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Abortion Politics in India and the United States: Women's Movements and State

by

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The legality of abortion remains one of the mostly highly contested issues surrounded by debate and activism. The legalization of abortion is best understood in the American context with the 1973 Supreme Court decision, *Roe v. Wade* that has shaped the abortion debate in the U.S. ever since. The legality, cultural opinions, legitimacy, and prevalence of abortion vary from country to country; views are never static, but are constantly adjusting to global and local conditions, as well as changing economic and social needs. Abortion politics are often essentialized to a dichotomy of proponents and opponents of legal abortion.

Nevertheless, this essay is intended to complicate this simplification by considering the legalization of abortion in the U.S. as well as in India. Despite numerous studies of abortion politics in the U.S. and India, scholars have failed to situate and explore the two in relation to one another. In doing so, the processes and social movements that preceded and followed the legalization of abortion in the American context and Indian context emerge as a complex puzzle, one with fascinating contradictions and implications.

In the U.S., the women's movement sought to end state regulation of abortion; in India, feminists of the women's movement sought state regulation and restriction of abortion. Moreover, U.S. anti-abortion activists worked to ban or restrict abortion for the sake of preserving social order, i.e. family and motherhood; in India, the state initiated legalized abortion, also in the interests of social order, i.e. population control. Thus, it is equally important to consider counter-movements in addition to and in relation to initial movements. In both the U.S. and India, women's movements sought state policy reform to achieve greater gender equality. The dilemmas inherent in feminist reliance on the state surface when the outcomes of abortion's judicial history in the U.S. and legislative history in India are evaluated in relation to women's movements initiatives. This puzzle calls for not only the recognition of how state policies are enacted, but also how state policies are and are not implemented. The histories of the abortion debate in both the U.S. and India challenge

any hard-and-fast definitions of feminism and demonstrate the importance of considering the historical, social, cultural contexts, as well as the larger political environment.

Literature Review

Feminist theorists remain divided on the question of women's movements' reliance on state policy reform to achieve greater gender equality, both acknowledging the relative necessity and inherent failures of such a strategy. While feminist theorists, such as Rhode (1994) and Piven (1984), argue that the state can be mobilized on behalf of women, they are also aware of the shortcomings of women's movements' reliance on the state. Pateman (1989) and Ferguson's (1984) arguments help flesh out the limitations of such a strategy by highlighting the state's patriarchal nature, the disparity between the public and private sphere, and women's unique and incomplete integration into the public sphere.

On the one hand, women activists and feminists may make use of the state to achieve feminist goals, e.g. by enacting laws or achieving legal rights. Rhode (1994: 1187) asserts that the democratic liberal state can be "mobilized to prohibit sex-based discrimination." Nevertheless, she finds that "liberal institutions have not in fact delivered on their commitment to ensure equal concern and respect for women" (1994: 1187). Likewise, Piven (1984) argues that political resources can be gained on the behalf of women by fostering a relationship with the state. Rhodes and Pateman (1989) would cautiously agree, wary of the state's tendency to reinforce male domination. Pateman recognizes the way in which modern political theory has ignored the "problem of patriarchal power or the government of women by men" (2).

While the state may help women activists and feminists may advance their goals, feminist theorists, such as Pateman (1989) and Ferguson (1984), do not underestimate the patriarchal nature of the state. One of the ways in which the state's patriarchal power has been masked is by clearly dividing public and private life, with the private sphere traditionally unhampered by governmental

intervention (Pateman 1989; Bush 1992; Gordon 1990). Pateman (1989), an early contributor to the feminist analysis of democratic theory, argues that political theory bases its inquiries on the assumption that subjects reside within the public realm of the state and economy and that the private realm of domesticity, the family, and sexual relations is not of the state's concern. When theorists examine the public, isolated from the private, they are able to "assume that nothing or no one of significance is excluded;" in other words, Pateman (1989: 3) continues, "theorists work on the assumption that the public world, and the categories through which it presented in theoretical argument, are sexually neutral or universal, including everyone alike." In reality, the private and public realms are "mutually interdependent." The misconceptions of the nature of the private and public sphere perpetuate the state's patriarchal power, curbing the success of women's movements employing the state on their behalf.

According to Pateman (1989: 4), women have been incorporated into public life in a different manner than men; women have been included as 'women,' in so much as "beings whose sexual embodiment prevents them from enjoying the same political standings as men." Liberal frameworks, according to Rhode, "frequently take women's objectives as given and assume that women can enlist the state on their behalf through group leverage in democratic processes;" however the state plays a dual role, not only responding to "expressed desires," but also actively "legitimizing, suppressing, or redirecting them" (1994: 1189). Ferguson (1984: 177) continues that liberalism "proceeds as if women were already free and self-constituting," when they are precisely not, confined by the patriarchy of the family and society. While feminist theorists, such as Rhode and Piven, argue that the state can be mobilized on behalf of women, the disparity between the public and private sphere and women's incomplete integration into the public sphere, continue to be problematic.

Indian feminists have weighed in as well, acknowledging the highly ambivalent relationship between feminist activists and the state. With the given conundrum, Ray (1999: 13) asks: “should [women] pursue legal reforms, push for state enforcement of already existing laws, or remain as ever-vigilant watchdogs to prevent erosion of hard-won women’s rights?” Furthermore, Agarwal (1988: 27) asks, “Can such groups [women and non-governmental organizations] participate in government policy-making forums or accept State funds without being coopted or controlled by the State?” Especially women of the third world, argue Alexander and Mohanty (1997) cannot escape the state intervention. Ray (1999: 13) reiterates arguments of other feminist theorists, acknowledging the fundamentally patriarchal nature of the state as well as its ability to create and change “laws about wages, inheritance, marriage, divorce, eligibility for the armed forces, and other issues crucial to the quality of women’s lives.” On the one hand, Ray acknowledges the gains from such laws, though coupled with the inescapable patriarchal power of the state. The state’s patriarchal nature and its tendency to reinforce government of women by men crosses national and cultural lines; both Western and non-Western women are pressured by the necessity of reliance on the state to advance women’s equality and yet hindered by the state’s fundamentally patriarchal nature.

In the specific context of reproductive freedom in the U.S., feminists have demanded that the state guarantees basic conditions necessary for reproductive autonomy. In India, by contrast, the women’s movement and feminist activism to end sex-selective abortions is part of the greater project to end violence against women and should not be conflated with curbing women’s reproductive rights. Both call for not only the redefinition of the boundaries between public and private life within the liberal state, but also for a narrowing of the separation between formal rights and social realities.

One of the ways in which social movement theorists have defined social movement organizational success is by one or a combination of the following: obtaining access to

institutionalized channels of political decision making (Zald and McCarthy 1979), influencing targets such as legislatures, courts, media, or regulatory agencies (Zald and McCarthy 1979), or achieving stated goals, often reforms in state policy, (Freeman 1979). In the case of the women's movements of the U.S. and India, both were successful in securing legal reform that addressed their respective issues: *Roe v. Wade*, which legalized abortion in the U.S. and the Maharashtra Ban on Sex-Determination Tests, which banned the use of genetic tests for sex determination in India. Unfortunately, there is little theorizing or empirical evidence about how movement success at reforming state policy actually creates changes in the conditions of everyday life for wronged people nor about how policy reform leads to change in social institutions (Gusfield 1981, Zald and McCarthy 1979, Bush 1992). Though social movement organizations may be successful by standards identified by social movement theorists, the state's mediation and implementation of new policies is equally, if not more important, than the enactment of new policies.

