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Women's reproductive rights in the USA: moving forwards or stepping backwards?



Introduction

The fight for women's reproductive rights in the United States of America has taken many important steps, both informally within societal norms, but also in Supreme Court jurisprudence, setting precedent to be followed in similar cases for years to come. However, the narrative of women's reproductive rights and how it is perceived by the general public differs massively to what is presented on paper by the Constitution or case law. By reproductive rights, we consider access to abortions and access to contraception in this article. However, it is important to mention that reproductive rights also include education on sexual activity and accessibility to adoption clinics, among others.

In *Griswold v Connecticut*, for example, it was declared an infringement upon additional fundamental rights and subsequently of the Ninth Amendment, to prohibit the sale of contraception, which was a law passed by the State of Connecticut in 1879, resulting in the Supreme Court interfering in 1965 (*Griswold v. State of Connecticut - Britannica Presents 100 Women Trailblazers*, 2021). Such case law continued creating landmark moments for women's reproductive rights in the present day, most famously *Roe v Wade* in 1973. In many cases such as the ones mentioned above, a precedent is set which dictates the future for cases on similar topics for decades to come, creating a new form of legal norm.

However, recently, different policies have massively affected women's reproductive rights and arguably caused the United States to take many steps backwards in the fight for non-State interference in women's reproductive rights (*Women in the States*, 2015). In 2021, the spotlight fell on the USA when over 600 protests all across the nation's 50 states called upon the federal government to take action to protect these fundamental rights (Iyer, CNN, 2021). Although the majority of the groups involved were pro-choice feminists, conservative groups made their concerns known, especially those within highly Republican states of Christian majority.

So, the question remains: is the United States really taking the right steps towards an equal and fair society, or is it still a case of "one step forward, 3-steps back"?

Current context

The legal right to abortion was established in the landmark case of *Roe v Wade* in 1973. Since then, both legally and socially, abortions have become de-criminalized and more common in the USA. However, although abortion is legal in all the states, each state places various limits on it, thus making the process either highly accessible or highly inconvenient. These limits can be considered to prevent the full exercise of women's rights, since they reduce accessibility to basic fundamental provisions allowing freedom of choice and action.

The most recent of these limits was placed by the state of Texas in September 2021, in the so-called "Heartbeat Act", in which the State of Texas declared it illegal to conduct an abortion after 6-weeks upon which a foetal heartbeat can be detected (Heartbeat Act, HB 1515, 87, 2021). This sparked a plethora of reactions from Congress, igniting an increase in visibility of the feminist movement across the states. Politicians, influential figures, and celebrities, as well as the civil society, showed their discontent for the Bill being passed, and even participated in protests either via social media or physically.

The introduction of this bill significantly questioned the precedent left by *Roe v Wade*. Many wondered whether the institutional rights established by this case are diminishing and whether the Bill undermines *Roe v Wade*. Initial reactions included the belief that *Roe v Wade* had been overturned, or was slowly dying (Chemerinsky, 2021). There have been many bills and policies, especially under the Trump administration, which have previously undermined *Roe v Wade*, so this is nothing too novel. During his campaign, Trump threatened to criminalize abortion and use his executive power to appoint anti-choice judges (Center for American Progress, 2018).

However, despite the fear instilled by the Trump administration, the expansion of the Affordable Care Act (ACA) has resulted in increased availability of contraception to lower-income women due to the reduction of the financial barriers that had been previously associated with the purchase of contraceptive pills (Women in the States, 2015). In Native American communities, the IHS provides contraception at no cost within the reservations (Crow Tribal Reservation, MT, 2019).

In 2020, amidst the COVID-19 crisis, legislators in the USA continued to press the reproductive health rights agenda. Several abortion restrictions were enacted, as well as provisions which expand and protect abortion services, and expand access to reproductive health services and education. However, due to the pressing issue of the pandemic, there was less attention given to reproductive health (Guttmacher Institute, 2020).

Conclusion

Whilst on the institutional level there seems to be adequate safeguards for the protection of womens' reproductive health, the last few years have shown the flaws of having fundamental rights only in Supreme Court case law rather than in a codified Constitution. The recent controversy over the Texas Heartbeat Act has also cast a new light on the societal divide in public opinion on these topics, and especially on the disparities between more conservative states and those that are more liberal.

Whether more will be done to preserve Roe v Wade and thus promote the security of womens' reproductive rights in the US is up to the Biden administration, as well as Congress, within the currently established social norms and political order. The question of whether American society is progressing in accepting womens' reproductive rights, however, is an ongoing process that will most likely not show hasty signs of change soon.

Therefore, it can be said that the acceptance, expansion and security of womens' reproductive rights in the United States is a slow phenomenon that happens in peaks and troughs. This being said, there should always be vigilance of the fundamental rights that all people under the US Constitution are legally entitled to, including marginalized groups such as women and Native Americans . Upholding these principles can greatly improve American image as a highly progressive society at the forefront of liberal and democratic rights.

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