

**Freedom of Choice Vs. Right to Life:
The Abortion Controversy
in American Politics
(1973-1976)**

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HIMANI PAHADIA

Centre for American and West European Studies
School of International Studies
Jawaharlal Nehru University
New Delhi - 110067, India
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जवाहरलाल नेहरू विश्वविद्यालय
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110067

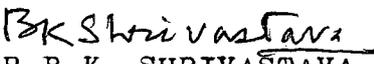
Centre for American & West European Studies
School of International Studies

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CERTIFICATE

THIS Dissertation entitled "FREEDOM OF CHOICE Vs. RIGHT TO LIFE: THE ABORTION CONTROVERSY IN AMERICAN POLITICS" (1973-1976)" by Ms. HIMANI PAHADIA, for the Degree of Master of Philosophy is an original work and has not been previously submitted for any other Degree of this or any other University.

We recommend this Dissertation to be placed before the examiners for evaluation.


PROFESSOR B.K. SHRIVASTAVA
Supervisor


PROFESSOR R.P. KAUSHIK
Chairman

**DEDICATED
TO MY PARENTS**

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P r e f a c e

The Supreme Court of the United States passed a historic judgement in January, 1973, when it declared constitutional a woman's right to abortion. This right was seen to be falling within the realm of the fundamental right to privacy of all U.S. citizens which was protected by the Fourteenth Amendment. Thus, with Roe vs. Wade the Supreme Court invalidated all restrictive abortion laws which criminalized the procedure and which inhibited a woman's right to abortion.

The liberalization of abortion laws came about largely due to the repeal/reform movement started by civil libertarians, feminists, population planners and social welfare groups, among others, who were concerned about the high rate of maternal mortality that resulted from illegal abortions.

Legalization of abortion, with the Roe and Doe decisions started a nation-wide debate on the moral and ethical aspects of the issue. Abortion was revealed to be a highly sensitive and volatile issue which divided the American population into two almost equal halves. While the liberal faction supported abortion rights and the freedom of choice in abortion decisions, the other faction, led by the religious and social conservatives was strongly opposed to abortions and fought for the civil rights of the fetus.

A right-to-life movement was started by these opponents of abortion who considered the wide-scale killing of unborn life to be a national tragedy and equivalent to 'murder'. The anti-abortionists who came to be known as the 'pro-lifers' sought to put an end to the 'unrestricted performance of abortions' and to the 'commercialization of abortion trade' by lobbying for an amendment to overturn all liberal abortion statutes.

Thus, instead of remaining simply a legal and constitutional issue, abortion soon became the newest social issue to emerge on the political horizon of the 1970s. It came to be ranked along with other similarly explosive issues like gun-control, unemployment and social spending. Its disruptive and volatile nature made the election campaigns for various public offices highly competitive and demonstrates the power of moral issues in American politics.

It is the objective of the present work to examine how the controversy over abortion came to occupy an important place in American politics and what impact the Court ruling had on public opinion and policy. The treatment is descriptive and analytical and touches upon the moral and philosophical arguments which are imperative in any comprehensive study of the political significance of the abortion issue. This is also helpful in understanding the public stand taken by the political parties and candidates

on this issue which is reflective of their perceptions of how the American society feels about abortion.

This study on abortion has been divided into five chapters. The first chapter gives an introduction and an overview of the complex history of abortion laws in America. It traces their transition from a liberal to a restrictive era which came to an end with the reform/repeal movement and the liberalization of abortion laws.

The second chapter records how the American population reacted to the Court ruling in Roe vs. Wade and how the pro- and anti- abortion activists organized their forces, the former for the preservation of the status quo and the latter for the reversal of the liberal abortion laws.

The third chapter brings out the controversies that revolved around the abortion issue and the ensuing public debate.

The fourth chapter explores how this issue got politicized and how it came to play an important role in American electoral campaigns.

Finally, in the concluding chapter, analysis has been made of what the Roe decision reflects about the American political system and why the abortion controversy continues to play an important if minor role in American politics.

I wish to express my sincere thanks to my guide Prof. B.K. Shrivastava who supervised my work with uncommon patience, and to Prof. R.P. Kaushik whose good humour and wise counsel were of great help in stressful moments.

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I am specially thankful to Savita Pahadia, my younger sister and close friend, without whose co-operation and constant encouragement this work would never have been completed.

Lastly, any irregularities in this work are my sole responsibility.

Himani Pahadia
HIMANI PAHADIA

CHAPTER-I

INTRODUCTION TO THE ABORTION ISSUE

In 1920, when American women secured the right to vote with the passage of the 19th Amendment, one of the major goals of the women's movement had been achieved. Women, however, were far from satisfied with their limited roles of looking after the home and family. Their continuing struggle for greater autonomy entered a new phase in the 1960s with the unexpected revival of the feminist movement¹.

Feminists directed their efforts at bringing about changes in social practices which restricted women from emancipating themselves. Their attention was particularly focused on the restrictive abortion laws which not only hampered a woman from controlling her own reproductive life but which also resulted in a large number of poor women risking their lives through criminal abortions.

The feminist belief that it is a woman's basic civil right to control her own body formed the basis of the active campaign that was launched to 're-educate' the public and to provide extensive information on birth-control, contraception and abortion. Thus, the newly revived feminist movement played a major part in bringing the abortion issue into the main-stream of public debate².

1 Judith Hole and Ellen Levine, Rebirth of Feminism (New York; Quadrangle Books, 1971), p. 280.

2 Shiela M. Rothman, Women's Proper Place: A History of Changing Ideals and Practices, 1870 to the Present (New York; Basic Books, 1978), p. 83.

Feminists, however, were neither the first nor the only ones to address the abortion issue. Opposition to abortion laws had been steadily growing and included lawyers, legislators, clergymen, doctors and sociologists - all believers of the basic tenet that a woman had the right to decide whether or not to be a mother.

In the United States legislation on abortion had traditionally been guided by the English Common Law under which abortion before "quickening" (the stage at which fetal movement can be perceived) was, apparently not a crime. Nor was an abortion performed after 'quickening' considered to be a grave offense³.

Up until the ratification of the United States constitution in 1787, abortion before quickening was not a punishable crime so long as the woman survived the operation. It was in the mid-19th century that a convergence of medical, legal, socio-economic and religious ideas and beliefs, led to the condemnation of the liberal attitude towards the practice of abortion. The transition from centuries of a liberal attitude on abortion to a more restrictive one was resisted vigorously by many groups. Soon, this resistance crystallized into a movement to reform and/or repeal the restrictive abortion statutes, constituting an important phase in the complex history of the abortion laws.

Abortion laws in America first came into existence in the 1820s. Before this, few cases of criminal abortions were reported and they were decided under the English Common Law. The abortion laws enacted after 1821 were aimed at protecting women from the dangerous procedures adopted by unqualified abortionists, particularly in the absence of advanced medical techniques. According to abortion historians, these laws also served the need, generated by America's expanding frontiers in the early 19th century, to increase the population, thereby to fulfill the growing labour needs⁴.

The first anti-abortion law in the US was enacted in Connecticut in 1821. Under this statute an abortion attempted after "quickening" was a punishable crime and carried a penalty of life imprisonment. By 1860s abortion performed prior to "quickening" were also prohibited but the punishment was reduced to imprisonment for upto five years. By the mid-19th century a number of states had passed laws which made abortion a crime except to save the life of the woman.

Many of the states, however, continued allowing legal abortions before quickening. This liberal attitude of the state legislations made the procurement of abortion and related information readily available. Between 1840 to 1880, 'commercialization in the abortion trade' led to changes in

the social character and practice of abortion⁵. More and more married women began resorting to this method to limit family size as newspapers increasingly carried advertisements for the sale of abortion inducing drugs, as well as, for clinics, providing surgical abortions⁶.

This change in the practice and use of abortion in America heightened public awareness, and opposition to legalized abortion began to grow. Major newspapers expressed their opposition to abortion in strongly worded editorials thereby helping the anti-abortion movement.

In 1847, the American Medical Association (AMA) organized a campaign led by well established medical associations and doctors to lobby legislation in support of restrictive abortion laws, as well as, for the publication of articles of public-interest on the dangers of abortion.

The restrictive era in American abortion laws did not start until after the Civil War, when many criminal abortion statutes were introduced in the eastern states. The morality of the times, guided by Puritanism, advocated sexual repression and was the inspiration behind the legal restrictions on abortion⁷.

5 Irving J. Sloan, The Law Governing Abortion, Contraception and Sterilization (New York; Oceana Publications, 1988), p. 4.

6 Ibid.

7 It was mainly due to the efforts of Anthony Comstock, a Puritan, that many abortionists were arrested, advertisement of abortion services stopped, and the commercialization of abortion trade came to end. Ibid.

In the early 1860s, the anti-abortion movement began to crystallize into a significant force. The Catholic church was the strongest opponent of abortion which considered it to be a 'sin' and tantamount to 'murder'. This rhetoric had a deep influence on the public as also on many state legislatures, inducing them to modify their statutes so as to prohibit abortion at all stages of pregnancy.

A number of federal laws reflecting theological and metaphysical arguments were enacted in an attempt to 'legislate morality' and to 'stamp out sin'. State after state soon followed the federal example by criminalizing the procedure and the period between 1860 to 1880 saw the revision of abortion laws in 31 states. The efforts of New York to make its restrictive abortion laws more exhaustive were exemplary. Punishment was set down for attempted abortions, from the movement of conception on, as well as, for advertising or providing abortion services and for voluntarily seeking an abortion. Similar stipulations were appended by many states to reinforce their anti-abortion policies.

However, 46 states and the District of Columbia allowed some "therapeutic abortions" as exceptions in their statutes, in the event of medical necessity to save the life of the woman and/or to save her from "serious or permanent bodily injury" (New Mexico and Colorado), to "preserve the life and health" (Alabama and District of Columbia), and for the 'safety' of the woman (Maryland). Of the four remaining

states, Louisiana, Pennsylvania, Massachusetts and New Jersey, the first two allowed no abortions, even if necessary to save a woman's life, while the other two allowed 'judicial exceptions' to their statutes.

The sanctioning of therapeutic abortions only when necessary to save the life or health of the expectant mother clearly fell short of providing adequate coverage to a host of other problematic and dangerous pregnancies. None of these jurisdictions permitted abortions for 'special' cases like when for instance the fetus was likely to be deformed or when the woman had undergone radiation therapy in the early months of pregnancy; when there was Rh factor incompatibility; and when the pregnancy resulted from rape or incest.

The moral code of the times, which regarded abortion as a taboo and an anathema, imposed upon it several legal, medical and religious restrictions. Many women seeking abortions, not strictly qualifying as therapeutic in nature, were faced with the difficult choice of either resorting to illegal means or to undertaking travel to a foreign country to procure an abortion. And, when either option was unavailable, they had little choice but to bear the child without having the economic means to look after it. As a result, many illegal abortions were performed covertly during this period. In 1960, according to one estimation, the rate of abortions versus live births was 1 : 3 or about 1.2 million abortions. The number of therapeutic or legal abortions was significantly smaller. Between 1957 to 1962

the rate of therapeutic abortions was about two per thousand live births, or about 8000 abortions per year⁸.

From 1910 until 1967, criminal abortion laws of varying degrees of severity were in effect in all the states. However, these laws were not free of technical shortcomings. The first weak-spot pertained to the incorporation of a rather strange provision in the abortion statutes of a number of states including those of Connecticut (1958), Illinois (1961), Minnesota (1953), Missouri (1949), Virginia (1960) and West Virginia (1955)⁹. The provision regarded the 'preservation of the life of the unborn child' as a qualifying requirement for granting a therapeutic abortion if the same were "necessary to preserve the life of the mother or of her unborn child"¹⁰.

The self-contradicting provision of permitting abortion to save the life of the unborn child, the total opposite of its true medical meaning was the cause of deep consternation to both the legal and the medical profession. This erroneous interpretation of the term probably resulted due to the law makers confusing the medical meaning of abortion which means 'destroying' the fetus with the legal

8 Sloan, op. cit., n.5, p. 7.

9 Roy D. Weinberg, Family Planning and the Law (New York; Oceana Publications, 1979), p. 4.

10 Ibid.

meaning which implies 'induced labour'¹¹.

The second difficulty arose in determining as to when a physician could be charged with a criminal abortion and whether a woman who voluntarily assented to an abortion was to be considered an accomplice in the offense. While some states accepted a 'good faith' belief in defense of the physician that he performed the operation in compliance with the state statute other states did not. The task of proving that the woman's life or health was not dependent on the operation was left to the prosecution in most of these states. Others, however, placed the burden of proving that it was, on the physician.

Lastly, the ever increasing sophistication in medical procedures virtually ruled out the absolute necessity of abortion to save the life of the mother. This provision granting therapeutic abortions was prone to be manipulated to accommodate some technically illegal abortions. These lacuna highlighted the shortcomings and the contradictory nature of the criminal abortion statutes and emphasized the need for radical and comprehensive reforms.

Despite the fact that before 1950 there was an absence of strong opposition to the anti-abortion laws, there had always been a small minority committed to this cause. Their reasons for seeking abortion law reform or repeal were

11 In legal terminology, "abortion" denotes an 'intentional interruption of pregnancy by removal of the embryo from the womb' which is not much different from induced labour. Ibid.

varied¹². Firstly, they believed that a woman's reproductive life is a basic inalienable civil right, and outside the jurisdiction of the Church and the State. The criminalization of abortion had forced many doctors to choose to safeguard their careers over the health and lives of millions of women. Morality, they argued, can neither be legislated nor enforced. This was evident from the fact that more than a million women sought abortions each year. Furthermore, the socio economic conditions which had demanded an increase in the labour force were no longer applicable. On the contrary, there was an ecological need to control population growth, abortion was one alternative method to meet this need. Also, it was argued that abortion laws violated the constitutional rights to privacy and to equal protection under the law guaranteed to all citizens. Besides, the laws of a country which expressly separates the Church and the States should not impose one set of religious beliefs on a pluralistic society particularly since each of the three major religions in America endorses a different set of beliefs on the question of when life begins. Catholics believe that life begins at conception, Protestants believe that it begins at 'quickening' and the Jews, at birth. Imposing the religious doctrines of one church on to the others would be as unfair as, in the words of abortion historian and reformer Lawrence Lader, 'banning pork because of Jewish beliefs' or 'prohibiting blood transfusion because

of Jehovah's Witnesses' objections to it,¹³.

The first effort at an abortion law reform was made in 1952 when the leading psychiatrists of the time published a symposium on abortion policy which attracted the attention of jurists, lawyers and legal scholars. The American Law Institute, ALI, was the first one to draft a formal proposal for realistic reforms in the abortion laws. Its Model Penal Code (1959) allowed for abortions when the continuation of pregnancy jeopardized the physical or mental health of a woman (eventually 'mental' health was interpreted to also include psychiatric problems); when there was a likelihood of mental or physical abnormality in the fetus; and when the pregnancy had resulted from rape or incest¹⁴. This statute met with a lot of resistance and did not get ratified by any state until 1967.

Public attention however was once more focused on this subject when the use of drugs like thalidomide during 1961 to 1963 and the American German measles epidemic in 1964 caused many fetal deformities. Over 20,000 severely deformed babies were born in the wake of the epidemic mainly due to the non availability of legal abortions. Both the events were extensively covered by the media and helped to shake the public out of its apathy¹⁵.

13 Ibid., p.292.

14 Weinberg, op. cit., n. 9, p. 17.

15 Hole, op. cit., n. 1, p. 296.

The abortion law reform movement in these years was strengthened by the establishment of a number of organizations, some of which were political action groups that mobilized support and encouraged public debate to influence law-makers while the others provided abortion - counseling services. These included welfare rights groups and birth control organizations; the American Civil Liberties Union, ACLU, which was engaged in abortion lobbying and litigation; some medical organizations which supported greater freedom for the physicians to practice their profession, and a number of other organizations which are still active.

In 1964, the Association for the Study of Abortion, enjoying tax exempt status, was established to provide research and factual information, and extensive data on the subject. Experts in various fields - doctors, lawyers, social and welfare workers and theologians all contributed time and expertise to remove public ignorance on this important and sensitive issue. Bill Baird a crusader for birth control rights openly challenged and defied the criminal laws which he considered to be oppressive in nature. In 1964, he established the Parents' Aid Society in New York, which helped women to find trained and competent abortionists and also provided advice on birth control.