Bush (1992) argues that defining the success of women's movement as securing access to institutionalized political decision-making or having policy reform legislated runs the risk of ignoring the ways in which the liberal democratic states are structured by gender inequality. The state, nonetheless, is not so dominant that women's movements' demands are excluded from institutionalized channels. Though potentially strengthening the capacity of the state to incorporate women's movement demands, by only getting legislation passed, the foundations of such issues may remain unaddressed (Bush 1992).

Both "victories" for women's movements in the U.S. and India, though granting formal rights, address symptoms of the problem rather than the source. In the U.S., *Roe v. Wade* grants women the right to terminate a pregnancy free from "undue burdens;" yet, "burdens" such as race and class have been neglected. Rhode argues a range of funding and service restrictions "disproportionately burden access to abortion by poor and minority women," targeting those that

are “least able to protect their interests through political channels and least able to bear the costs of an unwanted child” (Bush 1992). The dismal reality is hardly tolerable: *privileged* women get rights. Additionally, the government’s inadequate response to pro-life terrorism and violent protest has not only restricted the number of abortion providers, but has also amplified the risks and trauma associated with the procedure (Bush 1992).

Similarly, the Maharashtra Ban on Sex-Determination Tests is credited to the work and activism of the Forum Against Sex Determination and Sex Pre-Selection (FASDSP), a small organization in Bombay. The FASDSP sought a two-pronged strategy: to pressure the government to ban the practice of sex-determination tests (SDT) by revitalizing public opinion against the practice, and to change the attitudes and values held for daughters (Everett 1998). Though it is necessary to recognize the shortcomings of the women’s movement and FASDSP’s strategies, it is equally, if not more so, important to recognize the Maharashtra Ban as ‘social legislation,’ meaning, “the legislation was intended to educate the public about the government’s position [against SDT], but not to be strenuously enforced” (Everett 1998). In conjunction with the state’s failure to enforce the ban against SDT’s, FASDSP activism fizzled following the passage of legislation. The ineffective policy halted activism and the continuation of the second prong of the Forum’s strategy, i.e. consciousness raising activity. In effect, the symptom of the problem, i.e. banning sex-selective abortions, was addressed, but not the source of violence against women in a male biased, patriarchal state.

The issue of abortion in the U.S. and India has been studied extensively, providing a rich pool of resources to draw from. Gordon (2002) provides a thorough account of the general history of birth control politics in the U.S., arguing that birth control has remained primarily an issue of politics, not technology. Ginsburg (1989), though a more anthropological account, looks at pro-life

and pro-choice activism in Fargo, North Dakota, specifically the Fargo Women's Health Organization—the first freestanding facility in the state to provide abortions publicly.

Chandrasekhar (1974) offers a thorough description of India's liberalization of the abortion law as well as India's population problem of the 1970s. Chandrasekhar argues that though Hindu texts condemn abortion, the state did not experience the same religious struggle, as seen in the U.S., because the pressing issue of over-population outweighed religious arguments. Menon (2004) traces the debate of abortion in India in relation to feminist politics and makes the careful distinction between reproductive rights and violence against women. Lastly, Ray (1999) considers the social movements in both Calcutta and Bombay; her writing on Bombay focuses heavily on the FASDSP's work to ban sex-selective abortions. Ray is also most helpful in developing the notion of social movement fields, recognizing that organizations do not exist within a vacuum, but rather interact and respond to 'fields,' in this case, political fields.

By situating the two histories of abortion politics in India and the U.S. together, the chiasmic structure, or cross-shaped configuration, of movements and processes that occurred in each respective country becomes apparent. The women's movement in the U.S. sought reproductive freedom, mirroring the women's movement of India that sought to ban sex-selective abortions and end violence against women. Likewise, the Right-to-Life movement in the U.S. largely concerned with the preservation of motherhood and the family as a social structure parallels the fears of over-population and preservation of social order in India, the primary catalyst for abortion's legalization. Informed by feminist theory and social movement theory it is necessary to consider the implications and "success" of both women's movements relying on state policy reform to achieve greater gender equality.

Part One: Initial Movements in India and the U.S.

Growing Fears of Overpopulation: The History Preceding Legal Abortion in India

Abortions were commonly performed illegally in both India and the U.S., but the conditions and circumstances preceding legal abortion in each country greatly differed. Feminist goals, i.e. reproductive freedom, marked the initial movement in the U.S., whereas the movement preceding the liberalization of the abortion law in India, characteristically anti-feminist, must be contextualized within India's family planning program.

As early as the 1930s, overpopulation had been a pressing issue for the Indian subcontinent. India's rapid growth in population was a result of numerous factors including, a preexisting large population, formerly high birth rates and recently rapid declining death rates, high marriage rates, early marriages, a lessened stigma for widows to remarry, an agrarian economy relying on a large rural labor force, and a health revolution (Chandrasekhar 1974). British rule and officials were apprehensive about the sheer size and continued growth of the Indian population. The Congress Party's National Planning Committee, established in 1935, encouraged the State to implement a family planning program, encouraging couples to limit their number of children (Smith 1973). Gandhi himself favored the restriction of family size by practicing *Brahmacharya*, or abstinence, but opposed the use of contraceptives. Nehru, the first and longest serving prime minister of independent India, was also in favor of family planning, but in the 1930s and early 1940s, India's political freedom was the most prioritized goal—all other issues made secondary (Smith 1973).

Though the First Five Year Plan was executed in 1951, it was not until 1967 that a more "vigorous, new, anti-natalist policy was formulated and an all out campaign to control population growth launched" (Chandrasekhar 1974: 75). The more aggressive campaign included propagandistic banners, sterilization, and increased availability of contraceptives. All available mass-media was infused with slogans such as, "Two or three children—enough," or "If you have two, that will do" as well as Red Triangle symbols, which identified programs and locations of family planning clinics, supplies, and services (Chandrasekhar 1974: 75). Later, banners promoting sex

determination tests (SDT) used for sex selective abortions echo similar paternalistic sentiments as those used to promote smaller families.

For a “technologically backward country” with a “vast culturally heterogeneous population,” like India, there is no single method of contraceptive suitable to all, and thus a “cafeteria approach” was taken, advocating sterilization, IUDs, and condoms (Chandrasekhar 1974: 76). According to the Ministry of Health and Family Planning, by January 1970, 7 million sterilizations had been performed: 82.4% were vasectomies and 17.6% were tubectomies. Also, 3.25 million IUDs had been inserted. Statistics reveal a strong urban bias; the 1961 census indicated that 80% of India’s total population resided in rural areas, nevertheless, only 60% of sterilizations and a comparable number of IUD insertions were rural-based (Smith 1973). The aggressiveness of the family planning program speaks to the urgent fear of overpopulation and contextualizes the imminent liberalization of the abortion law.

