BLOGS

Roe v Wade Overturned: Everything You Need to Know for CLAT 2023

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"But, of course, "people" did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women's liberty, or for their capacity to participate as equal members of our Nation."

-Dissent in the judgment overruling Roe v. Wade

Introduction

Roe v. *Wade* [i] is the landmark decision of the Supreme Court of the United States that established the rights relating to abortion ('medical termination of pregnancy') in the country. This right was based in the women's right to privacy [ii], among other rights.

In overruling the case, the Bench decided as follows:

"Alito, J., delivered the opinion of the Court*. Thomas, Gorsuch, Kavanaugh, and Barrett, JJ., Roberts, C. J., filed an opinion concurring in the judgment.*

Breyer, Sotomayor, and Kagan, JJ., filed a dissenting opinion."[iii]

Roe v Wade Overturned

The recent case, i.e., *Dobbs* v. *Jackson Women's Health Organization*, overturned *Roe*. It also overruled Planned Parenthood v. Casey [iv]. This precedent (majority) now concludes that right to abortion is not granted by the Constitution of the United States. The judgment stressed that abortion posed a 'profound moral question'. In concluding its opinion, the Court noted:

"The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. Roe and Casey arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives."

So now, the States of the U.S. reserve the right to regulate abortions. This would naturally cause abortion to be criminalized in many states.

Dissent on Roe v Wade Being Overturned

The dissenting opinion reiterated the rights to liberty and equality of women, which was guaranteed by *Roe* and *Casey*. The dissent also disregarded the matter being left in the hands of elected representatives, saying: "We believe in a Constitution that puts some issues off limits to majority rule."

It also highlighted the fact that an originalist reading of the Constitution is improper, given that originally women did not participate in Constitution-making nor were considered equal right-bearing citizens. Such a reading,hence, is improper.

Comments

This decision was highly dreaded by a large population of the United States but was also anticipated after the confirmation of the Republican nominee Amy Coney Barrett to the U.S. Supreme Court. This confirmation provided a majority to judges nominated by the Republican party of the U.S., who are generally regarded as conservative in their ideologies. This also shows a sharp politicization of the apex Court of the country—which is not considered a healthy turn for democratic countries.

To read about the rights of women in India among other things, click here.

Suggested Readings:

1. Full Judgment of Roe v. Wade is available here: https://tile.loc.gov/storage-services/service/ll/usrep/usrep410/usrep410113/usrep410113.pdf.
2. Full Judgment of Dobbs v. Jack Women's Health Organization is available here: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

To read more on recent judgments, click here.

[i] 410 U. S. 113, 163 (1973)

[ii] **Roe**: "*We, therefore, conclude that the right of personal privacy includes the abortion decision…*"

[iii] Dobbs v. Jack Women's Health Organization, No. 19-1392, 597 U.S. (2022) (Syllabus p.8)

[iv] 505 U. S. 833 (1992): This case also discussed Roe, but the judges remained split as to altering the judgment in any manner.