Reverend Howard Moody, a clergyman of the Judson Memorial Church, established the Clergy consultation service on abortion in 1967, with 21 nuns and priests. It sought to

help women with 'problem pregnancies' which included giving references of qualified abortionists, who were also considerate of the women's feelings and funds. This referral service expanded its network to about 40 states and was staffed by 3000 clergymen and women counselors. These 'courageous' clergymen, thus, had a big hand in "making abortion as a word and an act acceptable if not respectable"¹⁶.

The Association to Repeal Abortion laws in California was founded by Patricia Maginnis, a medical technologist, in 1966, and was probably one of the first political action groups which aimed at total repeal of the restrictive laws. It supported the view that abortion is a surgical procedure and should not be a criminal offense. The National Organization for Women, NOW, at a convention held in 1967 pledged to campaign for elective abortions. This move, however, was not welcomed by all its members since they feared that taking an aggressive stand on the issue would scare away those who generally sympathized with the cause. In addition the New York branch of NOW set up an independent state-wide organization in January 1969, called New Yorkers for Abortion Law Repeal, NYALR. This organization campaigned vigorously against any restrictions on access to abortion and birth control methods.

Civil disobedience, through the compilation of lists of abortionists, and through advertising their referral

services, was often undertaken by these organizations to test the legal limits of the state laws and of judicial action. Feminists, constitutional lawyers, population control and welfare rights groups were openly confronting and challenging the constitutionality, and often the very existence of these criminal abortion laws. Many political activists opted for the politically expedient goal of working towards abortion law reform, rather than total repeal, in an attempt to widen the scope of therapeutic abortions, so as to accommodate a larger number. Some were even in favour of keeping the qualifying requirements to rule out misapplication of the laws.

The reform movement continued to gather speed and attained its first victory in 1967, when Colorado became the first state to enact laws based on the Model Penal Code. By 1970 eleven states had passed similar legislations : Arkansas, California, Delaware, Georgia, Kansas, Maryland, New Mexico, North Carolina, Oregon, South Carolina, and Virginia.¹⁷.

Radical feminists, however, were not satisfied and continued to struggle for a total repeal. The first "Repeal Bill" was introduced in the New York State legislature in 1969. Many organizations had been actively lobbying for anti-abortion law repeal in state legislators, which soon resulted in a "snow balling" of repeal recommendations. Also, for the first time in history, a bill was introduced in Congress to

extensively liberalize the country's restrictive abortion laws.¹⁸

Thereafter, in 1970, new laws rejecting the ALI approach were passed in New York, Alaska, Hawaii, and Washington. These statutes were based on the repeal argument, the core of which was 'abortion on request'. Women could now procure legal abortions in these states upon fulfilling certain pre-conditions. One or more of the following requirements was mandatory :

- that the women seeking abortion had to have parental consent (in the case of a minor) or spousal consent (if married) ;
- that she was to be a resident of the state¹⁹;
- that the operation had to be performed in a licensed hospital, and by a licensed physician;
- and that the operation had to be performed before the fetus became viable.

18 In April 1970, Senator Robert Packwood, a Republican from Oregon proposed the "National Abortion Act" under a legislative proposal for stabilizing population growth. Ibid.

19 New York became a virtual haven for legalized abortions in the early 1970s, as it had no residency requirement and did not restrict the performance of the operation in a doctor's office. In the first 18 months after the legalization of abortion, about 356,000 legal abortions were performed in New York, of which 278,122 were performed in New York City alone. However, only 35.5% of all the abortions were performed on New York City residents. Ibid.

While the liberal reformers welcomed these new laws radical feminists strongly objected to the accompanying qualifications on a number of grounds. Firstly, they argued that a woman's right to control her own body is a fundamental right, and therefore, the woman herself should be able to decide whether or not to have a child. She should not, they felt, be compelled or pressurized by her husband or parents to bear an unwanted child that would drastically and permanently affect her whole life.

Secondly, they argued that the residency requirement was unfair since it was not a necessity in any other medical procedure. The third requirement limiting such operations to a licensed hospital was self-defeating in purpose as public hospitals were often over-crowded, creating delays and forcing poor women to turn to 'back-alley abortionists', which was far worse than going to a well-equipped clinic. Similarly, the fourth requirement of a licensed physician was considered to be an unnecessary impediment since trained paramedics could easily perform the operation which had been appreciably simplified with the advances in medical techniques. In fact, in the opinion of many doctors, the sophisticated new medical technology had rendered abortion 'one of the safest medical procedures'.

Finally, the 'before viability' condition raised a lot of controversy since it was based on the concept of when human life begins -- at conception, quickening, or viability? These concepts, in turn, were based on religious

doctrines and ancient beliefs. In any case, determining the point of viability with any accuracy was impossible, since it varied from one pregnancy to another. Feminists argued against the fairness of imposing a single religious doctrine through a law which affected all women. Total repeal of abortion laws, they claimed, would create happier families through lower birth and death rates, and would consequently, also afford greater privacy in associational, reproductive, family and sexual matters. Further, it would separate the Church from the State (none of whom should have any power in the first place, to legislate a woman's rights to her own body), and reduce federal and state welfare expenditures. Whether or not a woman chose to have an abortion, they felt she must first have the right to be guided by her own personal beliefs on the issue.

Feminists have played a major role in abortion politics, resorting not only to confrontational politics but also to lobbying techniques to persuade legislators and judges to take favorable action. Besides rallies and demonstrations, they organized referral services, sometimes in co-operation with the Clergy Consultation Service. The effort of these referral services was to provide lists of qualified and 'humane' doctors who refrained from making sexual advances (a commonly reported phenomenon) and who did not give gratuitous lectures on morality²⁰.

In 1965, the U.S. Supreme Court endorsed the substantive due process right to privacy in the landmark case of *Griswold vs. Connecticut* 381 U.S. 479. The Supreme Court declared unconstitutional a Connecticut statute which prohibited the use of contraceptives as it restricted the right of married people to use them and hence abridged their freedom of reproduction. The Court said that the right to privacy in reproductive matters was an intrinsic human right which was "older than the Bill of Rights, older than our political parties and older than our school system"²¹.

By 1971, some 70 civil and criminal abortion cases were pending in more than twenty states. The majority of these were based on the constitutional grounds that abortion laws violate a woman's civil rights. In May 1971, the Supreme Court agreed to hear two such cases : *Roe vs. Wade* and *Doe vs. Bolton* from Texas and Georgia, respectively, which proved to be a turning point in the history of abortion laws. Two years later, in a historic decision the Supreme Court outlawed the abortion laws of both the states proclaiming that within the protections accorded to the right to privacy in decisions relating to reproduction, a woman has a fundamental but qualified constitutional right to obtain an abortion. This right to privacy which was recognized for the first time in *Griswold* was eventually expanded to include the right to abortion in the *Roe* and *Doe* decisions.

The Roe decision, thus, laid down that during the first trimester of pregnancy, a woman, in consultation with her physician, has the right to an abortion; that during the second trimester, the State can regulate abortions to safeguard a woman's health and safety; and during the third trimester, the State may regulate abortions in the interest of protecting potential human life, even to the point of prohibiting abortions unless necessary to save the life or health of the woman²². This ruling of the Supreme Court proved to be a watershed in the history of the abortion issue having far-reaching consequences on the American society and raising a heated controversy across the Nation.

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"Supreme Court Eases Rules on Abortion", U.S. New and World Report, 5 February 1973, p. 36.

CHAPTER-II

REACTIONS TO ROE VS. WADE

In arguably "one of the boldest and most sweeping decisions of the Nixon Years"¹ the U.S. Supreme Court endorsed a woman's right to obtain an abortion with a 7-to-2 vote. Thus, with one sweeping decision of the Court, all criminal abortion laws, which restricted access to abortion, were invalidated.

The Supreme Court, upon re-viewing the history of the abortion laws, had discovered that the numerous abortion statutes functioning in the various states were adopted in the latter half of the 19th century and were neither ancient nor derived from the English Common Law. These statutes were seen to have been enacted mainly for three reasons, primary amongst them, the Court found, was the Victorian society's desire to discourage 'illicit sexual conduct'; secondly to protect women from undergoing the operation which prior to the development and widespread use of anti-biotics and anti-septic techniques was a hazardous procedure; and thirdly, due to the legitimate interest of the state in protecting potential human life².

1 "Abortions: What Happens Now?", Newsweek, 5 February 1973.

2 Peter Woll, Constitutional Law: Cases and Comments (New Jersey; Prentice - Hall, 1981).

The landmark cases which led to the establishment of the basic law governing abortion were Roe vs. Wade 410 U.S. 115, and Doe vs. Bolton 410 U.S. 179. 'Roe' and 'Doe' were pseudonyms adopted by two parties from Texas and Georgia, who challenged the abortion laws of their respective states in what was described as 'one of the most fiercely fought legal battles' in the nation's judicial history.

In the first case 'Jane Roe', a divorcee from Dallas who worked as a waitress, filed a case questioning the constitutionality of the Texas criminal abortion statute. She had been denied a safe, clinical abortion and the services of a competent and licensed physician simply because the continuation of her pregnancy did not appear to be endangering her life.

In the accompanying case, 'Mary Doe', a 22 year old house-wife from Atlanta went to court when her request for a therapeutic abortion was turned down. 'Doe', who was a mother of three children, had been forced to give them up—two, to foster homes and one, for adoption - because of her poverty. This suit was filed together with physicians and nurses, clergymen and social workers, for 'Doe' and for other women in a similar situation, as well as, for the medical staff who were restricted from practicing their professions freely.

In both the cases, the plaintiffs had based their protests on the assertion that the Texas and Georgia criminal abortion statutes circumscribed their fundamental rights and

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freedoms which were guaranteed by the constitution. These constitutional guarantees were for freedom of action and privacy in marital, familial and procreational matters, due process of law, and equal protection of the laws under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the U.S. constitution³.

The Texas law was typical of the various restrictive statutes, in effect at that time, which considered it a criminal offense to perform any abortion that was not necessary to save the life of the pregnant woman. This law was invalidated by the Supreme Court in its entirety. The Court proclaimed that state abortion laws that prohibited abortions except to save a woman's life, without taking into account the stage of pregnancy and other important considerations, violated the Due Process clause of the Fourteenth Amendment. The Supreme Court acknowledged that population growth, pollution, poverty and racial overtones complicated the controversy surrounding abortion which was by nature a "sensitive and emotional issue".

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The Georgia law, which was considered to be more liberal than the Texas law, was patterned after the Model Penal Code of the American Law Institute, and allowed therapeutic abortions for a number of reasons. However, all abortion cases had to meet certain conditions before they

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3 Roy D. Weinberg, Family Planning and the Law (New York; Oceana Publications, 1979), p. 22.

were considered⁴. Thus, only residents of Georgia could request therapeutic abortions. The applicants in turn, had to be screened and approved by a hospital committee. Moreover, two doctors, other than the woman's attending physician, were required to independently recommend and certify that an abortion was required in view of the risks involved to the patient's life or health. And the abortion procedure had to be performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals. The Supreme Court struck down these conditions in the Georgia abortion statute on the grounds that they unduly restricted a woman's rights. Their imposition, the Court said, was not justified since the woman's health and safety was more than adequately protected by the general laws regulating medical practice and the licensing requirements of the state.

Similarly, the requirement of recommendation by two other doctors was found to be unnecessarily restrictive, and that of limiting access only to residents, irrational. The Court argued that the denial of medical care, to any person who was present in the state, was unjustified⁵. Besides, limiting the availability of abortion services only to residents was violative of the 'privileges and immunities clause' of the Fourteenth Amendment. This clause protects the rights of people to travel from one state to another for commercial or other legitimate reasons, including medical care.

4 Ibid. p. 23.

5 Irving Sloan, The Law Governing Abortion, Contraception and Sterilization (New York; Oceana Publications, 1988), p. 15.

The victories of 'Roe' and 'Doe' against state officials in the abortion cases resulted in the outlawing of nearly all the abortion statutes in the U.S. The Georgia case decided by the Court necessitated alterations and re-writing of more liberal abortion statutes in fifteen states. The Texas case, on the other hand, resulted in the mass repeal of abortion statutes in thirty-one states. The Court proclaimed the criminal abortion statutes to be violative of the 'right to privacy against governmental action' implicit in the due process clause of the Fourteenth Amendment. The 'right to privacy' is not mentioned, categorically, anywhere in the U.S. constitution. It is, however, implicit in the 'zones' of privacy which have been created by constitutional guarantees in the Bill of Rights. The 'right to privacy' in associational, marital and reproductive matters is particularly implied by the concept of 'liberty' embodied in the Ninth Amendment's reservation of rights to the people and in the Fourteenth Amendment's due process clause. This 'liberty' the court believed, protected more than those freedoms mentioned explicitly in the Bill of Rights and was "broad enough to encompass a woman's decision whether or not to terminate her pregnancy"⁶.

The Court considered this right to be neither absolute nor unconditional. It rejected outright the claims of certain women's rights groups that a woman's right to abortion is absolute and that she is "entitled to terminate

her pregnancy at whatever time, in whatever way, and for whatever reasons she alone chooses"⁷. Instead, it reaffirmed that the State has a "compelling" interest in safeguarding health, maintaining medical standards and protecting potential human life, by demarcating the limits of the 'right to privacy', depending upon the stage of pregnancy at the time of the abortion.

The Court deliberately avoided speculating on the question of when human life begins, noting simply that there was no convergence in the beliefs of philosophers, physicians and different religious denominations. The Court also ruled out the possibility that the term "person" as used in the constitution applied also to fetuses. The Court ruling had kept in mind the historical background, the changed social environment, and the advancement of medical technology, imposing very few restrictions on a woman's right to abortion in consultation with her physician.

The state's interest in the woman's health and welfare was not seen to be compelling enough to warrant any interference in her abortion decision in the first trimester. In New York City, under a liberal abortion law, the death rate for early abortions was 2 per 100,000 operations (this was even lower than that for tonsillectomies which was 13 per 100,000)⁸. Medical data submitted to the Court was supportive of the fact that the progress in medical

7 Ibid.

8 Ibid., 28 January 1973, p. 45.

techniques had made abortion 'one of the safest surgical operations'. In fact the death rate associated with a full term pregnancy, including child birth and the post-natal period was more than 20 per 100,000, much higher than that for early abortions.

The opinion of the Court on Roe vs. Wade was written by Justice Harry Blackmun. The Court majority agreeing with the verdict comprised of seven Justices : William O. Douglas, William J. Brennan, Jr., Potter Stewart, Thurgood Marshall, and three Nixon-appointees, namely, Lewis F. Powell, Jr., Harry A. Blackmun and Chief Justice Warren E. Burger.

President Nixon had earlier expressed his opposition to liberalized abortion policies in a letter he sent to Cardinal Cooke, in May 1972⁹. Calling the abortion law repeal campaign of the archdiocese "a noble endeavour", the President said that he wished to associate himself "personally with the Cardinal's opposition to the law. Ironically, only one of the four Justices appointed by Nixon, namely, William Rehnquist joined the lone dissenter Justice Byron R. White. Justice White called the decision "an exercise of raw judicial power", saying that "the Court apparently values the convenience of the pregnant mother more than the continued existence and development of the life or potential life which she carries". He maintained that the

Court had, in its attempt at 'judicial legislation', overstepped its original function of determining the intention of the drafters of the constitution.

The Supreme Court's broad sanctions to abortion by an over whelming majority surprised almost everyone - pleasing the proponents and infuriating the opponents of liberalized abortion laws. Perhaps most astonishing of all was the 'explicit detail' and broad scope of the guidelines laid down for the enactment of liberalized abortion laws by the states.

Leading the opposition and the hundreds of the Right-to-Life Committees around the country was the Roman Catholic Church. The immediate reaction of the Roman catholic leaders was strong condemnation of the "utilitarian judgement" which was "an unspeakable tragedy for the nation", and a "monstrous injustice"¹⁰. Cardinal Cooke of New York and Cardinal Krol of Philadelphia, who were in the forefront of Catholic reaction, called the Court's action "shocking" and "horrifying" and asserted that it would "set in motion developments which are terrifying to contemplate". Cardinal Krol who was also the president of the National Conference of Catholic Bishops added that "judicial decisions are not necessarily sound moral decisions"¹¹ Claiming that the Court ruling was incompatible with their faith and moral

10 Ibid, p.20.

11 Ibid.

convictions, the Roman Catholic Bishops' Committee for Pro-Life Affairs, urged the hospitals and health-care personnel, under its auspices, to refuse to provide abortion on request.