In a meeting held on August 25, 1964, the Central Family Planning Board of the Government of India, a policy-making body, voiced concern over the issue of abortion and decided to appoint an eleven-member committee to study the “subject of abortion in all its aspects, legal, medical, moral and social, and to make suitable suggestions to alter the existing law on the subject” (Chandrasekhar 1974: 83). Large numbers of women, especially poor women residing in rural areas, were suffering and dying from failed attempts to self-abort or had received botched illegal abortions from questionably qualified practitioners; “an abortion which could have been aseptically performed under proper medical supervision becomes under these circumstance a case where doctors have to fight, sometimes in vain, for the life of the mother, expending the best available skill, drugs and equipment” (Chandrasekhar 1974: 82). The unfortunate condition of women’s healthcare in addition to the issue of overpopulation compelled the government, medical profession, and general public to review and reevaluate the question of illegal abortion.

After a series of studies, interviews, and surveys, the Committee submitted a report to the Government at the end of 1966 with their recommendations, including additional stipulations to allow termination of pregnancy by a qualified physician, not only to save a woman's life, but also in the case of serious risk to her life or health, whether physical or mental, or if child should suffer from severe physical or mental abnormalities, or in the case of rape or incest (Chandrasekhar 1974). Acknowledging the common fear of legal abortion, i.e. repeated misuse of the procedure, the Committee included that contraception should still be vigorously promoted; furthermore, to "prevent the danger of repeated abortions in the case of women who are not fit to bear the strain of further pregnancies the medical practitioner should advise the woman and/or her husband to undergo voluntary sterilization" (Chandrasekhar 1974: 86). The Committee's recommendations clearly reveal that improving maternal healthcare was a central concern for the revised abortion law.

The Central Family Planning Council accepted the recommendations of the Committee on October 7, 1967, with the amendment that when "pregnancy exceeds three months, such an abortion is performed by the qualified medical practitioner only after obtaining a second opinion in the matter from another qualified practitioner" (Chandrasekhar 1974: 86-7). Similar to the trimester system established by *Roe v. Wade*, access to abortion in India also becomes more difficult past the first trimester. The Medical Termination of Pregnancy Bill (MTP) was finalized in 1969 and enacted in 1971. Interestingly, India never had a serious anti-abortion stream of opinion or movement, despite the existence of major religions: Hinduism, Islam and Christianity (Menon 2004). Arguably, the predominantly Hindu parliament was able to pass abortion measures more easily than Western Christian nations, because the religious beliefs of a previous age had to be compromised in order to cope with pressing modern needs (Chandrasekhar 1974).

It is impossible to locate a single motivation behind the liberalization of India's abortion law. The present writer in the Rajya Sabha (Upper House) of the Indian Parliament presented the Bill in

1969, urging that abortion must be understood from three points of view: that of the woman—“her physical and mental health, and her freedom,” of the “child who may be physically deformed or mentally retarded, and the unwanted child who becomes the unloved, uncared for, and in time the delinquent child,” and lastly, from the point of view of the “state and society and the totally socio-economic and demographic picture” (Chandrasekhar 1974: 89). The final point of view exemplifies India’s fear of overpopulation. Chandrasekhar states: “the unwanted child who cannot be supported by his parents or even the larger joint family (which is gradually breaking up) ends up on the pavement with a beggar’s bowl, and becomes a starving, disgruntled and anti-social citizen, a burden to himself, society and the state” (1974: 89). While the legalization of abortion in India may be more palatably framed as a healthcare issue, as Chandrasekhar articulates, the palpable fear of overpopulation cannot be ignored. The liberalizing of India’s abortion law in 1971, though concerned with meeting basic standards of women’s healthcare, was never an attempt to empower, liberate, or grant Indian women reproductive freedom. It is impossible to ignore MTP’s context within India’s larger family planning program—arguably, a series of reproductive laws and regulations, drafted and proposed exclusively by male officials, to be imposed on women’s bodies.

India’s legalization of abortion was not overlooked abroad. In the U.S., with the abortion debate heightening, even the *New York Times* ran a single-columned special entitled, “India May Revise Law on Abortion” (1969). The article notes: “Although the Government is presenting its liberalization bill as health and humanitarian measure, family planning officials are understood to be hoping it will have at least some effect in dampening India’s population growth” (1969). It is clear from the impending problem of overpopulation and top-down means with which India’s abortion law was liberalized, that legalization of abortion was another facet of the family planning program and means of population control, and may be characterized as anti-feminist.

“The Personal is Political:” Reproductive Freedom in the United State

Conversely, the 1973 Supreme Court ruling of *Roe v. Wade*, though influenced by overpopulation discourse of the 1950s to 1970s, is considered to be “one of the most clear-cut and concrete among many women’s rights gains of the 1970s” (Gordon 2002: 297). In the U.S. the abortion debate has been framed in feminist discourse as an issue of reproductive freedom. Petchesky (1983) identifies two essential ideas that underlie the feminist view of reproductive freedom. The first derives from “the biological connection between women’s bodies, sexuality, and reproduction,” “that women must be able to control their bodies and procreative capacities” (2). The second, more historically and morally bound, states that “under the existing division of labor between the sexes, [women] are the ones most affected by pregnancy, since they are the ones responsible for the care and rearing of children,” thus, “it is women who must decide about contraception, abortion, and childbearing” (2).

Second radical wave feminists, which comprised organizations such as the Red Stockings and NARAL located the right to legal abortion as central to the feminist struggle for women’s autonomy. They believed and argued “women’s most fundamental subordination occurred in what has often been conceived by women’s historians as the private sphere” (Nelson 2003: 35). Only by addressing the root of women’s subordination, “in the family, in regards to women’s bodies, and in regards to women’s control over their reproduction—could feminists begin to eradicate sexism in the public sphere” (Nelson 2003, 35). Second wave feminists chose to make personal and private problems into political demands; thus, the slogan, “The personal is political,” was adopted in the campaign to liberate women (Nelson 2003). “The personal is political” strove to renegotiate the binary of the private and public spheres.

Though abortion was largely unregulated in the first two-thirds of the nineteenth century, circumstances changed in the last third of the century when the physician led movement outlawed abortion except under special circumstances (Ferree et al. 2002). The movement sought to

medicalize abortion, and “held that physicians could perform abortions to preserve the life of the mother but did not spell out how physicians were to make this discrimination” (Luker 1984: 40). Casting abortion in a medical framework temporarily obscured the morality of abortion, by entrusting the official decision to the discretion of doctors (Luker 1984). However, the 1950s marked a period of medical and technological advances that vastly improved and eliminated conditions that typically endangered the health of mothers (i.e. tuberculosis, cardiovascular disease, pernicious vomiting). While the need for therapeutic abortions decreased, many physicians still offered abortion services. In response, the medical profession created hospital abortion committees to mediate abortion cases and avoid the “threat of potential conflict between the adherents of strict and broad interpretations of the law” (Ginsburg 1989: 34).

Arguably, it was the increasing disintegration of physician consensus to terminate or continue a woman’s pregnancy, as well as the increasingly public decision-making process among hospital committees that prompted some of the first activism to liberalize abortion laws. American Law Institute (ALI) proposed a model abortion law that would legalize abortions under the circumstances that the pregnancy was a result of rape or incest, that the mother’s physical or mental health were in grave danger, or that the child was at risk of serious physical or mental defects (Ginsburg 1989; Ferree et al. 2002). No reform was achieved at this time because of little public interest. Though two events in 1962 marked the end of the public silence – an episode of a popular prime-time television show, “The Defenders,” and the case of Sherri Finkbine. Condit (1990) details both events, which opened abortion reform as an openly discussible debate and boosted reform efforts.

