartbeat bills, which makes abortion illegal once a fetal heartbeat can be detected which is as early as six weeks into pregnancy²⁵.

7. LEGALITY OF ABORTION IN INDIA

Despite almost 50 years into the incorporation of the medical termination of the pregnancy Act, abortion still is considered to be a taboo issue in India. The half-a-decade old law is one of the most liberal laws on abortion in the world but is still not free from fallacies. According to the Abortion Assessment Project which is one of the most extensive Indian studies on abortion that lasted from 2000 to 2004, of the total abortions that took place in India, 56 percent of them were unsafe i.e. Statistically, of the 6.4 million annual abortions, 3.6 million of them were unsafe. The mortality from these unsafe abortions contributed about 13 percent of maternal deaths in the nation.

Is abortion legal in India?

Abortion certainly is considered legal in India since the year 1971. The Medical Termination of Pregnancy Act, 1971, is a statute solely responsible for the legalization of abortion in India. However, legally abortion can only be performed up to the term of 20 weeks from conception.

Conditions under which abortion is allowed

²⁴ Tara law, [Here are the details of the abortion legislation in Alabama, Georgia, Louisiana and elsewhere](https://time.com/5591166/state-abortion-laws-explained/), (July 02 2019 05:21 PM), <https://time.com/5591166/state-abortion-laws-explained/>.

²⁵ Id.,

The idea of terminating a pregnancy cannot originate on the grounds of choice rather is purely circumstantial. There are four situations under which an abortion can legally be performed, they are as follows:

- If continuation of the pregnancy poses any kind risks to the mother's life or to her physical or psychological health
- If the fetus is diagnosed with severe abnormalities
- If pregnancy occurred as a result of the failure of contraception, this ground is only made applicable to married women.
- If pregnancy occurred as a result of sexual assault or rape²⁶

Choice of abortion

It is solely at the discretion of the doctor that a woman may or may not undergo the procedure of abortion. It is not a right that every woman can exercise only by her decision. Also, if the abortion is to take place within the first trimester i.e. within 12 weeks of conception, the woman only needs one doctor to sign off. However, if she exceeds the 12-week bar she would need two doctors to sign-off. According to the MTP Act, adult women have the autonomy to decide for themselves. A doctor cannot ask for anybody's consent except for that of a mother's.

The Right to Privacy and Abortion

Abortion is included under the right to privacy. Justice Chelameswar in a benchmark judgment observed that "A woman's freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy"²⁷

Why is there a 20- week bar?

In accordance with the MTP Act, abortions can only be carried out only within 20 weeks of conception. This rule, when incorporated, was put in place to prevent the gender prediction testing

²⁶ Rashmi Mabiyan, [India's Conditional rights to abortion](https://health.economictimes.indiatimes.com/news/policy/indias-conditional-right-to-abortion/69686368), Economic times (June 07 2019 11:42Am), <https://health.economictimes.indiatimes.com/news/policy/indias-conditional-right-to-abortion/69686368>.

²⁷ Krishna Das Rajgopal, [Right to privacy verdict: Privacy realms span from abortion to euthanasia](https://www.thehindu.com/news/national/privacy-realms-span-from-abortion-to-euthanasia/article19562682.ece), The Hindu (Aug 25 2017 10:23PM), <https://www.thehindu.com/news/national/privacy-realms-span-from-abortion-to-euthanasia/article19562682.ece>.

and sex-selective abortions, which then due to lack of technology could only be done post the 20-week.

However, the MTP Act fails to realize that now with the advancement in technology; this test can now be performed much before 20 weeks. The sex of the baby can be determined as early as seven weeks of pregnancy through a simple blood test.

Abortions Post the 20-Week Bar

There are certain situations where any fetal abnormalities or risks to a mother's life can only be discovered after 20 weeks of pregnancy. In such cases, according to the MTP Act mother seeking an abortion has to get approval from the court. However, there have been many cases where the courts have given judgment in the negative despite the family seeking an abortion. The supreme court has turned down a case despite the risk of the 26-week-old fetus to be born with Down syndrome²⁸. Similarly, in another case of a 26-week-old was turned down despite the heart defects that were diagnosed.

Also, in the cases involving underage rape victims and child assault, the condition of pregnancy may be diagnosed late, usually only when the child tends to develop certain noticeable symptoms. In such cases, the Act failed to take into account that the 20-week clause may be extremely harsh. Such cases are not a rarity as the case of a 10-year-old being forced to deliver her rapist's child in Chandigarh recently came into light²⁹.

The MTP Act Amendment Draft

An amendment to the MTP Act was proposed by the Ministry of Health and Family Welfare in the month of October 2014. The bill put forward certain valid propositions, such as the extension of the legal abortion limit to 24 weeks from 20 weeks, giving the right to legal abortion to every woman irrespective of her marital status, elimination of the need for a second doctor's sign-off for termination of pregnancy beyond the period 12 weeks and so on. The primary objective of the bill was not only to empower women but also to reduce the number of unsafe abortions in the nation.