A pastoral message issued by the National Council of Catholic Bishops warned Roman Catholics that they faced excommunication if they underwent an abortion; if they persuaded others to have an abortion; and if they performed the abortion procedure¹². It warned that this would amount to being "guilty of breaking God's Law" and would lead to automatic ex-communication of the subject who would, thereafter, be debarred from receiving the sacraments, as well as, a church burial.

A Virginia group of Catholic laymen even called for the excommunication of Justice Warren J. Brennan, the Courts' only catholic and part of the majority. This "symbolic gesture" was immediately complied with and was greatly applauded by the anti-abortionists.

The Church accused the Court of taking over the powers and responsibilities of fifty states to protect human life, and of ignoring the people's will as expressed in

12 Ibid., 15 February 1973, p. 20.

referendums and legislations¹³.

This charge was brushed aside by the pro-abortion groups who argued that the main function of the Supreme Court was to interpret the constitution and not to apply "the will of the people", whatever that may be at a given time. Others supported the view that it was the duty of the people to "resist the impulse to amend the constitution everytime a large group of people disagreed with a judicial decision"¹⁴.

The pro-abortionists also expressed their concern at the President's regressive stand on the issue and his support to the catholic opposition to the law. The opponents, however, defended his stand saying that in allying himself with the anti-abortion forces, the President had correctly assessed the public mood against "permissiveness".

According to Catholic belief life begins at conception and, therefore, abortion is equivalent to murder. Nevertheless, it is interesting to note that catholic doctrine on the question of abortion and the beginning of human life had changed several times over the centuries¹⁵.

13 The referendums seeking broadly liberalized abortion laws in North Dakota and Michigan in November, 1972, were defeated, according to pro-abortion groups, due to two factors: last minute "shock" campaigns, and being close enough to New York. Thus, it was easy for the residents to vote against liberal abortion laws when they had access to legal abortions in New York. In fact, two-thirds of the abortions performed in New York City under the liberal laws, from 1970 to 1972 were on non-residents, of whom 20,000 were from Michigan. New York Times, 2 January 1973, p. 24.

14 Ibid., 24 January 1973, p. 40.

15 New York Times, op. cit., n. 13.

From 1591 until 1869 the Church was of the view that the unborn infant acquired a soul only with 'the first movement of its body' or 'quickenning' which normally occurs between the twelvth and fifteenth week of pregnancy. Thus, an abortion performed before that time seemed to have been a minor offense. The Church's present view that human life begins at the moment of conception had been adopted as recently as roughly a century ago.

Anti-abortion forces have likened the Supreme Court ruling on abortion to the Dred Scott decision in 1857, which declared that a Negro was not a citizen, although he may have 'a beating heart and a functioning brain and be biologically human'¹⁶. Legally, the black man was not a person and therefore could claim "none of the rights and privileges" granted under the constitution. Similarly, in Roe Vs. Wade the Supreme Court asserted that the word 'person' as used in the Fourteenth Amendment does not apply to the fetus and that forbidding abortions violates the mother's 'right to privacy'. To the anti-abortionists, this decision ranks in infamy with the Supreme Court's endorsement of slavery. The Court had, then maintained that freeing slaves would unconstitutionally violate the owner's right of property. This decision had been overturned by the passage of the Fourteenth Amendment, eleven years later.

Another objection raised by the anti-abortion forces was on the Court's view that the exact moment of the beginning of human life was in doubt, as ideologies and beliefs differed on the topic. They reiterated that a "presumption of life" should be used in cases where the legal existence of the unborn was in doubt. This argument was derived from the "presumption of innocence" used in the legal system for the protection of individuals against unjust accusations¹⁷.

The Supreme Court ruling had been more liberal than what the anti-abortion forces had anticipated. It motivated them into channelizing their efforts to get a new amendment passed to overturn the endorsement of abortion, and to secure for the unborn "equal protection" under the constitution.

The Supreme Court ruling on abortion was welcomed by the pro-abortionists as constituting a victory for the women's liberation movement. Pro-abortionists had the support of the Planned Parenthood Federation of America, civil libertarians, population planners, and radical feminists, and Protestant and Jewish Clergymen, including some Roman Catholic priests.

Dr. Alan F. Guttmacher, an obstetrician and president of the Planned Parenthood Federation of America described the Court ruling as a "wise and courageous stroke for the right to privacy and for the protection of a woman's

physical and emotional health". "By this act," he said, "hundreds of thousands of American women every year will be spared the medical risks and emotional horrors of back-street and self-induced abortions"¹⁸. The American Civil Liberties Union, ACLU, too, called it "an important step in the right direction".

William Baird, a crusader for birth control and abortion labelled the decision "a triumph" which had vindicated a woman's right to control her own body.

Radical feminists hoped that the Court ruling would bring to an end the emotional and divisive argument over what "should always have been an intensely private and personal matter". The pro-abortionists generally agreed on the basic principle that abortion ought not to be regulated by the law at all, and should be a private matter between a woman and her physician - subject only to private morality and medical regulation.

Similarly, Lawrence Lader, Chairman of the National Abortion Rights Action League (NARAL)¹⁹ felt that medical societies and health codes, rather than the state, should determine when a woman can have an abortion and announced NARAL would now concentrate on preserving and enforcing the new laws. Ray M.S. Tucker, Chairman of the National

18 Ibid., op. cit., n. 9.

19 Formerly NARAL stood for National Association for the Repeal of Abortion Laws.

Religious Coalition for Abortion Rights²⁰ also felt that abortion was a highly personal decision that "should be determined by an individual's conscience, not by the dictates of the Church or the State. The Coalition said that it would work to safeguard the right of women to seek an abortion, while also fighting the attempts of anti-abortionists to nullify the Supreme Court decision.

The Women's National Abortion Action Coalition, which had lobbied for abortion reform on the basis of "democracy vs. hypocrisy" postulated that "democratized abortion" being a matter of public health was more than just a women's rights issue. Representative Bella S. Abzug, a Democrat from Manhattan denounced the hypocrisy of those Right-to-Life supporters who wanted to undo the abortion legislation with little regard for the distress of the unfortunate child "born unwanted", or for the poor woman left to the mercies of surreptitious and often unskilled abortionists. Not falling under the category of therapeutic abortions these women, "cannot get two psychiatrists to certify that they will jump off the bridge if they are not spared the burden of an unwanted pregnancy", reasoned another Representative Shirley Chrisholm, a Democrat-Liberal from Brooklyn²¹.

20 Members of the Coalition included Union of American Hebrew Congregations, the Unitarian Universalist Association, the National Council of Jewish Women, and the Board of Homeland Ministries of the United Church of Christ, and the Division of Social Ministries of the American Baptist Churches, among others.

21 New York Times, 12 January 1973, p. 30.

Studies showed that low income women from minority groups and other poor communities, including Puerto Ricans and blacks, experienced the highest maternal death rate from illegal, unsafe abortions. Most lawyers active in the abortion field, felt that the Supreme Court decision made it incumbent upon municipal and public hospitals with obstetrical facilities to make abortions available for these women.

Medical professionals and social welfare groups, through out the country, were encouraged by the reformed laws to make safe and inexpensive abortions readily available to women. Hospital administrators and medical facilities began working on policies and procedures to treat an estimated total of 1.6 million American women seeking abortions annually²². Several hospitals announced new plans of increasing their capacity to perform more abortions, and their decisions to establish abortion clinics in other metropolitan areas.

Dr. Christopher Tietze, a demographer with the Population Council, warned against misinterpreting the Supreme Court decision to mean that abortions performed in doctors' offices or in hastily equipped clinics were risk-free²³. Abortion clinics he advised, should have ready access to a nearby hospital, to deal with emergency cases. Risks of death and other complications, associated with

22 Ibid., op. cit., n. 8.

23 Ibid.

abortions in the second trimester of pregnancy, is nearly nine times greater than the risk of an early abortion. Emergency equipment, such a resuscitater and a blood supply should, he therefore suggested, be mandatory in a well equipped clinic.

With the liberalization of abortion laws Planned Parenthood World Population, announced its plans of running a nation wide toll-free telephone referral service in addition to setting up more abortion clinics to stop private entrepreneurs and commercial abortionists from hiking their prices. In an effort to eliminate the potential hazards of abortions performed in doctors' offices, NARAL, planned on holding regional workshops and seminars for physicians to promote safe abortion methods and advise on how to set up out-patient abortion clinics. In addition, experts felt, women too must be educated on the abortion issue, to ensure that they "obtain the safest possible procedure under the best possible circumstances". This, they felt, was specially important in the light of 'the legacy of adverse physical and emotional after effects left by centuries of criminal abortions',²⁴.

Mrs. Harriet Pilpel, an attorney for Planned Parenthood World Council, observed that the Supreme Court decision had the effect of invalidating, right away, all

existing laws that did not conform. "When the Supreme Court interprets the Constitution, "she said, "the decision becomes effective immediately"²⁵. She thus affirmed that doctors could go ahead and perform abortions until new laws were passed. Indeed, within hours of the Court's decision, hospitals began receiving abortion enquiries²⁶.

Implementation of the Court decision, however was not an easy matter and varied from state to state, hospital to hospital and physician to physician. Although abortion was now legal till late in pregnancy, the procedure was still not easily available. State governments and the American medical profession moved slowly and with extreme caution, to adopt liberal abortion policies.

In a number of states including Texas, Iowa and Tennessee, it seemed that no one was willing to make the first move. Doctors, uncertain of the full implications of the new right to abortion, continued to exercise restraint in agreeing to perform abortions, since their licenses could still be revoked as, for example, in Louisiana. Hospitals awaited the opinions of their respective Attorney Generals on the ramifications of the law and on their legal options thereby delaying implementation²⁷.

25 Ibid., 24 January 1973, p. 14.

26 Ibid.

27 Ibid., 16 February 1973, p. 1.

In at least five states, the old restrictive laws were supported by the courts or the legislatures. Even in the states where legal or judicial opinions declared state laws unconstitutional the medical profession took little action, particularly when they supported the pro-life movement.

Clearly, doctors were under no compulsion to oblige any woman who happened to request an abortion—no where did the Court ruling specifically say that it granted a right to abortion on demand. Indeed, Chief Justice Burger asserted in his concurring opinion that "no such right is given"²⁸. But, since doctors were no longer legally restrained from performing abortions—most women who wanted abortions were able to get them although this was not so easy in the rural and non-metropolitan areas with only one doctor²⁹.

The reluctance of the local doctors and hospitals to perform abortions willingly forced abortion referral services to continue sending women to the same places as before the Court decision. As one abortion councillor explained, women found it easier to go out of state to get an abortion, than to get involved in the legal hassles of a court case. In fact, in the first few months, the health officials of New York City reported no perceptible decrease in the numbers of non-resident women receiving abortions.

28 New York Times, op. cit., n. 6.

29 Time. op. cit., n. 16.

Family Planning and population planners expected the states closest to New York to be the slowest in setting up abortion facilities of their own³⁰. It was also suspected that legislatures might try to find some 'loopholes' to enable them to get around the ruling and to pass tough laws again, incorporating such "road blocks" as high prices. A case in point was that of Virginia. The legislature rejected a bill to bring the Virginia abortion law in conformity with the Supreme Court ruling, passing instead a resolution requesting the Court to reconsider its decision³¹. The attitude in Virginia, that abortion is immoral, was reinforced by this action of the General Assembly.

Virginia's Attorney General, Andrew P. Miller, issued a statement advising the state's medical profession to disregard the state's restrictive law and be guided by the Supreme Court's ruling. These conflicting rulings by the state legislature and the Attorney General resulted in non-compliance with the Court ruling, by about fifty percent of the state's hospitals, even by the end of the year.

Not all states however, were slow to enact and implement new abortion laws. A review by the New York Times

30 New York Times, op. cit., n. 27.

31 The Supreme Court, however, refused to reconsider its decision and invalidated the anti-abortion laws in 9 states, amongst them Connecticut, Illinois, Carolina, Ohio, South Dakota, Texas and Utah, ordering them to comply with its mandate. Ibid., 27 February 1973, p. 22.

showed that more than a dozen states had brought their laws into conformity with the Supreme Court decision and several others were working on new legislation.

The Court's historic decision had far reaching effects, both intended and unintended, on social policy. By the end of the year, legal abortions were available in cities where earlier it was impossible to obtain the operation. This had the immediate effect of putting illegal abortionists practically out of business³².

Legalized abortions also had an important effect on health statistics. Maternal mortality caused by criminal, unsafe abortions declined markedly. In addition, fewer births to "high risk" women namely, the unmarried, the poor and the older mothers, were recorded. This in turn lowered the infant death rate.

Readily available abortions also indicated a decline in illegitimate births, which in turn meant fewer babies available for adoption. Experts felt that this could also result in a reduced need for welfare payments to dependent children³³. Among the unplanned consequences were a reduction in teenage marriages (which are twice as likely to end in divorce as those of older couples), as well as a reduction in the number of girls, forced by pregnancy, to drop out of schools and colleges.

32 Ibid., 31 December 1973, p. 14.

33 Time, op. cit., n. 16.

Sociologists proclaimed that this promoted the goals of the women's liberation movement by giving teenagers greater opportunities to develop "extra-familial interests". Dr. Phillips Cutright, a professor of sociology at Indiana University and an expert on teenage sexuality denied that the ready availability of abortion would make teenagers careless about contraception, maintaining that it would have just the opposite effect³⁴.

Experts anticipated that the abortion ruling of the Court could also encourage a desirable shifting of the health care responsibilities from over-crowded hospitals to well equipped clinics. This, they expected, would not only cut down on the costs but would also encourage the participation of the public. The evidence that abortions can be safely performed in well-equipped clinics may also, they felt, be extended to other areas of health care, such as child birth and sterilization³⁵.

A not-so-obvious inference from the Court's reiteration of the 'right to privacy' which worried the conservatives the most, was the likelihood of lawyers extending it to other fields, with the purpose of limiting governmental intervention³⁶.

34 New York Times, 28 January 1973, p. 3.

35 Ibid.

36 Time, op. cit., n.16.

Perhaps the most important consequence of the Supreme Court's decision was to bring the abortion issue, out of the back-rooms of the illegal abortionists and into the mainstream of modern medical care³⁷, greatly benefitting the poor women. A study conducted by the Planned Parenthood Federation of America before the Supreme Court ruling showed that non-white women constituted 47% of the resident patients as compared to 42% of whites. In live births, the ratio was 54% for white and 30% for non-white women. Single women had a choice between two equally daunting prospects - to bear the unwanted child, thus becoming "girl mothers" in a society intolerant of unmarried mothers and their offsprings; or to resort to local midwives or incompetent abortionists. Paradoxically, the social stigma attached with illegitimate births was the greatest amongst white lower middle and middle class people, the majority of whom support the Right-to-Life movement. Legalization by the Court removed much of this social stigma and guilt attached with the operation³⁸.

Although the Supreme Court overruled all state laws that prohibited a woman's right to obtain an abortion in the first three months of pregnancy, the American public remained closely divided on whether abortions ought to be legalized.

In 1969, a Gallup Poll reported that 40 percent of

37 New York Times, op. cit., n. 32.

38. Ibid.

the population favoured legislation, 50% opposed it while 10% were undecided. Three years later, just before the Court ruling, the figures showed an increase in support of legalized abortion 46% favoured it, 45% opposed it, and 9% remained undecided³⁹.

The shift in favour of legalized abortion came almost entirely from amongst persons under fifty years old. Significantly, the more educated, younger and non-catholic population formed the bulk of those who favoured legislation. Among persons with a college education, 63% favoured legalization as compared to 44% of those who had attended high school and only 30% of those who had frequented 'grade' school. Of the Protestants and Catholics interviewed for the Poll, 45% of the former and 36% of the latter favoured legalization of abortion, showing an overall increase of those in favour. The survey also showed that more men (49%) than women (44%) were in favour of legalization. Three years earlier, only 40 percent of both men and women had favoured legalization⁴⁰.