Additionally, the liberalization of contraceptive legislation led population control professionals to view abortion as a necessary step towards curbing population growth, though many professionals joined the movement cautiously in fear of its political controversy (Ginsburg 1989).

The contraceptive laws passed in the 1960s were policies largely shaped by fears of over-population and need for fertility control in the U.S. The FDA approved oral contraceptives in 1960, the Supreme Court legalized the sale of contraceptives to married couples in 1965, and President Johnson approved a \$20 million contraceptive program in 1967, making contraceptives more acceptable, and transforming them into an explicit goal for policy-makers. The fear of overpopulation and concerns of fertility control starting in the 1940s and 1950s was an impetus for many of these decisions regarding contraceptives. State officials and population control agencies shaping population policy in the 1950s through 1970s would have preferred to avoid legal abortion; “abortion has never been an efficient method of reducing fertility from the standpoint of population controllers” (Petchesky 1983: 118). However, Petchesky argues that once it became clear that legal abortion could not be avoided the “population establishment rationalized the change in law by invoking the specter of the ‘population explosion’” (1983: 118).

With the legality of abortion remained in flux, another constituency was forming, organizing to provide abortions services, counseling, and referral services for women. Underground abortion networks had been in existence, and shared the same goals as “above ground” organizations in aiding women, but their covert operations, paradoxically, both undermined and accepted the laws of abortion. One of the most famous was Jane; an underground collective based in Chicago, which performed more than 11,000 successful, though illegal, abortions from 1969-73 (Gordon 2002). Many of the women working for Jane learned how to perform the procedure themselves from the organization’s primary physician, who they later learned was not an actual doctor. They adopted the, “Well, the hell with it. If he can do them, we can do them” thought; gradually, laywomen began performing abortions on women in need, without incident (Gordon 2002: 301). Jane not only had an exemplary safety record, but also a 75% drop in prices, providing affordable options to women (Gordon 301). More radical, underground, referral groups began operating openly, “inviting arrest

and conviction in order to challenge the law” (Ginsburg 1989: 37). Underground abortion networks, such as Jane, illustrate women’s willingness to assume control over their discontent with the current availability of and restrictions on abortion.

With the abortion rights movement gaining momentum, a divide formed between advocates of repeal or reform. The first set of major players was based in New York. Consisting of more radical feminists, organizations such as The New York chapter of the National Organization for Women (NOW), the New Yorkers for Abortion Law Repeal, and the Redstockings favored repeal of all restrictions on abortions. NOW relied on direct action strategies, “from invading legislative hearings, to holding speak-outs and demonstrations, to lobbying *against* reform campaigns that would still maintain medical restrictions on abortion practice” (Ginsburg 1989: 39). Similarly, by disrupting legislative assemblies the Redstockings demanded the inclusion of women’s voices and opinions in the abortion law debate.

Planned Parenthood and The National Association for the Repeal of Abortion Laws (NARAL) are among the major players of the abortion movement at the national level; the former an advocate of reform, the latter of repeal. Firstly, Planned Parenthood emerged as a leading advocate, organized around getting states to adopt the ALI model law. Planned Parenthood remains a key abortion provider in freestanding clinics (Ferree et al. 2002). NARAL, established in 1969, was the first and dominant, national group for the repeal of abortion laws. While feminists demanded abortion access for all women, and liberals advocated for the right to choose, NARAL was able to unite the two stances—achieving common ground by establishing the overturn of abortion’s medical model as their primary goal. NARAL included “feminists, radical clergy, liberal lawyers and politicians, health professionals, and population control and welfare rights advocates but also conservative groups such as Church Women United, Young Women’s Christian Association (YWCA), and the Commission on Uniform State Laws” (Ginsburg 1989: 40). It was the redefinition

of abortion as a “democratic right” that helped to mobilize such a diverse group of contributors.

NARAL attacked the existence of abortion laws, and by introducing legislation and demanding the passage of repeal bills in state legislatures, illustrated that women sought abortions not under the conditions outlined by the recommendations of ALI, but because women desired to choose “if, when, and with whom they would have children.” Shifting attention from state legislatures to the courts, proponents of abortion directly challenged the constitutionality of current abortion laws. By 1971, “seventy criminal and civil cases were pending in over twenty states,” and the Supreme Court chose to hear two of those cases, one of which being *Roe v. Wade* (Ginsburg 1989: 41). The Supreme Court granted their decisions on January 22, 1973, legalizing elective abortion within the first trimester, with restrictions to protect maternal health in the second trimester, and the potential life of the fetus in the third trimester.

Abortion rights activists helped to spread a feminist understanding of abortion, transforming the issue into one “as a right of self-determination to which all women were entitled” (Gordon 2002: 300). Nevertheless, some supporters of abortion rights, prominently including Justice Ruth Bader Ginsburg, claimed that the *Roe* decision came prematurely and was a judicial mistake—“as *Roe* energized pro-life conservative social movements, it simultaneously demobilized social movement support for abortion rights” (Balkin 2005: 12). In catering to both sides of the debate, *Roe v. Wade* failed to completely satisfy proponents and opponents, resulting in a slew of Supreme Court decisions and state regulations. The consequences of *Roe v. Wade* and the U.S. women’s movement’s reliance on the state, specifically NARAL, will be further discussed in Part Three.

Proponents of abortion in the U.S. were thus a heterogeneous group—ranging from feminists to physicians to radical clergy; nevertheless, the movement clearly held feminist ideals and goals, in trying to secure women’s reproductive rights. *Roe v. Wade* was based on the doctrine of “the right to privacy,” not the right to choose; consequently, physicians maintain the power to make a

medical decision in the second and third trimester (Ginsburg 1989: 41). The Court also did not guarantee the availability of abortion, “nor did the health care system respond uniformly to the increasing demand for abortion services” (Ginsburg 1989: 41). *Roe v. Wade*, though a landmark Supreme Court decision, was not entirely successful in meeting all of the demands set forth by the women’s movement. The judicial decision sought to appease both proponents and opponents of abortion, in a way that the Indian abortion legislation did not. *Roe v. Wade*, though rife with upsetting limitations for feminists of the women’s movement, resulted from feminist activists’ demand for reproductive freedom. Population control, though very relevant to the liberalization of contraceptives in the U.S., played a marginal role in U.S. abortion politics discourse, whereas in India, the legalization of abortion occurred in response to fears of overpopulation with an unmistakable relationship to India’s family planning program.

Part Two: Counter Movements in India and the United States

Banning Sex Determination Tests: The Women’s Counter Movement in India

Counter movements emerged in India and the U.S. challenging the legalization of abortion. The Right-to-Life movement in the U.S., concerned with the morality of abortion and preservation of the family and motherhood, directly opposed *Roe v. Wade* and women’s movement initiatives. The counter movement in India, however, differed in motives and constituencies. The Forum Against Sex Determination and Sex Preselection (FASDSP) led the campaign against sex selective abortions and was part of the larger Indian women’s movement to end violence against women.

