

Abortion Rights

-Highly Controversial Legal Issues

Yuhe Zhou^{1,a,*}

¹*Law School, The Ocean University of China, Qingdao, 266000, China*

a. twong61785@student.napavalley.edu

**corresponding author*

Abstract: As a long-standing issue, the right to abortion has generated many social issues in its practical application, leading to intensified social conflicts between pro-abortion and anti-abortion groups. It will use relevant cases such as the *Roe v. Wade* case as the starting point to conduct a specific analysis of the reasons for the dispute, including the conflict between religious will and feminism, high law enforcement costs, increasing social class gap, and disputes over whether the fetus has the right to life. On this basis, it will propose measures to weaken the negative impact of the right to prohibit abortion on these issues, such as to promote the revision of legal provisions, to integrate public law and private law, to increase the popularity of female sex education, to increase social welfare, and to consolidate social security. It should be noted that mitigating the adverse effects of an abortion ban is a gradual process, requiring the cooperation of different factions with conflicting interests. But by increasing attention to relevant issues and taking corresponding improvement measures, the problems caused by the ban on abortion will gradually be alleviated.

Keywords: right to abortion, women's rights, social issues, law

1. Introduction

Abortion is an ancient phenomenon, but the question of whether women should have the right to abortion has arisen in modern times. This is because advances in medicine have reduced the risks associated with abortion, making it safer. Moreover, women now have the necessary conditions to make autonomous choices regarding their reproductive health. Secondly, feminism has flourished, and women are increasingly pursuing control over their physical and reproductive rights. They believe that this is an important manifestation of freedom, sex equality, complete dignity, and personality [1]. Especially after World War II, the eligible male labor force became scarce, so more women entered the workforce. Between 1948 and 1963, the promotion of women in manufacturing employment increased by 16%, while in the service industry, the number of employed women rose by 53% [2]. Women now strive not only for traditional family roles but also for career success and personal fulfillment. In 1960, women who obtained a bachelor's degree from a university accounted for 15% of the female population of university age. However, by 1970, this proportion had increased to 21%. These highly educated women are open-minded, unafraid to challenge traditional beliefs, and demonstrate strong organizational skills [3]. All of these reasons have led women to resort to court and demand freedom of abortion, which has led to many cases, one of which is *Roe v. Wade*.

In the Roe case judgment, in order to balance privacy rights with maternal health and potential fetal life interest, the Supreme Court has proposed “Three months” pregnancy standards. However, the ruling in the Roe case was considered too progressive and went beyond the accepted norms of the American society at that time, and instead prompted the rapid rise and counterattack of conservatives and religious rightists. Furthermore, advancements in medical technology have improved fetal monitoring capabilities and extended the safe period within which women can undergo abortions. The “three months” pregnancy standard has been criticized for its lack of flexibility and failure to account for different stages of pregnancy. In addition, the Roe judgment focuses more on privacy rights and does not directly address the issue of women’s rights being restricted. These are some of the shortcomings of the Roe case, which contributed to the subsequent the *Planned Parenthood v. Casey* case.

As the shortcomings of “Three months” privacy standards have become increasingly apparent, state laws have begun to impose restrictions on privacy rights. For example, these restrictions include the disclosure of medical records, spousal consent requirements, and parental notification for minors seeking abortion. The Casey case shifted the emphasis from privacy rights to women’s freedom and autonomy, specifically their right to bodily autonomy [4]. The Supreme Court ruled that the rule of notifying spouses is unconstitutional. This rule stipulated that female abortion requires the consent of the spouse, granting men the power to make decisions on behalf of women regarding abortion. Such a policy clearly violates the principle of gender equality and fails to recognize women as an independent individuals. The judgment in the Casey case has, to some extent, addressed the limitations of the Roe case by providing stronger safeguards for women’s freedom. The American model established by the Roe and Casey cases also marked the beginning of constitutionalization of abortion.

After Republican President Trump took office, he appointed three conservative justices, thereby strengthening the presence of conservatives in the US judicial system. As a result, the opposition to the Roe judgment became increasingly strong. In 2022, in *Dobbs v. Jackson Women’s Health Organization* case, the Roe judgment was overturned, and the Supreme Court held that the Constitution does not grant the right to abortion and returns the power to regulate abortion to the people and their elected representatives [4]. Conservatives have temporarily achieved victory in the struggle, and women’s right to abortion has once again been restricted.