Thus, the Supreme Court not only provided a legal settlement of the abortion issue but was also instrumental in encouraging the public to see it, increasingly, as a modern medical procedure and less as a sin to feel guilty about. However, as the legal restrictions were removed, the

39 Ibid., op. cit., n. 8.

40 Ibid.

ethical questions about abortion, which the Court had been unable to settle, became more pressing. Ethicists believed that society had a social responsibility to protect the "mission of motherhood" and that a mother-to-be carried a "human trust"⁴¹. Leaving the abortion decision to the pregnant woman and her physician may, they felt, harm that "human trust". Underlying this argument was the assumption that a fetus is a potential human life and, therefore, a person.

Anthropologists and behavioural scientists, however, were in disagreement with this theory claiming that "humanity is an achievement, not an endowment". To them, a fetus was not a person till it had been socialized but only a "coherent system of unrealized capacities". The embryo, the fetus and the new born, felt anthropologist Ashley Montagu "must be molded by society and cultural influences after birth to become truly human"⁴².

Thus, in effect, the Court ruling gave to every woman the freedom of letting her conscience decide whether or not to terminate her pregnancy depending on "her convictions, her religious and philosophical considerations, her views on the right of self-determination and her awareness of the social and psychological consequences of abortion".

41 "Abortion on Demand", Time, 29 January 1973.

42 Ibid.

The Supreme Court mandate in Roe vs. Wade gave the United States what was in principle one of the most permissive legal policies on abortion in the world, placing her at par with the nations like Japan, India and other countries of Eastern Europe where abortion was freely available⁴³. Abortion was henceforth to be guided by the private morality and medical standards and practices, of the expectant mother and her attending physician, respectively, rather than by socio-religious norms.

So "bold and uncompromising" was the Court ruling that no criminal abortion statute in the U.S. remained unaffected⁴⁴. Not even the four states New York, Washington, Hawaii and Alaska which had broadly liberal abortion laws even before the Supreme Court ruling, were spared. New York law, which at first seemed to be in conformity with the Court guidelines permitted abortion after twenty weeks only to preserve the woman's life, not her health; while Alaska and Hawaii also had residency requirements, which were struck down by the Court.

The Court was severely criticized for laying down a set of guidelines for liberalizing abortion laws, which the critics claimed looked a great deal more like legislation than adjudication⁴⁵.

43 "The Abortion Decision", Scientific American, vol. 228, March 1973, pp. 44-45.

44 Time, op. cit., n. 16.

45 New York Times, op. cit., n. 34.

The intensity of emotion with which the American public reacted to the ruling on abortion was reminiscent of two more sensitive laws which had stirred heated debate in the past, namely those outlawing Public School segregation and capital punishment⁴⁶. The passionate rhetoric of the pro-abortion anti-activists and their efforts at mobilizing the masses as also the deep seated convictions on the issue resulted in dividing the American population almost equally into those who favoured liberalized abortion and those who opposed it. The uncompromising partisan attitudes and the "close division of sentiment" ensured that while the matter had been settled legally, it created enough resistance and controversy to make it into a sensitive political issue.

CHAPTER-III

ROE VS. WADE ; CONTROVERSY AND RESISTANCE

The revolutionary decision of the Supreme Court to liberalize abortion laws, expectedly led to the counter-mobilization of the anti-abortion forces. Their fierce resistance to the Court ruling generated a heated controversy across the nation which made abortion one of the most volatile issues in American politics.

Demonstrations and rallies characterized the first anniversary of the Roe decision, as well as, all the subsequent anniversaries. Thousands of abortion opponents, with placards calling abortions 'murder' and 'Nazi genocide', gathered at the Capitol Hill in Washington under the aegis of the National Right to Life Committee, pressing for a repeal of the liberalized abortion laws¹. In the following year again, an estimated crowd of 25,000 anti-abortionists urged Congress to amend the constitution to outlaw abortions².

The pro-abortion groups, on the other hand, petitioned Congress to maintain the status quo on abortion laws, arguing that the abortion decision should be left to the woman in consultation with her doctor subject only to 'medical regulation and private morality'³. Pro-abortion activists favouring freedom of choice organized a street-

1 New York Times, 23 January 1974.

2 Ibid., 23 January 1975.

3 Ibid., 27 January 1973.

march under the sponsorship of the National Organization for Women, in which some women participants were chained and others carried placards symbolizing how unwanted pregnancies and childbirth enslaved them⁴.

The excessively passionate and emotional rhetoric of the opponents and supporters of abortion reflected their deep conviction and unshakable faith in their respective viewpoints. Both the sides used all kinds of fair and unfair means to win over more and more supporters for their cause. While the Right-to-Life groups tended to quote the scriptures (thou shalt not kill) and used appealing terms like 'pro-life' and 'pro-family', the pro-abortionists used the highly attractive term 'pro-choice', and the forceful argument that a 'woman's sovereign right to her own body is inalienable'⁵.

Anti-abortionists propagated the fear that liberalized abortion laws devalued motherhood and showed a lack of respect for the sanctity of life. Abortion, to them, was akin to the murder of innocent life which is unable to protect itself. The supporters of abortion rights retorted that this argument could be applied by vegetarians to people with a non-vegetarian diet⁶. They argued that abortions would continue even in the absence of a legal status since a

4 Ibid., op. cit., n. 1.

5 "Abortion on Demand", Time, 29 January 1973, pp. 46-47.

6 Fred M., Frohock, Abortion (Westport, Conn.; Greenwood Press, 1983), p. 82.

large number of women used it as a means of birth-control when contraceptive measures failed. Experts too felt that though abortion could never be a primary means of family-planning, its role as a back-up procedure could not be undermined⁷.

Pro-life groups, however, strongly condemned abortion as a back-up device for failed contraception since, by that logic, infanticide could be used to back-up unsuccessful abortions⁸. Arguing that abortion had become a profitable business in some big cities, they claimed that legalized abortion had paved the way for roughly 700,000 legal abortions each year⁹. Marjory Mecklenburg, chief of the National Right to Life Committee, maintained that the Roe decision was a virtual "declaration of war on the unborn children of America", and that legalization of abortion would claim "more American lives than World War II"¹⁰. In fact, pro-life campaigns often used coloured and enlarged photographs of aborted fetuses as a shock-tactic to invoke memories of "war photographs from Vietnam"¹¹, and to convert people to a pro-life stance. These all out efforts of the anti-abortion groups prompted the pro-abortionists to revise

7 "The Abortion Decision", Scientific American, March 1973.

8 New York Times, 14 February 1973.

9 "Furore Over Abortion: Hotter Than Ever", U.S. News and World Report, 4 March 1974, pp. 43-44.

10 New York Times, 30 April 1974.

11 Frohock, op. cit., n. 6, p.2.

their own strategies. Dr. Alan F. Guttmacher, chairman of Planned Parenthood World Population declared that they too would adopt a hard-line approach and would stop relying exclusively on "arguments conducted on an intellectual plane"¹². Insisting that it was time to "pull off the silk gloves and fight with bare knuckles", Dr. Guttmacher said that they would counteract the right to life activists with displays of their own showing "battered and malnourished babies, frightened 14 year-old pregnant teenagers, and the bodies of young women who died in coat hanger abortions"¹³.

The anti-abortion groups argued that recent studies in neo-natology and genetics had established that human existence begins at conception and therefore, started a national debate on the legal rights of the unborn¹⁴.

Supporters of abortion charged the anti-abortionists of being a "compulsory pregnancy pressure group" which was "willing to give constitutional rights to the unborn while stripping the rights of the one already born - the woman"¹⁵.

12 New York Times, 2 January 1973, p. 1.

13 Ibid.

14 Stephen J. Morse, "Family Law in Transition", in Virginia Tufte and Barbara Myerhoff, eds., Changing Images of the Family (London; Yale University Press, 1979), pp. 320-31.

15 U.S. News, op. cit., n. 9.

Most rational arguments, however, did not focus on when human life begins, nor was the fact that a fetus is a human life disputed by the pro-abortionists. They mostly differed from the anti-abortionists in their belief that the mother's rights precede those of the fetus. Their emphasis was more on the question of "whose right to life?" rather than on just the "right to life"¹⁶.

Some pro-choice groups asserted that they were more pro-life than the right to lifers since they endorsed not just a 'right to life' but a 'right to human living'¹⁷. They supported the view that every child born should be a loved and wanted child. Moreover, they argued, a child needed to be well fed and well-housed, he needed a good education and medical care to grow into a responsible citizen in a good society, all of which required a good deal of money and planning¹⁸. Joseph Fletcher, professor of medical ethics at the University of Virginia, emphasized that a shift to a "quality of life" attitude from a "sanctity of life" attitude reflected an "advancement in social ethics"¹⁹. There were some feminists who were against abortion and they felt that pro-life and pro-choice were both difficult decisions for women²⁰. They insisted that an easy access to abortion would not lead to a greater equality between the sexes until men

16 Time, op. cit., n. 5.

17 Paul Ramsey, "Protecting the Unborn", Commonweal, vol. 50, 31 May 1974.

18 New York Times, op. cit., n. 12.

19 Ibid.

20 Frohock, op. cit., n. 6.

continued to shirk their responsibilities to the family and society, thus compelling women to seek abortions²¹.

Nevertheless, some anti-abortionists were beginning to recognize the need to give greater importance to women's rights than they had been giving in the past. The acting director of the National Right to Life Committee, Mr. Warren Schaller, emphasized the need "to stop ostracizing the unwed mother" so that she can "continue her schooling, her work and her life in an accepting society" without having to abort the child if she did not want to²².

The majority of the anti-abortionists, however, were under the considerable influence of the Roman Catholic Church which had always lent support and backing to the pro-life campaigns. The Catholic bishops soon decided to get organized in their attempt to lead the opposition to legalized abortions. A "pastoral plan for pro-life activities" was passed by 255 catholic bishops in a concerted effort to mobilize support for some kind of a repeal amendment²³. The proposal was to coordinate their lobbying activities in all the 435 congressional districts with the help of inter-denominational pro-life groups.

21 Morse, op. cit., n. 16.

22 U.S. News, op. cit., n. 9.

23 "Strategy On Abortion", Time, 1 December 1975, p. 59.

Hoping to win the support of anti-abortion Protestants and Jews, in order to expand and strengthen their base, the bishops issued a statement that the parish to national level campaign was an "agency of the citizens" and not an agency of the Church²⁴. They also proclaimed that the programme was not being "operated, financed or controlled" by the Church. Earlier, however, the Church had helped local committees receive office space, telephones and other items²⁵. In Washington, according to one spokesman the National Right to Life Committee had received about half of its \$ 50,000 annual budget from an organization of the Church — the U.S. Catholic Congress²⁶. Proclaiming that abortion involves "the murder of the unborn" the spokesman, Monsignor Eugene Clark insisted that it was "an issue which could not be compromised nor bent to the ideals of a pluralistic society"²⁷.

The Church, therefore, lobbied for an amendment that would "protect the unborn child to the maximum degree possible"²⁸. Abortion rights advocates protested against the lobbying activities of the Church and criticized it as a misuse of their tax-exempt resources. Women's Lobby, a registered agency which scrutinized legislation affecting

24 Ibid.

25 New York Times, op. cit., n. 12.

26 Ibid.

27 Ibid.

28 Time, op. cit., n. 23.

women filed a suit against the U.S. Catholic Conference at the U.S. District Court in Washington²⁹. It alleged that the Catholic Conference was lavishly spending its time and money in lobbying for a constitutional amendment. It demanded that either the Conference be made to register as a lobbying organization or be deprived of its tax-exempt status. The law-suit had the potential of indirectly challenging the tax-exempt status of other religious institutions as well. The Federal District Court, however, dismissed the suit on the grounds that lobbying was not the principal purpose of the Catholic Conference.

Some opponents of abortion, including the Roman Catholic Church, saw adoption as a desirable alternative to abortion. They stressed that abortions not only killed innocent life but also made the women suffer from guilt feelings and long-term psychological consequences.

Numerous studies in different parts of the world proved this to be primarily, a myth³⁰. Researchers from the Center for Social Studies in Human Reproductivity at the Johns Hopkins Hospital found, in a study of psychological effects of abortion, that it was no more traumatic than the giving of birth³¹. In fact, the study showed, it was less traumatic, as an experience, for women having abortions in the first trimester.

29 New York Times, 21 May 1974.

30 Ibid., 21 January 1974.

31 Time, op. cit., n. 5.

Psychiatrists felt that though abortion is always a potential major trauma, it left no lasting depression or permanent emotional scars. They maintained that giving up a child for adoption was more traumatic than deciding on an abortion³². Feminists denounced all attempts by the Church to ban abortion laws saying that they recognized the "needs and desires of half the population namely women". Emily Moore an advocate of abortion rights described the activities of the male-dominated legislatures and the male-dominated medical profession as typical of a patriarchal society³³. In fact, she pointed out, it was the "celibate male religious hierarchy" which was "in the forefront of opposition to the recognition of women as persons", and that men were loath to relinquish to women the right to make their own decisions³⁴.

The minority communities and especially the blacks had their own grievances against the abortion issue. The black liberation movement charged the government of adopting programmes for the "planned genocide of black people" in promoting "birth control in general and abortion in particular"³⁵. Militant blacks argued that in order to gain political power the black population needed to strengthen its foundations by expanding in size and by thwarting the efforts of the government to encourage birth control programmes in

32 Ibid.

33 Ibid.

34 Ibid.

35 Morse, op. cit., n. 14.

poor and black communities³⁶.

The controversy and resistance generated in the wake of Roe vs. Wade was further deepened with the cropping up of other contentious issues. Some of these were:

- the report and recordkeeping of the abortion cases;
- referral counseling and advertising regulations;³⁷
- conscience clauses and consent requirements;
- the use of federal funds for abortions under the Medicaid programme; and
- the ethics of using tissues from aborted fetuses for the purpose of scientific research.

Strong moral arguments, both in favour and against the various controversial issues activated public support and engaged both sides of the dispute in various legal and legislative battles.

Some states in an effort to impede their health care facilities from turning into "abortion-mills" passed laws containing provisions for the protection of individuals or institutions who refused to perform or assist in abortions on moral, ethical or religious grounds³⁸. Thus, doctors,

36 Ibid.

37 Irving Sloan, The Law Governing Abortion, Contraception and Sterilization (New York; Oceana Publications, 1988), p. 25.

38 Ibid., p. 19. see also New York Times, 27 July 1974.

paramedicals, hospitals and clinics could refuse to participate in the termination of pregnancies on the basis of "conscientious scruples" without fear of legal or disciplinary action. By and large, the courts ruled that the private hospitals were under no constitutional obligation to accommodate women seeking abortions.

The "conscience clause" was supported and defended by the anti-abortionists on the grounds that it affirmed the right to freedom of religion and was, therefore, not unconstitutional³⁹.

The advocates of abortion, nevertheless, feared that this clause might be used as an excuse for not performing even those abortions recommended for such medical reasons as fetal distress, Rh incompatibility, toxemia or ectopic pregnancy⁴⁰. Moreover, they felt that those hospitals, public as well as private, which received tax exemptions, federal funds and other such benefits ought not to be freed from the obligation of providing all their health services. Otherwise, they argued, poor and low-income women might be forced to face undue hardships.

The dispute over the provision of consent as a precondition for abortion in various statutes also excited a lot of discussion. The 'consent requirement' had two aspects - firstly it required the 'informed and coercion-free consent' of

39 Sloan, op. cit., n. 37.

40 Ibid.

the pregnant woman. This provision, seemingly designed with the intention of discouraging women from opting for abortions, required that the woman be given a detailed description of the stage of development of the fetus⁴¹. Moreover, she had also to be informed about the abortion procedure to be used and its effect on the fetus. The Supreme Court upheld this provision.

The second aspect was regarding spousal or parental consent, both of which the Supreme Court declared as unconstitutional on the grounds that this would amount to giving "veto power" to a third party, which could abridge the fundamental "right to privacy" of the woman recognized in *Roe vs. Wade*⁴².

In *Planned Parenthood of Central Missouri vs. Danforth*, 428 U.S. 52 (1976), the Court pronounced that the traditional rights of the parents to control their minor child, and the interests of the husband were outweighed by those of the woman. It held that since carrying a pregnancy to term, and bearing the child demands a greater involvement and contribution from the woman in terms of time, energy and resources, "her choice should prevail" over those of the others⁴³.