The United Nations General Assembly’s defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life” (Khanna 2009: 1). Indian society displays unique and particularly brutal forms of violence against women, i.e. dowry deaths and sati. Female foeticide is an

extreme manifestation of violence; female fetuses are selectively aborted following pre-natal sex determination tests (SDTs), avoiding the birth of girls all together.

The introduction of amniocentesis and ultrasound in India, typically used to detect fetal abnormalities, has resulted in unimaginable consequences. Since 1975, when the All India Institute of Medical Sciences first began using amniocentesis, there has been a rapid increase of such tests being used for sex-selective abortions. The declining proportion of females to males reveals the issue's magnitude; as of 2001, the sex ratio of girls to boys has dropped, in some parts of the country, to less than 800:1000 (Kishwar 1999). Dr. Sunil Kothari, the owner of a major ultrasound and abortion clinic in Delhi, testified in a BBC interview, "This is the best way of population control for India;" he also admitted to having performed 60,000 such tests (Kishwar 1999: 78). Dr. Kothari is only one of thousands of physicians in India operating clinics conducting sex determination tests and sex selective abortions.

Studies have shown the adverse affects accompanying a scarcity of women in society. Areas of low sex ratios tend to be more misogynistic and those with higher sex ratios tend to allow for greater female independence and dignity. Low sex ratios also result in seclusion, disinheritance of women from property, low female literacy rates, poor health, low employment rates, and an increased incidence of domestic violence. Conversely, high sex ratios lead to more secure inheritance rights, independent incomes, higher literacy rates, better health and better opportunities for political participation, at least in local level politics (Kishwar 1999). Thus, Kishwar and others argue sex selective abortions work to perpetuate and worsen the problem. This is largely a "culturally conditioned choice rooted in certain economic and political power relations within family and the community" (Kishwar 1999: 86). For many women the dread of having a daughter results from numerous sources: they may not want their daughter to have the same life they or their mothers' had, having a daughter may degrade their status in the family—making them vulnerable to

abuse, or the family unit sees a daughter as an economic burden because the necessary dowry for marriage and limited employment available for women (Kishwar 1999). While the Medical Termination of Pregnancy Act 1971 framed the abortion decision purely between the woman and her medical practitioner, a women's right to abortion is very restricted and is typically a family decision (Khanna 2009).

After a failed attempt to ban pre-natal sex determination between 1977-1985, which only led to the privatization and commercialization of such technology, women's groups, civil liberties, and health movement activists launched a campaign against pre-natal sex determination. The Forum Against Sex Determination and Sex Preselection (FASDSP) formed in 1984 in an effort to ban SDTs by working closely with sympathetic politicians and friendly bureaucrats (Menon 2004). The Forum developed a two-prong strategy that sought not only to reform abortion policy but also to change existing attitudes regarding the value of daughters and women. 1988 marked a state level, legislative breakthrough: the state of Maharashtra enacted the Maharashtra Regulation of the Use of Prenatal Diagnostic Techniques Act (PND). PND was passed following a study, sponsored by the government, which revealed that most cases of amniocentesis were conducted for the sole purpose of sex determination (Kishwar 1999). PND sought to regulate private facilities offering SDTs and established regulatory committees responsible for implementing the ban. But the change was largely symbolic, and enactment largely took the form of replacing signs that once read, *Ladka ya ladki jaanch karaiye*, "Find out if it's a boy or a girl," with ones that read, *Swasth ladka ya ladki?*, "Healthy boy or girl?", or *Garbh mein bacchhe ki har prakar ki jankari*, "Everything you want to know about your child in your womb (Kishwar 1999: 80). As mentioned in Part One, the messages on propagandistic banners outside clinics offering SDTs resemble the paternalistic slogans of the family planning program.

Frustrated but not defeated, the Forum continued to campaign for all-Indian legislation. The

Prenatal Diagnostic Techniques Act (PNDT) 1994 responded to their long efforts and activism. Nevertheless, PNDT took the same approach as PND—again, leaving the Forum dissatisfied. Unfortunately, the PNDT Act excluded many of the Forum’s recommendations, e.g. the Forum did not want criminal sanctions placed on women seeking SDTS and also hoped for the continuation of consciousness raising activities in pursuit of changing the cultural and societal male preference. PNDT was neither taken seriously, nor was the machinery or resources necessary to enforce it provided.

The failure of the PNDT Act illustrates that simply passing a law will not solve the problem of sex selective abortions, especially in a country where population control, economic concerns, and power relations within the family influence the value of women. The counter movement in India, led by feminist activists of FASDSP, must be understood in relation to the larger Indian women’s movement to end violence against women. The women’s movement in the U.S. and India may seem diametrically opposed—one preceding, one following the legalization of abortion, one seeking removal of state regulation of abortion, the other seeking state regulation—but once historical, political, cultural, and economic contexts are considered, a more thorough and complex picture emerges. Part Three will consider FASDSP’s reliance on state policy reform as well as the legislative history, including PND and PNDT, more closely.

Right-To-Life: The Growing Anti-Abortionist Movement in the United States

The impetus behind the women’s counter movement in India differed greatly from the Right-to-Life Movement that emerged in the U.S. following *Roe v. Wade*. The Right-to-Life Movement was a single-issue movement with unexpected strength that sought to overturn *Roe v. Wade*. The anti-abortionist effort, though in existence prior to 1973, had been relatively small, developing into a well-organized social movement only after the legalization of abortion. Anti-abortionists concentrated their efforts on the status of the fetus as a human life with its attendant

rights. The medicalization of abortion in the ninetieth century and first-half of the twentieth century had temporarily eliminated the current debate over the defining the status of a fetus, but this issue resurfaced after *Roe v. Wade*, and transformed understandings of “abortion from a traditional form of reproduction control into murder” (Gordon 2002: 303).

Roe v. Wade held heavy, disturbing symbolic messages for anti-abortionist activists. The Supreme Court had ruled that an “embryo was no a person but only a potential person,” which anti-abortionists found horrifying; however the decision also stated that “reasonable people do not agree on whether the embryo is a person,” granting both proponents and opponents of abortion equal respectability (Luker 1984: 140). Lastly, the Court’s ruling eliminated the right of states to regulate what happens to the embryo, in effect denying the embryo institutional protection (Luker 1984). The ruling was seen as both bizarre and unreal to anti-abortionists, for they believed that the status of an embryo as a human life was both fundamental and obvious.

The movement, initiated by the Catholic hierarchy, was concerned not only with the morality of abortion but also the need to preserve social order, i.e. motherhood and the family as an institution. The new group of anti-abortionists were “predominately women with high school educations (and occasionally some college) who married, had children, and were not employed outside the home;” in essence housewives (Luker 1984: 138). Many of the women active in campaigns were devoted to preserving their positions as mothers and traditional womanhood (Gordon 2002). Catholic leaders dominated the National Right to Life Committee (NRLC), and were able to take advantage of priests’ contacts with authority over parishioners to raise funds, recruit activists, and foster an antiabortion sentiment among Catholics (Gordon 2002). The anti-abortionist movement in the U.S. became “one of the largest social movements in the late twentieth century, possibly the largest grassroots conservative movement” (Gordon 2002: 303). The movement did not stay homogenously Catholic for long, but attracted activists committed to

overturning *Roe v. Wade*, on the grounds of its immorality and threat to social order.