From this perspective, the process of women’s struggle for the right to abortion has been challenging, as they face significant social resistance from the anti-abortion movement. Simultaneously, banning abortion can lead to severe serious societal problems. Therefore, it is important to analyze the factors contributing to this phenomenon and understand the interests involved. The main topic of this article is to examine the reasons for the controversy surrounding the prohibition of abortion and put forth measures to mitigate the adverse effects of the prohibition.

2. Reasons for the Controversy Surrounding the Prohibition of Abortion

2.1. The Impact of Conflict of Religious Purposes

Religious forces have always exerted a significant impact on the prohibition of abortion. Many prominent religions, including Buddhism, Islam, and Catholicism, firmly oppose abortion. The doctrine of Buddhism is that all living beings are equal and should not be killed. Islam criminalizes abortion [5]. Catholicism asserts that life begins with pregnancy, and an embryo is an unborn baby. The law protects the weak, but the unborn babies are the most vulnerable group, so abortion is murder [6]. Among the most mainstream religious Protestants in the United States, white Protestants Evangelicals are the most steadfast anti abortion group (61%). In contrast, 67% of the mainstream white Protestants believe that abortion is legal in all or most cases, while 74% of non-religious

individuals support Legitimate abortion [7]. Religion has a profound impact on a country's social beliefs and subtly influences individual thoughts. Taking the United States as an example, the influence of religion is very strong, and even in party elections, parties may align themselves with certain religious sects to gain more support from voters. For example, the Republican Party has chosen to align with conservatives, including the "evangelical right", and firmly opposes abortion. Liberals are more likely to support the Democratic Party, which adheres to the concept of abortion liberalization. Given that religious sects can significantly shape political party struggles in the United States, it is evident that they hold great influence over the issue of banning abortion.

2.2. The Increase in Law Enforcement Costs

Forcing the ban on abortion will bring high enforcement costs. For the country, childbirth, as a relatively private issue, is difficult to regulate. At the same time, the relevant population base is very large and the mobility is very high. To capture every illegal abortion as accurately as possible, the country needs to increase the number of relevant staff and may also need to install a lot of electronic monitoring to regulate it, which brings incalculable costs. At the same time, the cost of law enforcement also includes various links such as monitoring, investigation, capture, litigation, and enforcement punishment, each of which requires a large amount of financial expenditure, otherwise it is difficult to achieve the expected results. In addition, mandatory measures by the state may also cause some services to go underground, which in turn will greatly increase the cost and difficulty of regulation [8]. Therefore, banning abortion will bring high law enforcement costs to the country, and enforcement is very unrealistic.

2.3. Increasing Class Disparities and Not Conducive to Social Equality

Prohibiting abortion would make related abortion measures more expensive and only accessible to the wealthy, further exacerbating social inequality. In states where abortion is prohibited, wealthy women can choose to go to states where abortion is possible. Poor women are actually deprived of this choice and can only choose to go to high-risk black clinics. Experts estimate that banning abortion will increase the maternal mortality rate by 21% the maternal mortality rate for human women will increase by 13%, while the maternal mortality rate for black women will increase by 33% [9]. The rich can easily find solutions to their problems, while the poor have to choose between giving birth and facing the dilemma of not being able to afford it, or risking their lives to have an abortion. This is clearly unfair and further widens the wealth gap, exacerbating social inequality.

2.4. The Conflict Between the Right to Fetal Life and the Right of Women to Choose Fertility

The group that supports abortion believes that the fetus has the right to life and is inviolable. The fetus relies on the mother in the uterus, and the mother is responsible for the baby and cannot ignore the needs of the fetus on the grounds of "physical autonomy". Physical autonomy is limited and must be limited by the needs and rights of others, and cannot harm others, especially vulnerable groups who rely on us [4]. However, we not only have an obligation to protect unborn children, but also to pay attention to women's freedom and not deprive them of their right to choose. At the same time, the national ban on abortion is to ensure the dignified birth of children, not only legal, but also based on the wishes of parents themselves. If it is due to rape or incest, it is difficult for a mother to truly love the child, and the child will be in a distorted growth environment [10]. Similarly, if a child is born into a family that is unable to have an abortion due to poverty, it will bring a heavy burden to family life. In these situations, prohibiting abortion is actually a violation of the future rights of the fetus. It is important to have a qualified family in order to cultivate children with healthy backgrounds.

Therefore, prohibiting abortion to a certain extent is also an infringement of fetal rights. We cannot focus solely on the right to life of fetuses, but rather on their growth environment after birth.