41 Ibid.

42 Ibid.

43 Sloan, op.cit. n.37, p.22.

While on the one hand feminists argued that such familial decisions were, in any case, outside the effective jurisdiction of the Court, the supporters of the consent requirement felt that outlawing this provision would seriously undermine the role of the family. They argued that parental consent in the case of minors should be compulsory as it is for any other surgical procedure⁴⁴.

Max A. Coots, a minister of the Unitarian Universalist Church in New York, expressed the view held by many — that in leaving the abortion decision to the discretion of the woman, the "biological father of the unborn child" was being denied his "right of parenthood"⁴⁵.

Amitai Etzioni, professor of sociology at Columbia University and director of the Center for Policy Research, too held the view that by not giving the husband a right to be informed and consulted, and by letting the woman make a unilateral decision on terminating her pregnancy the Court was in effect, disregarding the marital contract they were under⁴⁶. She pointed out that since the husband was under a legal commitment to provide for his children, even in case of a divorce, so he should have the right to stake a claim to any "incipient future child" of his.

44 "A Stunning Approval for Abortion", Time, 5 February 1973.

45 Max A.Coots, "On Abortion", Progressive, vol.38, November 1974.

46 Amitai Etzioni, "The Fetus : Whose Property ?", Commonweal, vol. 98, 21 February 1973.

Another issue which raised a lot of controversy was the point of "viability" of the fetus which, theoretically, demarcated the end of a woman's right to get an elective abortion, and the beginning of the legal rights of the fetus⁴⁷. In the face of various conflicting ideologies about when human life begins, the Supreme Court had selected "viability" as the point at which the State's interest in potential life was "compelling enough" for regulation or even prohibition of abortion except when the mother's life or health was in jeopardy⁴⁸. Viability was, thus, defined as that stage in the development of the fetus, usually attained after the seventh month, when the fetus is capable of surviving outside the womb if born prematurely. As it happened, new developments in medical technology and neonatology made "viability" possible a lot sooner than was the case when the Supreme Court had laid down the law. "Viability" had since become a "function of medical technology", making it impossible to lay down a fixed age or weight at which the fetus could survive⁴⁹. This was also due to the fact that "viability" varied from fetus to fetus. "Viability" as the criteria for recognizing the claims of the fetus to a "right to life" led to a lot of conflict in legal and medical circles. The ambiguous definition of "viability"

47 Frohock, op. cit., n. 6, p. 94.

48 Sloan, op. cit., n. 37, p. 17.

49 Frohock, op. cit., n. 6, p. 86.

was seized upon by the opponents of abortion to wage many legal battles on the grounds of medical ethics.

A case in point which started a nation-wide debate and controversy was that of Commonwealth vs. Kenneth Edelin (1976)⁵⁰. Dr. Edelin, a senior obstetrician and gynecologist at Boston City Hospital, Massachusetts, was indicted for manslaughter of a 20-24 week old, allegedly viable, male fetus in a legal abortion. The charge was that the fetus was delivered alive when removed from the body of the mother and would have survived had Dr. Edelin tried to save its life by employing medical equipment to resuscitate it. Instead of which, Dr. Edelin was said to have displayed "reckless and wanton conduct" in simply letting the fetus die⁵¹.

Dr. Edelin, a Black-American, who was well known for his commitment to indigent patients, regarded legal and safe abortions as a necessary alternative to the "coat-hanger" abortions the poor often resorted to in desperation⁵². The predominantly-Catholic, all-white members of the jury, found Edelin guilty of manslaughter. But his conviction was overturned by the Massachusetts Supreme Judicial Court on appeal that the racial and religious bias of the jury had deprived him of a fair trial in Boston⁵³.

50 New York Times, 12 January 1975.

51 Ibid., 13 April 1974.

52 New York Times, op. cit., n. 50.

53 Ibid., 17 February 1975.

The Massachusetts Supreme Court struck down his conviction by the Boston Criminal Court on the grounds of there being insufficient evidence in support of the claim that the fetus had been born alive⁵⁴. Medical experts had supported this verdict, asserting that the chances of a fetus being born alive at about 24 weeks were 1 in 100⁵⁵.

Though Dr Edelin returned to his practice, the Boston trial which he felt was more of a "witch-hunt", had far-reaching legal, medical and socio-economic repercussions on the practice of abortion and paediatrics⁵⁶. The Edelin trial, according to experts, had no parallel "in the annals of medical history"⁵⁷ and was said to have left an "indelible imprint on American medicine", bringing to the fore difficult questions left undecided by the Supreme Court in its Roe decision in 1973⁵⁸.

Many hospital boards reviewed their abortion policies keeping in mind their vulnerability to being prosecuted for manslaughter in cases of late legal

54 Frohock, op. cit., n. 6, p. 88.

55 New York Times, op. cit., n. 50.

56 Ibid., op. cit., n. 53.

57 Ibid., op. cit., n. 50.

58 Ibid., op. cit., n. 53.

abortions⁵⁹ Many new and revised policies were announced in the wake of the Boston trial, where hospitals refused to perform abortions after 16 or 20 weeks⁶⁰.

The trial was widely criticized for its "intimidating effect on doctors" and for its "quasi political" nature, which according to abortion advocates, strengthened the possibility of a resurgence of illegal abortions⁶¹. Editorials in newspapers described the efforts of opponents of abortion "to set social policy in criminal courtrooms" as constituting a "gross abuse of legal power"⁶². Many felt concerned at the reluctance of the medical profession to do late abortions (though these constituted only about 15 per cent of the case load)⁶³. They argued that this would have grave consequences for those pregnant women who are "very young, poor, badly educated, mentally ill or carrying fetuses with genetic disorders" - since tests determining normalcy of the fetus can be accurate only when

59 "After a Conviction - Second Thoughts About Abortion", U.S. News and World Report, 3 March 1975, p. 78.

60 Ibid.

61 New York Times, op. cit., n. 50.

62 Ibid., 14 February 1975.

63 U.S. News, op. cit., n. 59.

performed at a later stage in pregnancy⁶⁴. Experts feared that the anti-abortion forces, in their attempts at "skirting the Supreme Court ruling, would do irreparable damage to the cause of rational abortions"⁶⁵.

Though the jubilation of the anti-abortionists, at the conviction of Dr. Edelin in the Boston trial, was cut short by the Supreme Court which rescinded the verdict, the publicity of their stand that "abortion equals murder" prompted them to attack the issue from other legal fronts. At about the same time as the criminal proceedings against Dr. Edelin, four researchers were arrested in Boston for violating a 19th century law against 'grave-robbing'⁶⁶. These researchers had used fetal tissue from aborted fetuses for medical research which was partly funded by the government. Studies showed that many research hospitals in Boston had been following the traditional medical practice of using fetal tissue for crucial health related research. In fact, medical history revealed that the development of the polio vaccine which had contributed "to the health and happiness of all humans", had been possible through such an

64 Ibid.

65 New York Times, 19 February 1975.

66 Ibid., 13 April 1974.

illegal act⁶⁷. It had moreover, won the Nobel Prize in Physiology and Medicine for the year 1954, for Drs. Thomas H. Weller and John F. Enders of Harvard University.

The public outcry against fetal experimentation led to the imposition of a ban by the Congress on all bio-medical research using fetal tissue, supported directly or indirectly by the federal department of Health, Education and Welfare HEW, except where it benefitted the fetus.⁶⁸

Since the majority of fetal tissue research was supported by the National Institute of Health, NIH, all biomedical research virtually came to a stand still. While doctors protested that "lay groups of citizens" could not make knowledgeable decisions on fetal experimentation many biomedical ethicists felt that fetal research and tissue transplantation should be regulated since the "morality of the issue could not be over-ruled by a scientific argument alone⁶⁹. Just like Dr. Edelin, the scientists in the fetal tissue research controversy, too were seen to be convicted more on political grounds than under charges of malpracticing their professions.

Another contentious issue on which the anti-abortion movement managed to secure a victory was that regarding the use of federal funds for abortion procedures.

67 Ibid., 2 March 1974.

68 Ibid., 8 June 1974.

69 Ibid., 22 February 1973.

In June 1976, Representative Henry J. Hyde proposed an amendment to the Labour-Health Education and Welfare appropriations (HEW) bill in the Congress, that would prohibit the financing of abortions with federal funds⁷⁰. Arguing that just because there existed a right to abortion did not mean that the state should have to pay for it, the abortion opponents mobilized tax-payers into protesting against the public financing of "mass scale genocide".

Pro-abortionists, however, argued that denying Medicaid funds for abortions would victimize the poor, black and other minority women who for the major part, depended on hospitals run by the State. Depriving them of public funds, they warned, would only force them back to illegal abortionists in back-alleys thus leading to a greater "genocide"⁷¹.

Anti-abortionists challenged that a woman's right to her own body did not give her a right over tax-payers' money and that tax-payers were being deprived of their right to refuse paying for abortions on moral grounds. The pro-abortionists contested this charge alleging that prohibition of federal funds for elective abortions was unconstitutional and discriminatory against the poor since it violated the "equal protection" guarantees of the the constitution⁷². To

70 Frohock, op. cit., n. 6.

71 Morse, op. cit., n. 14, p. 188.

72 New York Times, 14 June 1974.

their dismay, however, the Hyde Amendment was passed in the House of Representatives after "an unusually brief debate" by a vote of 207-to-167⁷³. The US senate on the other hand, voted 57-to-28 to strike it down. A deadlock was brought about when the House-Senate Conference Committee could not arrive at a compromise. Later, an agreement was reached by both the chambers to permit reimbursement of funds for therapeutic abortions, the vote being 256-to-114 in the House, and 47-to-21 in the Senate⁷⁴.

The legal battles which followed soon after were settled by the Supreme Court, which proclaimed that "federal or state funded Medicaid programmes did not place states under any obligation to fund non-therapeutic abortions"⁷⁵.

Feminists and pro-abortionists criticized the Court ruling for "undermining the spirit of Roe" by severely curtailing privacy and procreative choice⁷⁶. They also cautioned against the likelihood of a greater burden on federal funds as a result of refusing Medicaid to poor women, who "unable to afford an abortion, would have the baby and then go on welfare"⁷⁷. A study conducted by the New York City Health Services Administration supported this argument.

73 Frohock, op. cit., n. 6, p. 113.

74 Ibid.

75 Morse, op. cit., n. 14.

76 Ibid.

77 "What Happens Now ?", Newsweek, 5 February 1973, p. 66.

It estimated that there would be an additional 24,000 children on New York City's welfare rolls if the liberalized abortion law was repealed⁷⁸.

Archbishop Joseph L. Bernardin, president of the National Conference of Catholic Bishops criticized what he called the "elitist attitude" that "abortion is good enough for the poor" since it costs less than child-bearing and child rearing⁷⁹. Minority leaders like Jesse Jackson were antagonized by the utility arguments which suggested that abortions are less costly to the tax-payers than supporting mothers and their children under welfare programmes⁸⁰.

Encouraged by their success in the Medicaid issue, the anti-abortionists sought to score other victories by attaching riders and conditions to other appropriations bills. Already the Legal Services Corporation Act of 1974 prohibited the use of corporate funds and the services of its attorneys for women bringing litigation suites for non-therapeutic abortions⁸¹. A provision was attached to the

78 New York Times, 24 June 1973.

79 "Ban All Abortions ?", U.S. News and World Report, 27 September 1976.

80 Frohock, op. cit., n. 6, p. 129.

81 Ibid., p. 117.

Foreign Aid law prohibiting the use of funds for non-therapeutic abortions⁸².

In popular view while the Supreme Court decision in Roe vs. Wade was seen to be enshrining the pro-choice stand, in the Medicaid decision it was the pro-life position which had been vindicated⁸³.

Representatives and Senators, sympathizing with the pro-life view received hordes of letters from their constituents pledging support and asking for constitutional amendments to overturn the Supreme Court decision legalizing abortions. The movement to amend the U.S. constitution to out-law all abortions has been described as "one of the most highly charged issues to haunt the Congress"⁸⁴. It resulted in the introduction of three "Right-to-Life" amendments, one in the House of Representatives and two in the U.S. Senate. Representative Lawrence J. Hogan, a Republican from Maryland, was the sponsor of the Hogan Amendment which stated that no human being "from the moment of conception" on shall be deprived of life without due process of law or be denied of

82 In 1986, under this provision, the U.S. cancelled the allocation of \$ 10 million for the U.N. sponsored population control programmes in China and other Third World countries, on the basis of reports which suggested that the aid package was used, partly, to finance co-ercive abortion policies. New York Times, 28 August 1986.

83 Frohock, op. cit., n. 6, p. 118.

84 New York Times, 21 May 1974.

the equal protection of the laws⁸⁵. The Hogan amendment made no exceptions for therapeutic abortions.

The Helms Amendment, as well as, the Buckley Amendment also sought to get the basic right to life of fetuses to be integrated in the constitution. Claiming that the word "person" as used in the constitution included also the unborn child "at every stage of its biological development" they proposed that the due process and the equal protection clauses of the Fifth and the Fourteenth Amendments be extended to the fetus⁸⁶.

The Buckley Amendment differed from the Helms Amendment in that it allowed for abortions when the mother's life was in danger. Cardinal Krol archbishop of Philadelphia and president of the U.S. Catholic Conference and other archbishops who testified before the Senate Subcommittee on Constitutional Amendments, refused to support the Buckley Amendment because of this provision. Besides the Roman Catholic Cardinals, the Senate Judiciary Subcommittee heard testimonies from noted scientists and geneticists amongst whom were Dr. Gerald M. Edelman, a Nobel Prize winner, medical specialists from France and New Zealand, as well as politicians co-sponsoring the amendments⁸⁷. Well-known

85 Frohock, op. cit., n. 6, p. 113.

86 Coots, op. cit., n. 45.

87 New York Times, op. cit., n. 84.

supporters of the women's movement like Gloria Steinem, Margaret Mead, Joanne Woodward and Billie Jean King decried the inadequate number of testimonies from women who they argued, were the ones to be directly affected by any change in legislation. A telegram to this effect was sent by them to Senator Birch Bayh, Chairman of the Senate subcommittee who acknowledged the abortion issue to be one of the most volatile in American politics.

Hearings were held at regular intervals in the House of Representatives and the U.S. Senate in the 93rd Congress. The various divergent views on abortion were debated, as were the implications of the Roe vs. Wade decision liberalizing abortions and the contemporary abortion practices; the consequences of the proposed right to life amendments, with the bishops stressing on the need for such amendments to discourage the taking of innocent lives, and the advocates of abortion contemplating the consequences of granting civil rights to the fetus and expressing their opposition to the incorporation of religious beliefs into legislation.

However, anti-abortion forces were aware that constitutional amendments are long drawn out procedures requiring ratification by a two-thirds majority of both the chambers of the U.S. Congress, as also by three-fourths of the state legislatures. They, therefore, concentrated their efforts more on getting the "Right-to-Life" statute incorporated in the Fourteenth Amendment. Leading

newspapers while applauding the "legitimate and desirable function" of the Senate Subcommittee hearings in a democratic process, urged the members of state legislatures, and Congressmen not to give in to organized pressure groups⁸⁸.

The U.S. Congress failed to take any action on the proposed amendments after the hearings and made no endorsements. Abortion, therefore, retained its legal status to the smug satisfaction of the freedom of choice, abortion-rights activists.

The anti-abortionists, however, continued with their concerted efforts to keep the issue constantly in the news — organizing "Right-to-Life" demonstrations, distributing literature on abortion with graphic photographs of aborted fetuses, picketing abortion clinics, mailing to the Congressman thousands of letters to press for legislative action. In fact they were so determined and vociferous in their pressure tactics and lobbying activities that they emerged as a single issue interest group⁸⁹. Their relentless efforts which at times served only to alienate even strong supporters and sympathizers, specially through such offensive activities as bombings of abortion clinics, made abortion emerge as an important political issue. It was mainly due to the activities of the anti-abortion forces,

88 Ibid., 9 March 1974.

89 Frohock, op. cit., n. 6, p. 120.

therefore that abortion came to be ranked along with such other sensitive issues like gun-control, busing, employment and social spending, in election year politics⁹⁰.