²⁸ Amit Anand Chaudary, [Supreme court rejects plea to abort 26 week old foetus with down syndrome](https://www.thehindu.com/news/national/privacy-realms-span-from-abortion-to-euthanasia/article19562682.ece), Times of India, (Feb 28 2017 02:32 PM), <https://www.thehindu.com/news/national/privacy-realms-span-from-abortion-to-euthanasia/article19562682.ece>.

²⁹ Huizong Wu, [Ten year old rape victim gives birth in India](https://edition.cnn.com/2017/08/17/health/india-child-rape-victim-gives-birth/index.html), CNN (Aug 08 2017 5:22 PM), <https://edition.cnn.com/2017/08/17/health/india-child-rape-victim-gives-birth/index.html>.

The draft did some rounds in the cabinets and to the Prime Minister's office, but yet is to see the light of the day.

8. LEGALITY OF ABORTION LAWS IN IRELAND

Abortion & Ireland: The Statistics

Though abortion is a criminal offence in Ireland, this did not deter Irish women from accessing abortion. It is important to note that these statistics are accepted to be an underestimation of the number of women flying abroad to access safe and legal abortion services and also do not include the number of women obtaining medication to self- induce abortions in itself.

- 4,402 women from the Republic of Ireland are recorded as having an abortion in England & Wales in 2010.
- A minimum of 31 women from the Republic of Ireland are recorded as having an abortion in the Netherlands in the year 2010.
- 1,216 illegal packets of abortion-inducing drugs are seized by Irish Customs in 2009³⁰.

1980 – 2010

From 1980-2010, utilizing the statistics from the UK DOH for England and Wales and the Crisis Pregnancy Programme for the Netherlands for the years 1980 - 2009, around 147,912 Irish women have had an abortion abroad.

1861 Offences Against the Persons Act

Women who "procure a miscarriage" are considered to be offenders under Section 58 of the Act. They are sentenced to imprisonment for life. Section 59 of the Act Criminalises helping a woman to "procure a miscarriage" as well. The punishment is penal servitude for a period of three years³¹.

1983 Referendum on the Eight Amendment to the Constitution

³⁰ Arch Robert, *Abortion & Ireland: The Statistics* 01, 02 (2017).

³¹ *Id.*,

Article 40.3.3 of the Constitution of Ireland reads as “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right”³².

1992 X Case

A 13-year-old girl, X, became pregnant due to rape. With the support of her parents, X flew to England for an abortion. The Attorney General sought and was granted an order from the High Court preventing X from leaving Ireland for a period of nine months until the baby was conceived. X and her parents flew back to Ireland to contest the order. X expressed her intention to commit suicide if compelled to continue with her pregnancy. When the case went on appeal, the Hon’ble Supreme Court ruled that “if it is established that there is a substantial risk to the life, as distinct from the health, of the mother, which can be avoided only by the termination of her pregnancy, such termination is maybe considered permissible”³³.

1992 Open Door & Well Woman v Ireland

The European Court of Human Rights ruled that Ireland had violated Article 10 of the European Convention on Human Rights guaranteeing freedom of expression. The Court found that the Irish courts’ injunction against Open Door and Well Woman from receiving or imparting information on abortion services legally available in other countries was disproportionate and created a risk to the health of women seeking abortions outside the State³⁴.

1992 Referendum

The Government put forward three amendments to the Constitution to be added to Article 40.3.3.

- To nullify the X Case decision by removing the risk of suicide as a grounds for obtaining a legally permissible abortion in Ireland which was rejected
- Freedom to travel between the State and another state to obtain an abortion, which was passed

³² Republic of Ireland Constitution 1972, art 40(3) (3).

³³ Robert, *supra* note 31.

³⁴ *Open Door & Well Woman v. Ireland*, 68 (ECHR: 1992).

- Freedom to obtain or make available information related to abortion services lawfully available in another state, subject to conditions which were passed³⁵.

1997 C Case

A 13-year-old girl, Miss C was raped and became pregnant. The Eastern Health Board took C into its care and in accordance with the C's wishes, obtains orders from the District Court to take C abroad in order to undergo an abortion. C's parents challenge these orders of the District Court in the High Court. The High Court ruled that as Miss C was intending to take her own life if forced to continue with the pregnancy, she was entitled to an abortion in Ireland in accordance with the Supreme Court judgment in the 1992 X Case. Due to the lack of parental consent, Miss C had to travel to England for the abortion³⁶.

2002 Referendum

Irish voters reject the Twenty-fifth Amendment of the Constitution i.e. the Protection of Human Life in Pregnancy Bill, 2002 that would score down the threat of suicide as a ground for abortion and also increase the penalties for helping a woman have an abortion³⁷.

2006 D v Ireland

The Applicant, known as Miss D, was pregnant with twins, one of whom died in the womb and the other was diagnosed with fatal abnormalities. D, unable to undergo abortion in Ireland had to travel to England for the termination. D argued that Ireland's ban on abortion in the case of fatal fetal abnormalities is a clear violation of Articles 1, 3, 8, 20, 13, and 14 of the European Convention on Human Rights. The European Court of Human Rights rules the case inadmissible as the case did not go through the Irish Court. The Irish Government relied on the argument that in this particular circumstance, she could have been legally entitled to an abortion in Ireland if she would have gone through the Irish court's system³⁸.