With a generous funding base and readily available resources, the anti-abortionist movement was able to implement several methods of campaigning against the legalization of abortion. From consciousness raising print and advertisement to direct action strategy, anti-abortionist activists worked to advance their cause (Gordon 2002). Violent campaigns increased, from picketers obstructing clinic entrances to death threats and fatalities of abortion practitioners and clinic employees. Violence was justified due to the “violence” of abortion practitioners and belief that direct action was rooted in traditional American civil disobedience (Ginsburg 2002). Anti-abortionists struck fear in those offering abortions and women seeking abortions, successfully decreasing the availability of abortion and increasing the trauma and stigma of the procedure.

Though print, advertisement, and mass action played an important role in campaigning for anti-abortionists, their primary objective was legal reform. Through the 1970s-1990s, activists pressured legislatures at the state and federal level to place regulations and prohibitions on abortion. In Reagan’s administration, conservative court appointments shifted the Court’s decisions. One of the major victories was the 1977 upholding of The Hyde Amendment, which “prohibited the use of public funds for state abortion” (Gordon 2002: 311). Prior to this ruling, many women, approximately 295,000 per year, received abortions covered by Medicaid; however, following the cutoff of public funds, “80% of poor women who wanted abortions either scraped together the money at great cost to themselves and their families or resorted to unsafe, non-medical (including self-induced) abortions” (Gordon 2002: 312).

The growth of the anti-abortionist movement did not imply the disappearance of advocates of legal abortion, but was largely an anti-feminist mobilization against legal abortion in the U.S. Though the Right-to-Life Movement has yet to successfully overturn *Roe v. Wade*, the movement has made strides in curbing the accessibility of abortion, especially for poor women and women of color,

i.e. Hyde Amendment. Additionally, violent action has deterred physicians and practitioners who once offered abortion services. The Right-to-Life Movement, initiated by the Catholic Church, was not only concerned with the morality of abortion and status of the fetus as a human life, but also the preservation of the family and motherhood. The goal of preserving social order of the family and motherhood mirrors the Indian government's liberalization of the abortion law for the sake of preventing social unrest and overpopulation.

The chiasmic relationship between initial and counter movements of legal abortion is fully elucidated; proponents of legal abortion in India and opponents of legal abortion in the U.S. shared a similar goal of preserving social order and are characterized as anti-feminist. The women's movement in the U.S. preceded legalization and sought removal of state regulation for the sake of reproductive freedom, while the women's movement in India followed the legalization of abortion and sought state regulation of abortion, specifically SDTs, in an effort to end violence against women. Both women's movements held specifically feminist goals. The emerging puzzle is one full of implications and contradictions, challenging any hard-and-fast definition of feminism, and proves that consideration for the historical, social, cultural contexts, and larger political environment underlying the emergence of feminist politics is essential.

Part Three: Women's Movements and the State

India

While the women's movement in the U.S. preceded *Roe v. Wade* and sought to end state regulation of abortion, the women's movement in India mobilized *following* the legalization of abortion, in pursuit of state regulation of abortion practices, i.e. sex selective abortions. In both countries the women's movement relied on the State for policy reform to address their issue—in the U.S., reproductive rights, in India, violence against women. By comparing the objectives of each women's movement with the realized legislation and Supreme Court decision, the theoretical and

practical implications and shortcomings of such a strategy, i.e. women's movement employing the State on their behalf to achieve greater gender equality, will become apparent.

The Forum Against Sex Determination and Sex Pre-selection (FASDSP), which produced legislation banning sex selective abortions, formed in 1984 and was a small Bombay organization composed of men and women with backgrounds in science, as well as activism in the women's movement. FASDSP (1989) argued that the issue of female foeticide had to be seen as "(a) an integral part of women's oppression and discrimination, (b) misuse of science and technology against people in general and women in particular, (c) a concern of human rights." The way in which the Forum shaped and defined the issue of female foeticide as a form of violent gender locates their objective within the larger women's movement to end violence against women.

The Forum developed a two-pronged strategy that would not only achieve regulative legislation but also change the cultural devaluation of daughters. First, FASDSP sought to awaken public opinion to guide the campaign and pressure the government to ban the practice in the short term. Because regulation in government hospitals is easier, FASDSP sought to have SDTs banned in for-profit private hospitals. FASDSP began "nationwide signature campaigns, saturating the media with articles and debates about the issue, and drafting legislation to ban the tests" (Ray 1999: 108). Secondly, FASDSP's long-term goal was to change existing social attitudes and values towards daughters. Demonstrations were organized with parents marching alongside their daughters and hundreds of schoolgirls marching, waving flags with the slogan: "*Ladki na ladke se kam*" (Girls are not inferior to boys). Songs were written and sung calling for the equality between boys and girls, three video films were made, and on Children's Day in 1987, skits and songs emphasizing the need to value daughters and sons equally were performed at children's fairs (Ray 1999: 105). In April and May of 1988, FASDSP held *Nari Jeevan Sangharsh Yatra*, a "Campaign for Women's Lives," which connected female infanticide, foeticide, wife murder, and other forms of violence against women (Ray

1999). The Forum was both creative and exhaustive in their consciousness raising activities.

In addition to the consciousness raising activities and demonstrations, members of the Forum played a significant role in shaping the content of legislation. Members worked closely with friendly bureaucrats and sympathetic politicians, including Mrinal Gore, a socialist member of the Maharashtra legislative assembly with long-standing ties and involvement with the women's movement (Everett 1998, Ray 1999). Gore drafted a private member's bill entitled, "The Maharashtra Prohibition of Amniocentesis and other Sex Determination Medical Tests Act of 1986," which was introduced to the Legislative Assembly (MLA) (Everett 1998). The bill intended to prohibit SDTs and restrict amniocentesis to government facilities where doctors would be forbidden to disclose the sex of the fetus to parents. The state government assured Gore that the state would introduce a bill, but would not be able to accept the one drafted by the FASDSP (Ray 1999). Though their proposed bill was not accepted in its entirety, the Forum worked to influence potential legislation.

Forum members justified reliance on the state for both practical and strategic reasons. The state was seen as a credible authority on the issue of SDTs, and also possessed the resources necessary to conduct studies and collect data on SDTs. The government commissioned a study of the incidence of SDTs in Bombay, conducted by Dr. Sanjeev Kulkarni (1987). Kulkarni's findings, published in "Prenatal Sex Determination Tests and Female Foeticide in Bombay City—A Study," helped legitimate the issue of sex selective abortions and provided evidence of the proliferation of SDTs. Though the Forum is credited for creating the issue of sex selective abortions, arguably, it would not have been possible without institutional backing, provided by the state. This is an interesting distinction between the Forum and NARAL; NARAL did not have to "create" the issue of legal abortion in the U.S., but they were responsible for framing legal abortion as an issue of women's choice and reproductive freedom.

Nevertheless, Forum members held reservations concerning the close collaboration with the state. At the Feminist International Network of Resistance to Reproductive and Genetic Engineering in 1989, FASDSP presented a paper expressing tensions within the organization:

One the one hand, one is always wary about giving more control in the hands of the state, and on the other, this has been the thrust of this campaign. In fact in a society where the craze for a male child is so very predominant, our rigid stance against sex determination doesn't definitely agree with the majority opinion. So, here we have the unpleasant option of going against what the majority of people seem to believe in and collaborating with the state which most of the time is anti-people. Being forced into living with this dilemma our efforts have always been towards seeing this issue in a wider context and linking this campaign with the larger women's movement so that we can move towards a society where such kinds of forced control would not be needed at all (FASDSP 1989).