CHAPTER IV

Political Aspects of the Abortion Issue

In the 1960s and 1970s when routine party activity seemed to have declined considerably, campaign strategists found that moral issues like abortion still had enough clout to mobilize the masses politically.¹ A deeply committed minority's "paranoid concern" with the abortion issue was motivating enough for it to participate in the political process.²

Studies conducted on the lobbying activities of the pro-life groups point out that the circumstances which focused public attention on this sensitive issue, resulted due to the absence of powerful party organizations which are instrumental in setting political agendas and which encourage the settlement of complex issues through accommodation and compromise.³

The declining power of political parties and of political organizations, at the city and county levels, it seemed, had made the candidates and public office holders vulnerable to the pressure tactics of anti-abortionists. The

1 Gillian Peele, Revival and Reaction : The Right in Contemporary America (New York; Oxford University Press, 1984), p. 8.

2 Ibid., p. 44.

3 Michael Margolis and Kevin Neary, " Pressure Politics Revisited : The Anti-Abortion Campaign", Policy Studies Journal, vol. 8, 1979-89, p.699.

absence of party platforms, coupled with the political indifference of the public made many candidates lose out on the benefits of a party endorsement or incumbency. Thus, these candidates tended to react defensively to the issues raised by the mass-media and interest groups. This behaviour was in severe contrast to that of the responsible political leadership in American politics which had earlier played a vital role in bringing particular issues of social importance to the attention of the public.⁴

The surprising emergence of the abortion issue on the political horizon of 1976 and its being placed on the national agenda was, in the view of political scientists, partly due to the unyielding attitude of the pro- and anti-abortion forces and partly due to the successful political strategy of the New Right to organise a powerful movement by exploiting the 'discontent', of the political and religious right.⁵ Thus, motivated by narrow-minded political interests, the right wing forces let the abortion issue occupy an important place in their political agendas.

The emergence of the abortion issue in the politics of the 1970s surprised politicians, campaign strategists and media persons alike. Newspapers reported that the candidates were increasingly made to substantiate their positions, not

4 Ibid.. p. 713.

5 Michele Mckeegan, Abortion Politics : Mutiny in the Ranks of the Right (New York : The Free Press, 1992), p. ix.

only on such perennial issues as social spending, unemployment and inflation but also on the "surprise emotional issue" of abortion⁶. Thus, it was with "surprising suddenness" that the abortion issue came to dominate the political campaigns of the 1970s.

As an issue abortion facilitated the building up of new political coalitions among "regional subcultures" in the United States, as also the realigning of old constituencies, and mobilization and linking up of new ones.⁷ Moreover, as political theoreticians point out, this volatile issue shook-off the political apathy of Protestant evangelicals and fundamentalists on one side and Roman Catholics on the other.

Political experts generally agree that few issues on the national agenda in the 1970s were as potent as abortion in integrating the Church into the political mainstream. The conservative religious hierarchy, aware of the benefits of forming coalitions with other groups having similar objectives, encouraged its members to work with potential political allies. Consequently they argue, these religious conservatives not only learned "the techniques of effective organization in politics" but also

6 "Down to the Issues", U.S. News and World Report, 1 March 1976, pp. 13-15.

7 Peele, op. cit., n. 1, p. 72.

learned the tactics for launching their own crusade-like lobbying campaigns.⁸

Thus the 'politicization' of the religious hierarchy proved to be largely beneficial to the political conservatives because of the potential of the abortion issue to attract the conservative votes. The abortion issue, therefore, was instrumental in bringing together the religious right in America with the new political right and this coming together was mutually beneficial to both the groups, not only in the present context but also for future campaigns on other conservative or moral issues.

The political leaders realized that taking the 'correct' stand on the abortion issue, which differed from one constituency to another, would not only bring the conservative votes but also provide a ready supply of volunteers for their political campaigns. The pro-life activists, too, willingly extended their assistance in campaigning, thereby ensuring that the "credit" thus generated with the politicians would later "need to be repaid".⁹ The churches also proved to be a profitable channel for raising funds through membership subscriptions and generous public contributions, as well as a useful channel for the enlistment of motivated activists.¹⁰

8 Ibid., p. 93.

9 Ibid., p. 8.

10 Margolis, op. cit., n. 3, p. 708.

The anti-abortion forces tended to be non-partisan in their support of candidates ^{who supported their} cause. Since their ultimate goal was the passage of the Human Life Amendment, the pro-life groups lent their support to pro-life candidates regardless of party affiliations. Thus, in the years following the Roe vs. Wade decision of the Supreme Court pro-life groups increasingly turned their attention to the political process.

Experts feel that the advocates of abortion rights, having achieved success with the passage of liberalized abortion laws, lost some of their steam and slowed down their political efforts, concentrating more on maintaining the status quo on abortion laws rather than on working towards further political gains.¹¹ For some years, therefore, the anti-abortion activists had the advantage of intensifying their lobbying activities, to secure the votes of the U.S. Congressmen and members of state legislatures for pro-life legislation, without much competition from their opponents. Aware that in the long run success could best be achieved by getting those candidates elected to the important public offices who sympathized with the pro-life stance they took an increased interest in electoral activities and worked at defeating at the polls those who favoured freedom of choice in abortion legislation. Having been unsuccessful in their

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Fred M. Frohock, Abortion : A Case Study in Law and Morals (Westport, Conn.; Greenwood Press, 1983), p. 118.

efforts to persuade Congress to amend the constitution to outlaw or severely restrict abortions, the pro-life groups were now "bent upon electing a President and Congress that agree [d] with them"¹². Similarly, the appointment of conservative judges to the federal courts also carried great significance for them.

Many pro-life organizations resorted to arm-twisting tactics, threatening political aspirants and incumbents with stiff opposition at the polls if they refused to support pro-life legislation. Regardless of how well these legislators might have handled other problematic issues in the past, they were judged only on the basis of their public stand on abortion.

The aggressive and energetic efforts of the anti-abortionists to use the abortion issue "to shape contemporary American politics" soon made them emerge as a significant political force.¹³ Their single issue intensity not only made abortion one of the 'hottest' issues in the politics of the 1970s but also turned the anti-abortion forces into a single -issue interest group.¹⁴

Experts note that single issue activists have long been considered a "bane of political life" as they pose a serious problem for the stability of governments. These

12 U.S. News, op. cit., n. 6.

13 Margolis, op. cit., n. 3.

14 Sara M. Evans, Born for Liberty : A History of Women in America (London : Collier McMillan Publishers, 1989), p. 305.

activists pressurize candidates and legislators to vote favourably on the single issue, be it abortion or gun control or woman's rights. The fear of severely damaging their political careers through a wrong vote leads many candidates to assess the popular opinion in their respective constituencies before taking a public stand on the issue.¹⁵ Single-issue interest groups, therefore tend to give rise to conflict stalemate situations which responsible politicians seeking re-election wish to avoid at all costs.¹⁶ Vulnerable to the disruptive powers of the emotional abortion issue and to the strident propaganda of the anti-abortion forces who threatened them with negative publicity, many public-office holders were persuaded to modify their positions on abortion. The "ethics of responsibility" which according to Robert A. Dahl involves a "commitment to govern" make it imperative for the politicians to resolve the stalemate situations through compromise or trades-offs.¹⁷ Dahl pointed out that since an absolute commitment to principle could well lead to the collapse of the government, most politicians try to re-adjust their public stands on such sensitive issues as abortion mainly in the interest of government stability.

15 New York Times, 22 January 1973.

16 Margolis, op. cit., n. 3, p. 698.

17 Ibid.

The abortion issue put many political leaders in a dilemma as to which side of the controversy they could safely support.¹⁸ Many of them would have conveniently avoided the issue altogether or chosen a middle path but the pro-and anti-abortion forces constantly pressurized them to take a public stand that was totally unambiguous. For the moderates, therefore abortion was a 'quick sand' issue all attempts to get out of which only resulted in getting in more deeply. For all practical purposes then, any right stand on abortion was the 'wrong' one from the point of view of the group on the other side of the controversy. Particularly since public opinion polls indicated that the American Public was almost equally divided into the supporters and the opponents of liberal abortion policies, no way could an elected official please half of the population without displeasing the other half. Hence in political jargon, abortion came to be described as a 'bullet issue' a representative or senator who gave a 'wrong' vote on abortion risked losing constituent support.¹⁹

The right-to-life activists aimed at putting a Human Life Amendment on the agendas of the U.S. Congress and the state legislatures. In addition, they favoured the restoration of the powers of the states to make

18 Ibid., p. 699.

19 Shiela M. Rothman, Women's Proper Place (New York; Basic Books, 1978), p. 288.

their own laws on abortion, without being compelled to pass liberal laws under a Supreme Court mandate.²⁰ The major concern of the opponents of abortion in the lean phases of their lobbying campaigns was to keep the issue alive²¹, while at the same time, awaiting a change in administration through the electoral process.

Initially after Roe vs Wade the anti-abortionists exercised considerable influence on the abortion issue, monopolizing the lobbying and electoral activities. Before long, however, the pro-abortionists woke up to the need for reorganizing their activities along similar lines.

Pro-choice groups had initially slackened their lobbying and electoral activities immediately after the Supreme Court's favourable decision on abortion. However, the show of electoral strength and the vigorous campaigning by the right-to-life groups made them renew and reorganize their efforts in the late 1970s and 1980s.²² The mobilization of the pro-choice groups also came about with the emergence of the pro-life activists as a single-issue interest group. While the former sought to maintain the status quo in abortion legislation favouring as little governmental intervention as possible in what they considered to be a private decision taken by the woman in consultation with her physician; the latter worked towards securing

20 Ibid.

21 New York Times, 2 January 1973.

22 Frohock, op. cit., n. 11.

governmental backing for banning all abortions. Thus, while the pro-choice activists are liberals, the right-to-life activists are conservative in their views about abortion laws. Political scientists have however, pointed out an interesting inconsistency in the ideological stands, of the liberal or leftist 'pro-choicers' and the rightist 'pro-lifers'.²³ Leftist ideology, they argue, favours a strong civil rights policy and supports a meaningful role of the state in furthering this goal. But, 'pro-choice' which is predominantly a liberal view supported by the women's movement seeks, paradoxically, to restrict the role of the state in regulating individual behaviour and curbing his liberties.

As for the anti-abortionists with their conservative viewpoint they should not be in favour of state intervention. In fact for economic matters, rightist support the laissez-faire policy, but, for the sake of outlawing abortion the anti-abortion forces seek governmental intervention and regulation to promote their cause.²⁴ Through the advocates of abortion and the right to life activists worked towards different goals, some of their tactics were identifiably similar. Both launched fund collecting campaigns which not only publicized their respective causes but also raised the money which along with

23 Ibid., pp. 129-30.

24 Ibid., p. 130.

membership fees and voluntary contributions was used for financing election campaigns²⁵. Advocates of abortion rights as well as anti-abortionists urged their supporters to vote for or against candidates solely on the basis of their stand on the abortion issue. However, certain strategies like the preparation of 'hit lists' tended to face resistance also from within the pro-life groups. Some pro-life Congressmen found the idea of preparing 'hit lists' targeted at defeating pro-choice candidates at the polls rather distasteful.²⁶

Evidently, the success of lobbying activities cannot always be predicted with certainty. Lobbying against pro-choice candidates did not always result in the defeat of those candidates, especially the long standing, many-time elected legislators²⁷.

Campaign strategists believe that this could have been due to a number of reasons: firstly, abortion is not the only issue which decides the outcome at the polls. And even where it might have been the deciding factor, the candidates, feeling the need to match their views with those whom they represented, and also wishing to protect themselves

25 Margolis, op. cit., n. 3.

26 In the early 1980's, Senator Henry Hyde, who had proposed the Hyde Amendment (which had restricted the granting of Medicaid funds for abortions), resigned along with three other Representatives from the advisory panel of the National Pro-Life Political Action Committee. Frohock, op. cit., n. 11, p. 116.

27 Ibid.

at the polls, carefully and often reluctantly, compromised on their convictions on the issue of abortion. For the major part, however, such strong convictions based on religious beliefs are immune to lobbying activities. Moreover, veteran Congressmen and legislators enjoy enough good-will to be largely unaffected by such propaganda.

Once the abortion issue activists emerged as a single issue interest group, experts started to question the rationality of such groups in a pluralistic society representing various overlapping interests²⁸. Interest groups favouring, for example, the abolition of slavery or the ratification of the Equal Rights Amendment, characteristically tended to judge legislators on the basis of their stand on that particular single issue, but most interest groups in American politics have represented more than one issue of 'variable relative importance'. They strove towards striking a balance between the several issues by compromising on their ranking on the priority scale or through trade-offs.

Experts felt concerned about the possibility of adverse effects on the running of the democratic political machinery as a result of the support extended to pro-life candidates irrespective of their party affiliations. Apart from their pro-life stance, these candidates often had little else in common. Candidates with vastly different

ideologies__ "Democrats and Republicans, economic liberals and economic conservatives, hawks and doves, incumbents and non- incumbents, geniuses and fools" had pro-life activists campaigning for them, because of their uncompromising stand on the abortion issue.²⁹ Some experts feared that this unbending attitude on abortion could be reflective of their inflexibility on other issues in the future — which could 'militate' against the ethics of responsible politics.³⁰

The activities of the anti-abortion forces included organizing pro-life demonstrations, picketing abortion clinics, lobbying (on a non- partisan basis) for anti-abortion legislation, pressurizing candidates and holders of government offices to ^{state} their position on the abortion issue and then informing the public about the same through distribution of leaflets and pro-life literature. However their literature, experts point out, show them to be relying more on rhetorical and emotional arguments rather than on an intellectual and rational approach which signifies scholarly debate. Nor does the text of the pro-life literature argue as would a learned treatise. ³¹

Though pro-life literature focused primarily on the abortion issue, right-to-life activists tended to link up some other emotional issues with abortion namely capital punishment and euthanasia or 'mercy-killing'. Pro-life material often projected the lives ^{of} the senior citizens, the

29 Margolis, op. cit., n. 3, p. 713.

30 Ibid.

31 Ibid., p. 709.

chronically ill, the minority races and ethnic groups and crippled children to be in danger in the wake of the Roe vs. Wade decision which "denied the right to life to the unborn children" for social reasons in the first six months. They contended that the reason for terminating a pregnancy because it might be "socially burdensome" could be extended, in time, to the above mentioned category of persons.³²

In their uncompromising opposition to all abortions, the pro-life forces and organizations tended to ignore or discourage official discussions on such related conflicting issues as contraception, teen-age parenthood, child-welfare, rape and incest victims' pregnancies.³³

The politics of abortion for the anti-abortion activists involved the setting-up and maintenance of a national network and central head-quarter, full-time and part-time staff which included the services of a legislative lobbying co-ordinator and a political action co-ordinator, as well as, having a toll-free pro-life telephone line.³⁴

The National Right to Life Committee, which is the 'umbrella' organization under which most right-to-life organizations function, co-ordinates their activities at the state and national levels. The activities of the pro-life

32 Ibid.

33 Ibid., p. 707.

34 Ibid., p. 704.

organizations were generally financed by fund-raising projects and through direct contributions. Membership fees and subscription fees, though modest, too, contributed to the funds. In fact, these 'paltry' fees, studies have shown, went a long way in creating a psychological commitment to participate and volunteer in pro-life campaigns. ³⁵ These committed ^{pro-lifers} responded enthusiastically to mail campaigns, launched to protest against, or favour, abortion related legislation, sending a deluge of letters to their representatives and other Congressmen.