2007 Miss D

³⁵ Mark Hilliard, The Abortion issue and Ireland: timeline from 1983, (Oct 15 2016 06:01 Pm), <https://www.irishtimes.com/news/health/the-abortion-issue-and-ireland-a-timeline-from-1983-1.2831517>.

³⁶ Robert, *supra* note 31.

³⁷ Hilliard, *supra* note 36.

³⁸ Robert, *supra* note 31

A 17-year-old woman, Miss D with an anencephalic pregnancy is in the care of the Health Service Executive. The Health care social workers attempt to prevent Miss D from traveling to England for a termination of pregnancy. Miss D challenges these restrictions in the High Court. The High Court rules that Miss D has a right to travel.

Ireland had seen no development in their abortion laws until January 1st, 2019, the law allowing access to abortion in the Republic of Ireland is the Health (Regulation of Termination of Pregnancy) Act 2018. This legislation followed from the 66.4% Yes vote in the referendum to repeal the Eighth Amendment legislate in May 2018

Yet citizens of Ireland prefer to fly abroad for abortion as abortion still is subject to hardened restrictions and complex and unaffordable procedure will still force women to fly abroad³⁹.

9. CRITICAL ANALYSIS

On its face, this appears to grant the states latitude in regulating post-viability abortions. However, due to the capacious definition of “health” provided by *Doe v Bolton*, and left undisturbed by Casey, the “health exception” that must accompany any limit on abortion at all the stages of development including all aspect of a woman’s wellbeing be it economic or familial, as determined by the abortion provider himself. Accordingly, the law of abortion in the United States is considered one of the world’s most permissive laws. The supreme court of the United States has never sustained a restriction on abortion as such. Far more often, the federal courts invalidate modest, widely popular, common-sense limits on abortion. To take a few recent examples, the courts of the US have struck down bans on abortion based on genetic or sex discrimination, a ban on abortions of unborn children 20 weeks or older, requirements for the humane and dignified handling of fetal remains, and bans on the dismemberment of a living unborn child. However, this very lenience on abortion has led to its misuse in various instances. Thus, as well said- too much is too bad, the US law also requires restrictive amendments to prevent the negative usage of a protective law⁴⁰.

While in the case of Ireland, the extremity of the abortion laws showed concerns from various human rights Activist groups to the UN itself condemning it. Ireland’s policies made it almost impossible for abortion to take place. Even if the referendum is accepted, the law following it is still far from perfect, for it still contains unaddressed key problems such as mandatory waiting

³⁹ Robert, supra note 31.

⁴⁰ Cater Snead, Abortion in the US: Actually, its laws are among the world’s most permissive, Irish times (Apr 13 2018 12:37 Am), <https://www.irishtimes.com/opinion/abortion-in-the-us-Actually-its-laws-are-among-the-world-s-most-permissive-1.3459718>.

time, refusal of care, criminal persecution of those who help, and most importantly- the health of the mother. The ambiguity of the Act takes a negative approach towards the practice.

India on the other hand, has much more elaborate and inclusive legislation regarding the same. Compared to the other two countries in question here, Indian laws follow a scientific and reason-based approach while dealing with cases of abortion. It takes into consideration the mental and physical wellbeing of both the entities- mother and unborn child and caters to them as well. But, while novel in its purpose and intentions, it suffers from some procedural and legal hindrances that make its application problematic and creates unpleasant consequences.

While Indian abortion laws are indeed meant to help empower its women-folk, its application and substantive elements suffer from some gross follies. There is an immediate need to update the MTP Act in order to bring it in consonance with modern-day technological development and medical methods. There is also a need to make certain amendments to the POCSO Act in order to do away with its clash with the MTP Act. India's medical infrastructure and legal framework also need improvement. Therefore, the need of the hour is for government and the elements of civil society to come together and improve the substantive and implementational elements of India's abortion laws and policy in order to cater to the needs of the women across the nation⁴¹.

10. CONCLUSION

Abortion is a socio-religious medical issue. It is entrenched into the laws of every country in the world in one way or another. It affects the lives of every individual directly or indirectly. Ethical values arise out of such deeds like abortion, which determines the direction that one chooses. Other factors that control abortion include the legal and religious aspects of society.

Provision of necessary support in various forms such as financial aid and psychological support to mothers contemplating abortion could serve as one of the best ways to curb deaths due to abortion.

When compared to Ireland and the USA, India has more reasonable abortion laws despite being subject to various religious and social factors. The Indian courts and government are comparatively much more liberal and considerate about this sensitive issue. If the MTP Act was amended and

⁴¹ Saurabh Kumar, [A critical Analysis on abortion laws in India](https://blog.ipleaders.in/critiquing-indias-abortion-laws/), Ipleaders (July 14 2018 10:45 Am), <https://blog.ipleaders.in/critiquing-indias-abortion-laws/>.

updated according to the changing needs and mindset of the society, it is not too far off for Indian abortion law to be considered to be the most reasonable and apt laws in the world.