The Forum acknowledges the irony of their position and relation to the state in this excerpt. Because of the lack of initial interest or public backing of the issue, FASDSP was truly dependent on the state, which they admit is mostly "anti-people." The Forum also reiterates concerns expressed by Agarwal and other feminist theorists; though state involvement may help advance feminist goals, women's movements risk being "coopted and controlled by the State" (Agarwal 1988: 27).

The government's introduction and implementation of the Maharashtra Regulation of the Use of Prenatal Diagnostic Techniques Act (PND) in 1988 substantiated Forum members' reservations and tensions. In 1987, FASDSP had detailed a number of their concerns regarding the proposed legislation in a letter to S.B. Chavan, chief minister—such as the swift assembly of implementation machinery, that women undergoing SDTs should not be punished under the act, inclusion of activist input, and continuation of consciousness-rising activities emphasizing sex

quality (Everett 1998). Though the Act marked a state-level legislative breakthrough and proved that organized public opinion could force the Government to take action, the Maharashtra Ban contained a number of upsetting restrictions: (1) the regulated use of SDTs in private hospitals, (2) criminal sanctions against women pursuing SDTs, instead of *only* against medical practitioners, (3) restrictions on persons able to file complaints to the State Appropriate Authority (SAA) and State Vigilance Committee (SVC), two official bodies constituted to implement the act. The last restriction's upsetting consequences were two-fold; first, the Forum had hoped that activists would be able to intervene directly, though no Forum members were appointed to either the SAA or SVC, and secondly, PND built a 60-day time lag into the process of complaint, providing doctors with a window of opportunity to conceal illegal activity (Everett 1998, Ray 1999).

In addition to upsetting restrictions, the Forum's campaign was only partially successful because the legislation was essentially toothless. PND was intended to function by monitoring laboratories conducting SDTs, banning advertisements of SDTs, and deterring doctors from performing the tests at the risk of fines and imprisonment. The SAA was responsible for registering and monitoring laboratories as well as creating public awareness against the practice of SDTs and female foeticide. The SVC, on the other hand, was to pay unexpected visits to the laboratories, evaluate compliance, and review complaints by the public (Maharashtra Ban 1988). Nevertheless, the SAA and SVC rarely met nor did they file any court cases. Awareness-generating activities were not organized, no budget was provided for vigilance visits, and no effort was made to investigate laboratories that did not seek registration (Everett 1998). PND illustrates the importance of not only considering enacted legislation, but also its implementation.

Though the Forum could have opposed the less-than-satisfactory bill, members feared it was their only opportunity to ban SDTs. Moreover, the limited "success" of the Maharashtra Ban encouraged the FASDSP to pursue central legislation, continuing its campaign after the Maharashtra

Ban was enacted. The Pre-Natal Diagnostic Techniques Act (PNDT) was finally passed by Parliament in 1994 and signed by the president in 1995. PNDT took the same approach as the Maharashtra Ban; it sought to regulate private-sector facilities and establish committees to monitor laboratories. While SDTs advertising ceased, and many doctors stopped performing SDTs, operations moved underground, increasing the cost and reducing the safety and accuracy of such procedures (Everett 1998). As of 2001, the sex ratio of girls to boys has dropped, in some parts of the country, to less than 800:1000 (Khanna 2009). Skewed sex ratios are most pronounced in the states of Punjab, Haryana, and Delhi, where the first private sex determination clinics were established. The trend tends to be far stronger in urban rather than rural areas, and among the literate rather than illiterate population; Khanna states such a trend explodes the “myth that growing affluence and spread of basic education alone will result in the erosion of gender bias” (2009: 190).

Though the FASDSP was successful in gaining legislative reform, the PND of 1988 and PNDT of 1994 failed to end the practice of SDTs and continuing devaluation of daughters. It is necessary to consider both the shortcomings of the Forum as well as of the law, and the Forum’s strategy in employing the state of its behalf. First and foremost, the law was not written to include all of the Forum’s amendments, nor was it adequately enforced. Both PND and PNDT were full of loopholes and stumbling blocks. The government “lacked the machinery to investigate whether unregistered clinics were carrying out SDTs” (Everett 1998: 325). Maharashtra did not establish a system of registration of private health care centers nor standards for hospitals; thus it was unrealistic to expect regulation of certain tests. In many ways the PND of 1988 and PNDT of 1994 were social legislations, “intended to educate the public about the government’s position, but not to be strenuously enforced” (Everett 325: 1998).

Conversely, the Forum warrants some criticism. For a small organization, it would have been difficult to sustain commitment and enthusiasm—indeed, activism fizzled out following the passage

of PNDT. FASDSP also failed to account for all of the logistical details involved with implementing and enforcing the legislative reform (Everett 1998). Resources necessary to monitor the law's implementation were lacking; the Forum needed institutional backing. Once again, the question of women's movement's collaboration with the state arises. On the one hand, the Forum was a successful movement in achieving legislative reform; nevertheless, the government lacked political will to implement the law revealing their insincere undertaking of the SDT's issue. By allowing the state to monitor women, the FASDSP in essence handed more power over to the patriarchal institution. Lastly, an altogether different yet important critique is the genuine flaw in trying to make decisions for other women. Women undergoing SDTs were virtually absent from the dialogue of FASDSP; Kishwar argues that the movement would have been better off listening to *why* women are using SDT, that feminists must work for changes in inheritance and family structure to enable daughters to be valued—only then will SDT cease “to serve an important need” (1994).

United States

In the U.S., the women's liberation movement and population control establishment accelerated the process of legitimating and giving voice to the ideas that made legal abortion possible. NARAL was a key player in the U.S. abortion debate and the only national lobbying and membership organization devoted solely to maintaining the availability of safe, legal abortion. Thus, NARAL's objectives and role in the abortion debate will be evaluated in relation to the Supreme Court decisions of *Roe v. Wade* and *Webster v. Reproductive Health Services* as well as the Hyde Amendment. NARAL adopted the repeal position, following the feminist logic “that the former [reform] was steeped in conditions that denied women's capacity and right to make reproductive decisions” while repeal “would simply abolish any restrictive, discriminatory conditions impeding abortion so that medical authorities could no longer be moral gatekeepers.” (Petchesky 1983: 126).

The National Association for the Repeal of Abortion Laws (NARAL) was established at the First National Conference on Abortion Laws: Modification or Repeal? held in 1969. The twelve member, elected Planning Committee defined NARAL's purpose as:

NARAL, recognizing the basic human right of a woman to limit her own reproduction, is dedicated to the elimination of all laws and practices that would compel any woman to bear a child against her will. To that end, it proposes to initiate and co-ordinate political, social, and legal action of individuals and groups concerned with providing safe abortions by qualified physicians for all women seeking them regardless of economic status (National Abortion Rights Action League Records 1969-1976).

It is important to note NARAL's recognition of women's reproductive freedom as a human right, and their commitment to providing universal access to abortion.