Abortion activists, thus, became an important political force, and abortion a major political issue in the political campaigns of the 1970s. This was clearly evident from the presidential primary campaigns. It made the race to the highest government office very competitive and "quintessentially adversarial". ³⁶ Professor John Noonan of the University of California, and an opponent of abortion, felt that the growing strength of the anti-abortion forces made abortion "a major issue in the presidential elections in 1976". Ray White, executive director of the National Right to life Committee, too, proclaimed abortion to be " the hottest issue in the 1976 elections".³⁷

35 Ibid.

36 Rothman, op. cit., n. 19, p. 288.

37 U.S. News, op. cit., n. 6.

Some political theoreticians believe that the strength of the anti-abortion movement, was largely exaggerated and perceived to be greater than what it actually was due to their aggressive and highly visible campaigning. Also, due to the fact that the primaries are aimed at a small number of voters, a well-organized interest group can exercise a significant influence on the outcome. Experts argue that inspite of the considerable influence of a small anti-abortion minority, abortion remains an issue of lesser relative importance to most legislators, and to the better part of their constituents. They found that it was difficult to attribute without ambiguity, the defeat, or the victory, of any particular candidate to the political tactics of the anti-abortion groups. Nevertheless, feeling threatened by the prospect of a "vigorous electoral opposition" especially in the primary elections, most candidates sought to accommodate the demands of the right-to-life groups. 38

Abortion, which emerged at the first presidential primary in New Hampshire surprised "politicians and pundits" alike and has been aptly described by a campaign strategist as a good issue "to avoid in an election year or any year". 39

The Roman Catholics constituting about one-fifth of the population were traditionally considered to be the vote-

38 "Uproar Over Abortion", Time, 16 February 1976, p. 13.

39 R. Steele and J. Doyle, "1976's Sleeper Issue : Abortion", Newsweek, 9 February 1976, p. 21.

bank of the democratic candidates. ⁴⁰However, since the Democratic party did not favour the passage of a Human Life Amendment which would outlaw most abortions, the catholic vote of a potential 33 million voters was practically open to be captured by the party or candidates who took a strong anti-abortion stand.⁴¹

Consequently both the Democrats as well as the the Republicans were engaged in competition to woo the catholic vote . Jimmy Carter, Democrat and a former governor of the state of Georgia, and President Ford, the Republican incumbent, both appointed Catholic consultants to their campaign staffs, and ordered research into ways of winning over the catholic vote. Later, they even took time to confer with the catholic bishops when the latter complained about being ignored on the abortion issue.⁴²

The Roman Catholic Church played a significant role in making the churchgoers aware of the stands taken by the candidates on the abortion issue through its newspaper and bulletins, distributed at Sunday-masses. It helped the

40 In New Hampshire, about 75% of the Democratic voters in primaries are Catholics. Time, op. cit., n. 38.

41 "Positions taken by the Republican and Democratic Presidential Candidates", U.S. News and World Report, 20 September 1976, pp. 15-18.

42 Ibid.

catholics to get familiar with the election pro-cedures through mock caucuses which underlined the importance of abortion as an issue.⁴³

For the abortion issue activists three distinct categories of presidential candidates were clearly discernible. The National Abortion Rights Action League listed them on the basis of its own poll, and on the public positions declared by the candidates on the abortion issue. Thus, the first category "clearly supported" the Supreme Court decision without reservations___as, for example, Senator Birch Bayh of Indiana. The second category included Jimmy Carter, Sargent Shriver and President Ford who upheld the Supreme Court decision as the law of the land despite having 'personal' reservations on the issue and despite personally being in favour of restricting the availability of abortion services. The third category consisted of the "darlings" of the pro-lifers___Ronald Reagan and governor George Wallace who "consistently opposed abortion rights and supported efforts to enact an anti-abortion constitutional amendment".⁴⁴

Once the presidential race had narrowed down to Carter and Ford, the anti-abortion forces made them the most obvious and 'visible targets' of their movement. Aware of

43 Adam Clymer, "Jimmy Carter's Candor", Nation, 7 February 1976, p. 134.

44 Economist, op. cit., n. 6.

this, President Ford opted for a middle position on abortion, describing himself as a moderate on this particular issue. He did not agree with the Supreme Court's decision to deny husbands and parents the right to consent. In addition he felt that the states should be given the right to regulate abortions and to make their own abortion laws as they wished. Some experts argued that this might lead to a 'patch-work' of abortion laws with some states totally banning and others totally permitting all abortions. ⁴⁵ Though earlier Ford had opposed adding to the Republican platform a resolution calling for a constitutional ban on abortion, he later changed his position somewhat, agreeing to support a constitutional amendment permitting regulation of abortion by the states. The First Lady Betty Ford, however, supported the Court's decision legalizing abortion when she was questioned about the issue in a T.V. programme.⁴⁶

Jimmy Carter on the other hand, seemed to be aiming at getting the sympathy of both sides of the controversy. He did not favour giving the states the independent right to permit or ban abortions, but was in favour of prohibiting the use of federal funds for financing abortion programmes. His ambiguous statement on favouring a "national statute" restricting abortions was misconstrued by many right-to-lifers including the Roman Catholic Church, to mean a "constitutional amendment" outlawing abortions. ⁴⁷

45. U.S. News, op. cit., n.41.

46. Time, op. cit., n. 38.

47. Nation, op. cit., n. 43.

Consequently, the Catholic Church endorsed his candidacy, publicizing his seeming support for a constitutional amendment on abortion. Carter's victory in the Iowa caucuses in January 1976, could in part be attributed to the assistance of the Church, which urged Catholics through Sunday sermons and masses to support him, "a born-again Christian", rather than Sergeant Shriver. While personally opposed to abortion, Shriver, a Democratic Candidate and a Catholic, did not support a legislative amendment which the Catholics held against him, hurting his chances at the primaries.⁴⁸

Carter, a southern Baptist, was soon accused of having "displayed a shallowness of understanding" on a very emotional issue when he withdrew his support of an anti-abortion statute on being advised that it would be unconstitutional.⁴⁹ Many pro-lifers believed that he had "deliberately misled" them and his being "personally" opposed to abortion to them sounded more like "I won't do anything about it".⁵⁰

While maintaining that he would not challenge the 1973 Court ruling on abortion, Carter stated that what the nation required was a "comprehensive national programme

48 Ibid.

49 "The Abortion Issue : Candidates Hear It from All Sides", U.S. News and World Report, 20 September 1976, p. 18.

50 The 'personal' positions of Ford and Carter were different from those of their party platforms. Time, op. cit., n. 38.

designed to minimise abortions with better adoptive procedures, sex-education and family planning".⁵¹

An interesting feature in the 1976 presidential elections was the sponsorship of a housewife from New York for the presidency.⁵² Mrs. Ellen McCormack campaigned as a Democrat in both New Hampshire and Massachusetts. Though not all anti-abortion campaigners considered her to be a serious White House candidate, she received national attention when she qualified for receiving federal funds for her presidential campaign (to qualify a candidate needed to raise at least \$5000 in contributions of \$250 or less in twenty states.)⁵³ Equally important was the fact that, as Georgia's Right-to-Life Committee chairman Jay Bowman put it, she could "get equal time on television for the pro-life message and she could get the Federal government to pay for the ads".

National Election surveys conducted by the Center for Political Studies have shown abortion to be of greater political significance to the white Americans who supported the Democratic Party than for any other racial group, including the Republican party supporters of the same race in

51 U.S. News, op. cit., n. 41.

52 "Pinning Down the Politicians ", Economist, 14 February 1976, p. 40.

53 "Why New Uproar Over Abortions", U.S. News and World Report, 1 March 1976, p. 14.

the American electorate.⁵⁴ The survey data also showed a substantial increase in public awareness.

The opinion of the American electorate on the abortion issue was seen to be influenced by a number of factors including their political ideologies. Voters who support political liberalism were also supportive of liberal abortion policies. However, there is no concrete or conclusive evidence of this phenomenon.⁵⁵

Some instances of single issue voting on abortion might have helped in the success achieved by several Republican candidates in the Congressional elections. Nevertheless, experts generally agree that abortion was not an important determinant of voting behaviour.

In 1976, for the first time contrasting positions on the abortion issue were adopted by the Republican and the Democratic parties⁵⁶. Many Americans, however, were uncertain of how the two major parties stood on the abortion issue. This was caused, primarily due to the ambiguity or

54 Louis Bolce, "Abortion and Presidential Elections : The Impact of Public Perception of Party and Candidate Positions, Presidential Studies Quarterly, vol. XVIII, Fall 1988.

55 Some indications of single issue voting on abortion might have helped to elect several Republican candidates in the Congressional elections of 1980. Nevertheless, experts generally agree that abortion was not an important determinant of voting in the 1980 elections. Ibid.

56 Ibid, p.821

inconsistency in the statements of the candidates regarding their stand on the issue.

The abortion issue in presidential elections has been described as a 'contaminating' factor.⁵⁷ This was because the 'whites' were more divided over the abortion issue than were the 'blacks' who were generally opposed to it and who favoured Democratic candidates. Abortion was apparently not a decisive factor in the votes of the black Americans, both pro- and anti-abortion 'blacks' gave 9 out of 10 votes to Carter in 1976. Thus, while Carter got 93% and 94% of the 'black' pro- and anti-abortion votes, Ford got only 6% and 7% from the same groups.⁵⁸ However, Ford got more of the 'white anti- and pro-abortion votes (54% and 53% respectively) as opposed to Carter's (46% and 47% respectively).⁵⁹ Voters became more aware of party and candidate positions on the abortion issue, and this awareness which increased from 1976 to 1980 due to the greater clarity of statement and unambiguous positions taken by the candidates.

Statistics show that the percentage of the 'white' voters who were reasonably well informed on the abortion

57 Ibid., p.819

58 Ibid.

59 In the 1980 presidential election, attitudes on abortion of the whites were more clearly reflected in their preference of the presidential candidates, than it was in 1976. While Reagan, in 1980 won 61% of the votes of the white anti-abortionists (as against Carter's 34%), Ford had secured only 54% of the same in 1976. Ibid., p.820.

issue increased from 14% in 1976 to 40% in 1980. ⁶⁰A number of other significant factors could also be observed. Firstly, anti-abortion white Democrats were seen to be considerably more likely to misperceive or be ignorant about the positions taken by the two major parties and the presidential candidates on the abortion issue. These

Democrats could, mistakenly, vote for a candidate whose views on abortion did not match their own. Data on the perceptions of party and candidate positions by white Democrats and Republicans support this finding. Thus, in 1976, only 7% of the anti-abortion 'white' Democrats correctly judged the Republican party to be favouring a constitutional amendment outlawing abortion. In contrast, 12% of the same category of voters wrongly perceived the Democratic party to be favouring the amendment. ⁶¹While as many as 20% the anti-abortion white Republicans correctly judged their party to be favouring a constitutional ban on abortion, only 8% incorrectly felt that it would be the Democratic party. Data also demonstrate that 'white' Democrats who supported abortion rights were significantly less ignorant on the abortion positions of the parties and the candidates than the anti-abortion white Democrats.

60 Ibid., p.822.

61 In 1980, these figures showed a greater difference between the current assessment by the white anti-abortion Democrats (29%) and the Republicans (55%) who felt that Reagan favoured restrictions on abortion. Ibid., p. 823.

The American electorate comprising of a plurality of races is sharply divided over the abortion issue into two almost equal halves, ^{into} those who support abortion rights and the others who do not. Amongst those who feel strongly about abortion, namely the pro-and anti-abortion 'whites' and the pro-and anti-abortion 'blacks', affiliated with the Republican and the Democratic parties no group seems to attach as much importance to the issue as do the 'white' anti-abortion Democrats, Black Americans, however, do not seem to attach any political significance to abortion.

White Democrats demonstrated a greater tendency to deviate from their traditional voting patterns than did the white Republicans. In 1976, as many as 40% of anti-abortion white Democrats had defected in favor of Ford. Abortion, therefore has a disparate influence on the fortunes of the two major political parties. The Republican party is only minimally affected by the abortion issue, while the Democratic party seems to be affected more.

Non-partisans and independents however, appear to be the ones whose ~~voting~~ ^{is} behaviour guided by their knowledge of the stands taken by the parties and the political candidates.⁶² In fact, in the 1980 presidential elections, Reagan had received "land slide margins" of the votes of the independent anti-abortionists. Experts claim that not only does the abortion issue influence and distort presidential

campaigns, it gets distorted in the process.⁶³ Campaign strategists are aware that the abortion controversy "antedates the campaign and is likely to survive it".

This is proved by the fact that 50 bills proposing a constitutional amendment to limit access to abortions were pending in the House of Representatives at the time of the presidential campaigns, while four were pending in the Senate⁶⁴. A resolution was passed in Congress to call a national convention to discuss the amendment. Most members seeking re-election, who voted in favour of the resolution wanted to protect themselves at the polls and also, argue some theoreticians because a "yes" vote could not harm (the amendment procedure itself spreads over seven years) while a "no" vote could make them face a tough time at the primaries, and also lose out some constituent support⁶⁵.

Though most experts agreed that abortion was not the decisive factor in the minds of the voters and consequently on their voting behaviour, most candidates felt pretty uncomfortable with the issue and probably wished that it would just disappear.

Karen Malhauser of the National Abortion Rights Action league insisted that most voters "don't vote a candidate in or out on any one issue". In fact no poll has

63 Economist, op. cit., n.52.

64 U.S. News, op. cit., n.53.

65. Economist, op. cit., n.52.

ever established abortion as one of the major issues of concern to the American voters. But because of the volatility of the issue and the extent to which an organized and passionately committed minority feels about abortion, it would in all probability continue to play an important though minor role in American Politics. Moreover, the institutional support of the Roman Catholic Church and the fact that abortion does not lend itself to rational debate specially "in the heat of the political campaigns" add further weightage to this prediction of the political analysts and campaign strategists.

CHAPTER V

Conclusion

The practice of abortion, though frequently condemned as immoral and inhuman and considered to be a taboo, had been universally used for centuries as a means of restricting population growth and limiting family size ¹. In the United States abortion gained general acceptance as a practice in the 1960s, when many "Americans decided that no subject was taboo" ². Legally, however, it could be performed only when a woman's pregnancy endangered her life. For rich women it was relatively easier to find a doctor who would illegally perform the procedure, but for the poor the illegality of abortion posed a real problem ³. They often had no alternative but to turn to back-alley abortionists of dubious skills, exposing themselves to the risks of infection, infertility or death through botched abortion procedures. Civil libertarians and feminists were amongst the first to emphasize the importance of attaining the legal right to abortion as essential to the women's struggle for social and legal equality and justice ⁴. Though many proponents of legalized abortion believed that abortion was a 'sorry answer' to the problem and an evidence of social policy

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- 1 Janet Podell, ed., Abortion: Moral and Ethical Aspects (New York; Wilson Press, 1990), p.5.
 - 2 Max A. Coots, "On Abortion", Progressive, vol. 38, November 1974, pp. 20-21.
 - 3 Ibid.
 - 4 Podell, op. cit., n. 1, p.7.

failure⁵, they maintained that forcing young, poor or ignorant women to bear unplanned children should not be used as a 'punishment' for permissive behaviour.

The activities of the pro-abortion forces culminated with the Supreme Court's decision on Roe vs. Wade in 1973 which legalized abortion while upholding the "right to privacy" of a person. Essentially, the Court proclaimed that abortion was legal within the first six months of pregnancy and a private matter to be decided between the woman and her physician — although, in the second trimester, a state was at liberty to impose regulations for ensuring maternal health safety. Only in the last three months, after the fetus attained viability, could the state, prohibit abortions except when the mother's life or health was in danger.

Thus the Court left it to the woman to decide whether to choose motherhood or not. This ruling expectedly outraged the anti-abortionists who considered it far too liberal, for it legalized abortion not only in the first six months but also for all practical purposes, in the last trimester as well. A woman could, they argued, get an abortion at any point of time or stage in her pregnancy by simply finding a physician who would certify that the continuation of her pregnancy posed a serious threat to her life or health.

The pro-life activists, thus, declared that liberal

⁵ New York Times, 2 January 1973, p.1.

abortion laws displayed a basic lack of respect for the 'values concerning the meaning of womanhood, of sexuality and of the sanctity of human life'. They soon organized their forces and started a Right-to-life movement which used both fair and unfair means to influence the opinion of the public and the legislators to support their cause.

Supporters of the Supreme Court's 'pro-choice' ruling welcomed it as an endorsement of a woman's undeniable sovereign right to control her reproductivity and to decide whether to have a child or not. They rightly argued that in legalizing abortions the court had not ordered any pregnant woman to have an abortion but merely given women a chance to avail of expert medical advice and health-care facilities⁶.

Soon the abortion issue stirred up such a lot of controversy that it began to have repercussions on the political system. Already abortion was a practical social problem of such a magnitude that, experts argued, it could not escape becoming a political problem as well⁷. The abortion issue thus proved to be one of the most complicated and controversial of issues in American politics which divided the American population, virtually, into two almost equal halves. The relative ease with which the issue got politicized was an illustration of the "recurrent power of

6 Ibid., 24 January 1973, p.40.

7 Coats, op. cit., n. 2.

moral questions in American Politics"⁸.

