Chapter 10
Abortion and the Right to Life in the International Bibliography

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ABSTRACT

In this chapter, the authors examine abortion and the right to life in the international bibliography. The touchstone of our discussion is the landmark decision, Roe v Wade, which relied on the 14th Amendment. However, society’s view on abortion is not clear, as it depends on many different factors and reasons. Abortion has been a controversial subject in many societies through history because of the moral, ethical, practical, and political power issues that surround it. However, abortions continue to be common in many areas where they are illegal. Today, they are more than mere words. “Soft” international law has also been found determinative in discerning the content of the 14th Amendment. However, the way a country deals with abortion is highly symbolic of women’s status and how it treats women generally.

INTRODUCTION

In general the right to privacy can be found to rest on the provisions of habeas corpus, which first found official expression under Henry II in 11th century England, but has precedent in Anglo-Saxon law. This provision guarantees the right to freedom from arbitrary government interference, as well as due process of law. This conception of the right to privacy is operant in all countries which have adopted English common law through Acts of Reception.

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Traditionally, American courts have located the right to privacy in the Fourth Amendment, Ninth Amendment, Fourteenth Amendment, as well as the penumbra of the Bill of Rights. The landmark decision, *Roe v Wade* relied on the 14th Amendment which guarantees that federal rights shall be applied equally to all persons born in the United States. The 14th Amendment has given rise to the doctrine of Substantive due process, which is said to guarantee various privacy rights, including the right to bodily integrity. In Canada, the courts have located privacy rights in the security of person’s clause of the Canadian Charter of Rights and Freedoms. Section 7 of that charter echoes language used in the Universal Declaration of Human Rights, which also guarantees security of persons.

While governments are allowed to invade the privacy of their citizens in some cases, they are expected to protect privacy in all cases lacking a compelling state interest. In the US, the compelling state interest test has been developed in accordance with the standards of strict scrutiny. In *Roe v Wade*, the Court decided that the state has an “important and legitimate interest in protecting the potentiality of human life” from the point of viability on, but that prior to viability, the woman’s fundamental rights are more compelling than that of the state.

Especially, the interests of a woman and those of her fetus do not always coincide. The most obvious area of conflict has already been discussed: a woman may actively desire, for various reasons, to terminate a pregnancy through an abortion. Often, though, a woman may very much want to have a child, yet to further other of her own interests she may be doing things that might harm the fetus (and thus the child that it would ultimately become). This area is sometimes referred to as “maternal-fetal conflicts” (Menikoff, 2001).

However, it is important to examine first what abortion is (including definition, types of abortion, factors leading to abortion and society’s opinion) and then the legal side under the right to life.

**DEFINITION**

If we can give a definition of abortion with medical terminology, abortion is the termination of pregnancy by the removal or expulsion from the uterus of a fetus or embryo prior to viability. An abortion can occur spontaneously, in which case it is usually called a miscarriage, or it can be purposely induced. The term “abortion” most commonly refers to the induced abortion of a human pregnancy rather than miscarriage. Notwithstanding, in this chapter, we will examine both types of abortion.
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