If women are deprived of their right to abortion under the banner of safeguarding their right to fetal life, it clearly violates their right to free choice. Women are not containers for childbirth, but individuals who enjoy freedom and rights, and have the right to decide whether to give birth to this child. If they do not have the corresponding parenting ability, it will cause a burden on themselves and society.

2.5. Not Conducive to the Protection of Women's Rights

Firstly, banning abortion poses health risks to women. As mentioned earlier, in situations where abortion is prohibited, some financially disadvantaged women may choose to have an abortion at a black clinic, and they are likely to lose their lives as a result. At the same time, the process of giving birth also carries risks, as some women's bodies may not support them, causing irreversible harm to their bodies. Even in the postpartum stage, women face a series of health problems, such as urinary leakage and back pain. Therefore, women will pay a high price for childbirth. If abortion is prohibited, is it disregarding women's lives and health?

Secondly, the consequence of prohibiting abortion is that women need to bear the responsibility of raising children. Of women who have abortions, 74% do so because they are concerned about their ability to care for dependents and the way pregnancy might interfere with education or work, 73% have financial concerns, and 48% cite relationship issues or concern about becoming a single mother [11]. Women naturally have the ability to pursue their studies and careers, and forcing them to become mothers makes it difficult for them to pursue better education and career development. This means that women need to compromise their life goals, and it is difficult for them to have the opportunity to realize their own values again. For impoverished women and single mothers, they will undoubtedly be hit even harder. Raising children will bring them a huge financial burden, and their quality of life will be difficult to guarantee. Single mothers are likely to sacrifice their youth to raise their children and it will be hard for them to find a spouse.

Finally, banning abortion will also affect women's sexual freedom rights and to some extent exacerbate gender inequality. Men and women have equal sexual rights, but they face completely different consequences because women face the risk of unintended pregnancy. In the United States, approximately 18% of pregnancies end in abortion, and about a quarter of American women have had an abortion before the age of 45 [6]. From this perspective, unintended pregnancy is a relatively common problem for women. If abortion is prohibited, it means that women have to bear the responsibility of raising children, which will undoubtedly have a significant impact on their future lives. This in turn will lead to women exercising their sexual rights prudently, and their sexual freedom will be greatly restricted, while men will be completely unaffected, which will result in gender inequality. Both men and women can become the subject of sexual rights, and women should also have the right to enjoy sex rather than being used as tools for childbirth. If abortion is prohibited, it implies that the purpose of women's exercise of sexual rights is to have children, which will exacerbate gender inequality.

In conclusion, the prohibition of abortion will have a significant negative impact on the protection of women's rights, as women are unable to freely exercise their rights and better realize their self-worth, further exacerbating gender inequality.

3. Measures to Weaken the Adverse Effects of the Right to Prohibit Abortion

3.1. Revise Legal Provisions

Due to the practical problems faced by vulnerable groups, such as underage or mentally ill patients,

in this situation, the rights and interests of vulnerable groups and fetuses cannot be fully protected. Therefore, it is necessary to regulate the right to abortion through the law. However, relying solely on public law to regulate the issue of abortion rights is not enough. The implementation of public law often relies on public deterrence, requiring the state to invest a large amount of costs, and public law focuses more on the public interest of the country. The right to abortion, as a natural civil right, seems more appropriate to be regulated by private law. Private law not only has lower implementation costs and is more convenient to operate in practice, but also pays more attention to individual rights and interests. It should be noted that relying solely on private law is also not advisable, as private law lacks a certain degree of coercive power and cannot directly combat illegal activities [10]. That is to say, the separate application of public law and private law cannot achieve good results, and integrating the two would be a good solution. With the mutual integration and infiltration of public and private law, the field of public law is gradually influenced by the concept of freedom and equality, and the privatization of public law has become a trend. At the mean time, the law should pay more attention to the problems faced by women due to childbirth, such as emphasizing the equal right of women of childbearing age to employment and labor. It is prohibited for units to dismiss female employees or unilaterally terminate labor contracts or reduce basic wages on the grounds of pregnancy, maternity leave, breastfeeding, etc, and provide a healthy working environment for pregnant female employees [12].

3.2. Improve the Popularization Rate of Sex Education Knowledge among Women

Some women may not know how to properly avoid unintended pregnancy and may not understand the potential impact of childbirth because they have not received sex education. In the face of this situation, the country needs to popularize sex education to women on a large scale to reduce the possibility of unintended pregnancies. And educate them on the potential adverse effects of childbirth on their physical health and the cost of raising children. Through the popularization of sex education, women can better understand the potential consequences of their behavior and choose to actively avoid related risks.