Although politically abortion was a good issue for mass mobilization, various other aspects of the abortion controversy__legal, ethical, moral and religious__distorted and shaped the politics of abortion. While legally, many cases of manslaughter of allegedly viable fetuses were debated in the courts, the ethical debate revolved around the use of aborted fetal tissue for medical research. While anti-abortionists considered it immoral to kill innocent life for the sake of convenience, to the abortion rights activists, the moral stand was not to impede a woman's right to control her own body, and to respect her right to privacy. On the religious front, the Roman Catholic Church vigorously opposed abortion as being equivalent to murder and therefore a crime, the American population generally resented the idea of the universal imposition of one theological doctrine through a repeal of the liberalized abortion laws⁹.

The words of Rabbi Richard Sternberger, Chairman of the Religious Coalition for Abortion Rights, summed up the public sentiments on the issue, "My great grand-father did not come over here to this country seeking religious liberty to have a specific theological position imposed upon him, and

8 Gillian Peele, Revival and Reaction: The Right in Contemporary America (New York; Oxford University Press, 1984), p. 93.

9 "Ban All Abortions?", U.S. News and World Report, 27 September 1976.
to have a specific theological position imposed upon him and

I certainly don't want it either"¹⁰.

On analysing the Roe decision of the Supreme Court, and the controversy that followed in its wake, a few observations can be made. Firstly, that the Supreme Court, while acknowledging the complexity and ambiguity of the issue evidently sought to accommodate both the pro-choice view as well as the pro-life stand on abortion. It, therefore, showed sensitivity to the 'right to privacy' of the woman as well as to the 'right to life' of the fetus by making the rights of the latter inversely proportional on an increasing scale to those of the former, as the pregnancy advanced in term. Thus, while in the first trimester a woman could opt for an abortion without assigning any reason for it, in the third trimester, the right to life of the fetus restricted her access to this option except for therapeutic abortions necessary to protect her life or health.

Secondly, the Roe decision illustrates the growing dependence of liberalism on court rulings which, however, lack the political legitimacy and support that public debate and legislative deliberations enjoy¹¹. The abortion decision also illustrates how legislative responses to the Supreme Court's decision can heighten or minimise the impact of the

10 Ibid.

11 Thomas B. Edsall and Mary D. Edsall, Chain Reaction: The Impact of Race, Rights and Taxes on American Politics (New York; W.W. Norton & Co., 1991).

Court ruling¹². In its attempts to please both the sides the Supreme Court left unanswered certain important questions, foremost amongst them being the question of when human life begins. What had initially seemed to be a definite and unequivocal ruling was found to be affording enough loopholes for the Congress and the state legislatures to enact laws limiting access to abortions¹³.

Thirdly, the abortion issue proves how the American political system is largely 'unresponsive to the needs of the poor' while benefiting the rich.¹⁴ Though liberalized abortion laws provided women with a strong incentive to exercise the freedom of procreative choice, they could not always avail of this freedom since many public health facilities resisted or openly disregarded the Supreme Court ruling specially in the non-metropolitan areas. In 1974 and 1975, only 46% of the private hospitals performed abortions and of the public hospitals only 1/3 offered the facility¹⁵. The low percentage of participation of public hospitals was criticized in view of the fact that poor women relied mostly on hospitals run by the government.

Moreover, the restrictions on allocating Medical funds

12 Lawrence Baum, The Supreme Court (Delhi; Universal Book Traders, 1992). p. 241.

13 Ibid.

14 Shiela M. Rothman, Women's Proper Place (New York; Basic Books Publishers, 1978), p. 289.

15 Ibid., p. 287.

except for therapeutic abortions further worsened their chances, as they now had to rely upon the "inconsistent and varying decisions" of the physicians¹⁶. The lower class and poor women did not benefit as much as the rich from the liberalization of abortion laws, just as earlier they had gained little from the legitimization of day-care for children. Social reformers who had believed that the woman's movement would unite the women of all classes to "act together as sisters in an effective alliance" were disappointed when the identity of sex was unable to override the differences in class¹⁷.

Fourthly, the Supreme Court decision while bringing to an end the long and extremely uneven process of liberalizing state abortion laws, seemed to have addressed only the mainstream of public opinion on the issue¹⁸. In a Gallop poll conducted in 1977 only around 20% of the respondents felt that abortions in the first trimester should be permitted under all circumstances; while another 20% felt that it should be banned altogether. The majority of the respondents had favoured abortions, under some circumstances in the first and second trimesters although there existed a

16 Ibid.

17 Ibid.

18 "Abortion: Pinning Down the Politicians", Economist, vol. 285, 14 February 1976, p. 40.

difference of opinion as to what those circumstances might be¹⁹.

Poll analysts, however, felt that the Gallop poll was of limited use to the legislators as the categories defined by Gallup were not very precise, making it difficult to determine the abortion policy preferences of the respondents²⁰. Nevertheless, most poll outcomes indicated that the public was tolerant of the pro-choice attitude on abortion²¹. Anti-abortion forces, however, insisted that the Supreme Court ruling on abortion did not represent the view of the majority.

Fifthly, the Roe decision, while reflecting a growing support for the liberalized abortion ruling from all the major demographic categories in American society did not legitimise the pro-choice position in the public mind²². Experts have found that a significant increase in public support generally follows in the wake of an authoritative decision, as in this case, by the Supreme Court²³. In

19 Michael Margolis and Kevin Neary, "Pressure Politics Revisited: The Anti-Abortion Campaign", Policy Studies Journal, vol. 8, 1979-80, p. 703.

20 Ibid.

21 Sara M. Evans, Born for Liberty: A History of Women in America (London; Collier MacMillan Publishers, 1989), p. 305.

22 Fred M. Frohock, Abortion: A Case Study in Law and Morals (Westport, Conn., Greenwood Press, 1983), p. 102.

23 Ibid.

proclaiming the procreative freedom of a person to be beyond its powers of jurisdiction, the Court encouraged public opinion to rise beyond the clutches of traditional and conservative moral and religious views, and to evolve new concepts of personal liberty and autonomy. Therefore, the apparent backing for the pro-choice view and the recognition and affirmation of reproductive freedom by the Supreme Court was a go-ahead signal for the acceptance of the procedure by the masses²⁴. The court ruling was seen by many groups as a final and reasonable resolution of an emotional debate on this difficult and decisive issue.

Demographic experts, while acknowledging the significant role of the abortion ruling in changing the nature and extent of population growth, the stability of family life, the role of women in society, the health and welfare of women and children, even the methods of delivering health care, felt that the full impact of the Supreme Court's decision might not be visible for a generation or more²⁵. Dr. Norman Ryder, a noted sociologist at the Princeton University and director of fertility studies, too, expected the liberalization of abortion laws to make a noticeable difference on how soon the population reached a stable size²⁶.

24 Economist, op. cit., n. 18.

25 New York Times, 28 January 1973, p. 3.

26 Ibid.

Sixthly, the abortion controversy proves that the American political system is susceptible to the sustained and strident campaigning of single-issue interest groups. Experts feel that this is possible because of the single minded devotion of these interest groups which makes them exercise more influence and power than what is warranted by their numbers²⁷. Therefore the danger of a repeal of abortion laws, many supporters of legalized abortion believe could be more real than imagined.

Abortion, although still legal, continues to be a controversial issue in America. Experts have noted that ideological issues like abortion have always been "notorious sources of acrimonious debate" on what is right and moral²⁸. The conflict between morality and justice is not easy to resolve particularly for the highly emotive and volatile issue of abortion.

On the one hand it is difficult to justify the social regulation of abortion solely on the basis of morality since, as the freedom of choice advocates claim, the rights of society against individuals are seen to be irrelevant to abortion disputes²⁹. Morality is a private choice which can

27 Margolis, op. cit., n. 19.

28 Frohock, op. cit., n. 22, p.10.

29 Ibid.

not be enforced by the state and, it is argued, should be outside the realms of public policy and state control. Abortion rights activists, resist all efforts by the anti-abortion forces to bring-in the question of morality to bear upon abortion legislation, viewing it as a 'totalitarian threat',³⁰.

On the other hand, the pro-life activists denounce the apparently widespread support for the pro-choice position arguing that even a unanimous social agreement does not justify the enforcement of morally unsound laws — equating the support for abortion with those in the past, for slavery and racial segregation and Nazism. Thus, many people believe that, a meaningful communication between the two opposing sides which continually level charges and countercharges against each other is next to impossible³¹.

In fact, abortion seems to be resistant to any attempts to settle it through political negotiations, trade-offs or compromise³². Nor does it lend itself to being resolved through a debate on ideological or morally acceptable solutions³³. Greater scientific knowledge, revealing that there are no well defined periods of growth in

30 Ibid.

31 Ibid.

32 New York Times, 20 June 1974, p. 82.

33 Frohock, op. cit., n. 22, p. 13.

fetal development and that dividing the nine-month gestation period in trimesters is at best arbitrary, further complicated matters.

Clearly, any attempt at resolving the abortion dispute would have to rely on bilateral debate and discussions, while avoiding a confrontational approach. A direct confrontation, the experts have found, only leads to a deadlock situation with both the sides refusing to give in because of the rigidity of their views. Some political analysts firmly believe that any attempt at resolving the practical problem of abortion, would have to keep in mind the fact that morality cannot be enforced. Therefore, it would best be resolved through private choice and not through the law of the land. Another widely held view is that the state should avoid taking a clear 'for' or 'against' stand on the issue³⁴. In other words the state should not encourage people to choose abortion nor should it discourage them. There is little doubt that any practical solution to the problem which keeps in mind the abortion realities could not at the same time be strictly moral³⁵. Besides, in a pluralistic society the abortion policy would need to be broad based and flexible and would require an effective family planning and welfare programme to strengthen it.

34 Ibid., p. 136.

35 Ibid.

Legalization of abortion led to a substantial decrease in the practice of surreptitious, illegal abortions. However, the total number of abortions performed in the U.S. increased from 193,000 in 1970 to 486,000 in 1971, to 1,270,000 by the year 1977³⁶. In the period between 1972 and 1979, the abortion rate was seen to have increased by about 150%³⁷. These high percentage of abortions in 1971 and 1972, prove that at least some abortions would continue to happen irrespective of the legality of the procedure³⁸. Consequently, outlawing abortions would not protect fetal life but would again jeopardize the lives of tens of thousands of women.

Feminists insist that the entire health care system in America is 'anti-woman' in both theory and practice and feel that the abortion issue is the most visible manifestation of this 'injustice'³⁹. Repealing the current abortion laws they fear would again lead to "dangerous abortion racketeering, subterfuge and technical criminality, corruption of public officials and widespread defiance of the law", as well as, to unreasonably high abortion prices⁴⁰.

36 Ibid., p. 102.

37 Baum, op. cit., n. 12, p. 245. The same phenomenon had been noticed in England and Hungary after legalization of abortion.

38 Coats, op. cit., n. 2.

39 Judith Hole and Ellen Levine, Rebirth of Feminism (New York; Quadrangle Books, 1971), p. 305.

40 Coats, op. cit., n. 2.

Though some political analysts feel that this "element of schizophrenia in public attitudes" is to be expected in view of the sensitive nature of the abortion issue, poll results show that a majority of people do not support health related policies that deny women access to abortion services⁴¹. In a pluralistic society, the government would anyhow find it difficult to enforce such policies without a public consensus. Historically too, efforts to make the government instrumental in binding the entire population under a single totalitarian law have time and again been proved to be futile, a fact that was also demonstrated by the rescinding of the prohibition on alcoholic beverages - which had been guided by the Puritanical ideology⁴².

Although concerted efforts by the anti-abortion forces to overturn the Supreme Court ruling in Roe vs. Wade were started from practically 'day one', abortion still continues to enjoy legal status. The anti-abortion activists, despite their notable victories from time to time for example the restriction of Medicaid funds for all non-therapeutic abortions, blocking important areas of medical research, the conscience clause, the cancelling of public funding of certain population control programmes in foreign-

41 Hole, op. cit., n. 39.

42 Margolis, op. cit., n. 19.

aid packages and more recently in Webster vs. Reproductive Health Services (1989) the granting of substantial liberty to the states to enact their own abortion laws, do not seem to be any nearer to realizing their ultimate goal of banning all abortions by means of a Human Life Amendment.

Political sociologists and campaign strategists believe that the abortion issue will continue to 'bedevil' American politics specially during election times, since the politicization of abortion is of benefit to both the politicians (if they take the 'right' stand) and to pro- and anti- abortion activists.

Though feelings run deep on both the sides of the explosive issue, studies have revealed that for the 'pro-lifers' as also for the 'pro-choicers' the moral aspects of a personal choice on abortion, when faced with the dilemma of an unwanted or dangerous pregnancy, and the public stand appear to be two different things and not always identical⁴³. Though committed to a 'for' or 'against' position, more often than not there exists only a superficial understanding of the complex scientific, moral, social and emotional problems connected with the issue of abortion. The uncompromising attitudes and deep commitments to the pro and anti-abortion stands are, for the main part, based on 'abstract normative principles'. Public opinion polls have revealed that many

43 Ibid.

advocates of abortion decided not to terminate an unplanned pregnancy, just like many supporters of the right-to-life opted for an abortion in their personal lives. As one psychologist describing the second phenomenon said, "It's easy to be pro-life till your own daughter needs an abortion"⁴⁴.

Despite the fact that most people believe abortion to be of little consequence as a political issue, it has been "the centerpiece of a major national debate" for two decades⁴⁵. And despite the continuing efforts of the anti-abortion forces, it is unlikely that a renewal of the restrictions on abortions would be enforceable⁴⁶. This is so for two reasons : firstly because the Supreme Court removed the stigma associated with abortion by bringing it into the mainstream of the medical practices, and secondly, because there is enough evidence from other countries that once liberalized abortion laws were adopted, these countries found it difficult to repeal them and to go back to a period of extremely limited legal abortions.

Currently, roughly 1.5 million abortions are performed annually in the U.S. - the majority of them to women under 30 years of age⁴⁷. And in the capital city

44 New York Times, op. cit., n. 5.

45 Baum, op. cit., n. 12, p. 253.

46 Margolis, op. cit., n. 19.

47 Podell, op. cit., n. 1.

Washington, reports show that the number of abortions performed annually exceed the number of live births. President Clinton whose Health Plan aims at guaranteeing affordable health care to Americans of all age and income groups, includes a proposal to cover the costs of abortions in the standard benefits package⁴⁸. Clinton, who had 'unequivocally' supported the right to abortion in his presidential campaign from the Democratic platform, is believed to be under pressure from the U.S. Catholic Conference not to make the "major political mistake" of "burden[ing] health care reform with abortion coverage"⁴⁹. On the other hand, supporters of abortion coverage have been expressing their approval of the Clinton Health Plan which also favours public funding of abortions. Thirty-one Congresswomen voicing their support for the inclusion of abortion coverage in the new health care package wrote a letter to this effect to First Lady Hillary Clinton⁵⁰, who heads the Clinton Task Force on health care. Abortion rights supporters are also trying to restore federal funding of abortions for poor women, American-Indians, federal employees and federal prisoners, women in the District of Columbia and women serving in the army, and for Peace Corps volunteers.

48 Indian Express, 30 May 1993.

49 Ibid.

50 Ibid.

About ten separate abortion bills, representing each of these groups, are pending in the Congress⁵¹.

Anti-abortionists, for their part, are continuing to make efforts to outlaw abortions altogether through a Human Life Amendment to the constitution that would ban all abortions, and through a Right-to-life statute under the Fourteenth Amendment that would give a fetus the status of a person thus making abortion a criminal act. In any case, acrimonious debates on the abortion issue seem more than likely to continue in the Clinton Years.

Thus we find that the abortion controversy is very much alive and continues to enjoy an important, if marginal place in American politics. The issue derives its political significance from the women's movement which is still fighting for social justice, and from the considerable influence that the Roman Catholic Church exercises on the religiously conservative American society. And if the intensity of feeling on this emotional issue is any indication, abortion will continue, for a long time, to be ranked amongst those volatile political issues that are repeatedly raised during electoral campaigns in the U.S.

51 Congressional Quarterly Weekly Report, 8 May 1993, p. 1155.

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