3.3. Improve the Social Security System and Strengthen Social Security

Firstly, the country should provide women with good medical security, reduce the adverse effects of abortion on their physical health, and provide comprehensive prenatal examination facilities. Secondly, for women who have already given birth and are facing economic difficulties, the government should provide them with appropriate subsidies to provide them and their children with a better living environment. In addition, the country also needs to strengthen social security, reduce the frequency of rape, protect women's physical and mental health, and avoid the dilemma of abortion and giving birth to children of rapists.

4. Conclusion

The implementation of the ban on abortion has brought about numerous social problems and has had a serious impact on women's realization of personal rights. Since the 1960s, feminists have launched a call for gender equality and the pursuit of women's individual rights. *Roe v. Wade* is a significant victory in the process of women gaining control over their bodies. *Planned Parenthood v. Casey* consolidated the victorious fruits of the *Roe* case, further safeguarding women's individual rights and freedoms. However, with the increasing power of conservatism in the Supreme Court, the *Roe* judgment was overturned in *Dobbs v. Jackson Women's Health Organization* of 2022, and women's right to abortion was severely restricted.

The process of women's pursuit of abortion rights and freedom has undergone twists and turns,

with mainstream denominations such as the Catholic Church's doctrine of prohibiting abortion having a significant impact. Faced with a powerful church, the path for feminists to defend their rights is very difficult. However, the protection of women's rights and interests is urgent, and women's personal rights and freedoms cannot be ignored. Against the backdrop of the resurgence of abortion bans, it is urgent to take measures to strive for development space for women's rights. This article believes that the adverse effects of the right to abortion can be weakened by promoting the revision of legal provisions, increasing the popularization rate of women's sex education knowledge, improving social security measures, and strengthening social security.

However, it should be clarified that the right to abortion involves issues of racial conflict, social equality, and political power competition. It is a reflection of the power competition among all parties and a microcosm of social contradictions. Therefore, solving the issue of abortion rights cannot be achieved overnight, but by increasing attention to the issue of abortion rights and taking relevant measures, women's rights will have more room for development in the future, and related issues will be improved.

References

- [1] Friedan, B. (2012) *Abortion: A Woman's Civil Right*. Linda Greenhouse and Reva Siegel eds. *Before Roe v. Wade*. New York: Kaplan Publishing.
- [2] James G. (1981) *Another Chance: Postwar America, 1945-1968*. Temple University Press.
- [3] Wang E. (2008) *Research on American Women in the 20th Century*. Shanghai Foreign Language Education Press.
- [4] Fu N. (2022) *The Focus of Controversy and Changes in Rights Concepts in Abortion Cases in the United States - from Roy's Case to Dobbs' Case*. *Law Application*, 08, 143-151.
- [5] Liu T. (2011) *Exploring the Integration of Public Law and Private Law from the Perspective of American Abortion Rights*. *Foreign Legal History Research*, 346-358.
- [6] Zhu H., Jin H. (2022) *Constitutional Interpretation of the Abortion Rights Case of the United States Supreme Court: From the "Roy Case", "Casey Case" to the "Dobbs Case"*. *American Studies*, 2, 97-124.
- [7] Jin Q (2021). *The Backfire of Religious Conservative Forces in the Cultural War in the United States: Taking Female Abortion as an Example*. *Foreign Languages, Literature, and Culture*, 81-87.
- [8] Sang B. (2007) *Cost Analysis of Legal Control - Taking the Legal Control of adultery and Yellow Text Messages as an Example*. *Modern Law*, 5, 16-26.
- [9] Harris, L. (2022) *Navigating Loss of Abortion Services-A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade*. *New England J. Med.*, 386, 2061-2063.
- [10] Yang L., Li Y. (2023) *Birth Control: Moving from Public Law Control to Private Law Governance*. *Journal of Xinjiang Normal University (Philosophy and Social Sciences Edition)*. Retrieved from <https://doi.org/10.14100/j.cnki.65-1039/g4.20230414.001>.
- [11] Guttmacher Institute. (2022) *Unintended Pregnancy and Abortion Worldwide*. Retrieved from <https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>; Guttmacher Institute. (2019) *Unintended Pregnancy in the United States*. Retrieved from <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states>.
- [12] Zhao Y. (2011) *On Reasonable Restrictions on the Right to Abortion*. *Journal of Beijing University of Aeronautics and Astronautics (Social Sciences Edition)*, 24, 02, 40-44.