From 1969 to 1973, NARAL worked with other groups within the women's movement to repeal state abortion laws and oversee abortion policies implemented in the few states, which liberalized their laws. In 1973, the landmark Supreme Court decision, *Roe v. Wade*, held that women's right to an abortion fell within the right to privacy (recognized in *Griswold v. Connecticut*) protected by the Fourteenth Amendment. The decision gave women total autonomy over the pregnancy during the first trimester and defined different levels of state interest for the second and third trimesters. The Court has reaffirmed *Roe's* central holding on multiple occasions: noting in 1992 (*Casey*, 505 U.S. at 859), "[t]he soundness of this . . . analysis is apparent from a consideration of the alternative," i.e., without a privacy right that encompasses the right to choose, the Constitution would permit the state to override not only a woman's decision to abort but also her decision to carry the pregnancy to full term (NARAL 2010).

The ruling in *Roe v. Wade* moved toward, while not completely satisfying, NARAL's demand for complete repeal. The two main points of contestation are the Court's tolerance of state regulatory involvement and the trimester clause. The Court recognized the state's valid interest in potential life, though *Roe* invalidated restrictive abortion laws that disregarded women's right to privacy (*Roe*, 410 U.S. at 159). In doing so, the Court was able to meet, partially, the demands of NARAL and the women's movement as well as those who opposed legal abortions. The Court rejected the argument that the right to choose is absolute and always outweighs the state's interest by imposing limitations and regulations. State regulations persist as an issue for NARAL, which will be seen further with *Webster v. Reproductive Health Services*.

Secondly, the trimester system incorporated into *Roe* proved to be problematic and deemed too "legislative." The Counsel from Texas argued that human life began at conception, that a fetus was a person under the meaning of the Fourteenth Amendment, and should have constitutional rights (Balkin 2005). Justice Blackmun sought to remove the judiciary from resolving the question of when life begins, nevertheless, it was recognized that "at some stage in the pregnancy, the state's interest in protecting the fetus became sufficiently compelling" (Balkin 2005: 9). Justice Blackmun offered an elaborate trimester framework in accordance with contemporary medical thought. Within the first trimester, the state cannot restrict a woman's right to an abortion by any means, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." In the second trimester, the state may regulate only "in ways that are reasonably related to maternal health," and after the point of viability, states can restrict and proscribe abortion as it sees fit, i.e. "except where it is necessary, in appropriate medical judgment" (*Roe* 410 U.S.). Justice William Brennan suggested that viability was imprecise and that the Court could not specify a specific cutoff point but should leave that question to medically informed legislatures. Blackmun ignored such suggestion and the result was *Roe*'s trimester system (Balkin

2005). The trimester system not only allows for state regulation but also continues to incorporate and perpetuate medical authority on the issue of abortion. In retrospect, Brennan's suggestion seems more appropriate rather than the hard and fast lines drawn by Blackmun's framework.

In addition, Justice Ruth Bader Ginsburg has claimed that the *Roe* decision was premature and "halted a political process that was moving in a reform direction and thereby . . . prolonged divisiveness and deferred stable settlement on the issue" (Ginsburg 1992). Arguably, Ginsburg was correct—*Roe v. Wade* opened the floodgates of future debate and Court decisions regarding abortion. Subsequent state regulations and Court decisions continued to impose upon and restrict women's right to choose, and forced NARAL and the U.S. women's movement to rely and turn to the courts for protection. NARAL became the National Abortion Rights Action League following *Roe* in 1973 to recognize the Court's repeal of restrictive abortion laws (National Abortion Rights Action League Records 1969-1976). While NARAL's activism continued, the counter, Right-to-Life Movement was gaining momentum, seeking federal laws to restrict access to abortion in every way possible (Stetson 2001). By 1976, the Court ruled that state governments were not obliged to pay for abortions, opening a new opportunity for opponents of abortion.

Henry Hyde, a Republican from Illinois, introduced an amendment to the appropriations bill for Health and Human Services (Ferree et al. 2002). The Hyde Amendment prohibited all federal funding for abortions through federal programs such as Medicaid, except when the life of the mother is endangered. Proponents of the Hyde Amendment successfully argued the coequal right of the life of a mother and fetus and that a women's right to choose did not give free reign to terminate life for convenience (Stetson 2001). Opponents argued that ending Medicaid funding targeted poor women and that "poor women alone would face the consequences of back room/back alley abortions with coat hangers and knitting needles" (Stetson 2001: 256). Later, exceptions for cases of

pregnancies that were a result of rape or incest were incorporated under the umbrella of the Hyde Amendment.

Regardless, the Hyde Amendment was a defeat for NARAL and its initiative to guarantee women's choice and access to abortion. Justice Powell, accepting the constitutionality of the individual states blocking Medicaid payments for the poorest women, wrote on behalf of the Supreme Court majority that "we are certainly not unsympathetic to the plight of an indigent woman who desires an abortion but the Constitution does not provide judicial remedies for every social and economic ill" (*Maher v. Roe*, 432 U.S. 464). Similarly, President Carter, a Democrat, responded, "Well, you know there are many things in life that are not fair, that wealthy people can afford and poor people can't. But I don't believe that the federal government should take action to make these opportunities exactly equal, particularly when there is a moral factor involved" (*New York Times* 1977: 10:3). Such remarks dismally reflect the view that the state is not responsible for meeting poor people's specific needs or equalizing their ability to exercise their rights—it is necessary for the state to shape the morality of the poor rather than limit the moral choices of the affluent.

Legal limitations achieved by the pro-life movement as well as violent and nonviolent action taken by the pro-life movement continue to curb access to abortion in the U.S. In 1989 plaintiffs were challenging a restrictive Missouri law, which they claimed violated *Roe*; Chief Justice Rehnquist declined to overrule *Roe*, but decided "none of the challenged provisions of the Missouri Act properly before us conflict with the Constitution" (*Webster* 492 U.S. 490). The 1989 *Webster v. Reproductive Health Services* opened the door for new legal limitations on abortion rights at the state level, though regulations and restrictions had to meet an ambiguous standard of not imposing "an undue burden" on pregnant women. Indeed, federal cases have come forward testing the boundaries of an "undue burden."

While the *Webster* decision allowed for new legal regulations on abortion rights at the state level, what proved to be additionally detrimental was violent and nonviolent action taken by the pro-life movement in limiting access to abortion. Following *Webster*, opposition to abortion through violent and nonviolent action grew steadily. Anti-abortion protestors invaded and blockaded clinics, at times, chaining themselves to the doors (Ferree et al. 2002). The National Abortion Federation reported 541 incidents between 1987-1992 and 264 incidents in 1993 alone (Ferree et al. 2002). David Gunn, a physician providing abortion services in Pensacola, Florida, was the first of four abortion doctors killed by anti-abortionists; death threats were common and further shootings and several murders of physicians and of staff at clinics providing abortions pursued (Ferree et al. 2002). The effects of anti-abortionists activism, violent and nonviolent, were deterring abortion providers. Women seeking legal abortions have access to fewer providers and rising costs, reflecting the insurance and security burdens that clinics faced (Ferree et al. 2002). Thus, it was not only state action limiting access, but also direct action taken by pro-lifers and anti-abortionists.

The opposing stances toward abortion in the U.S. have been translated into government policies that maintain the formal legality of abortion, but impose many practical and procedural obstacles on women who wish to obtain them—especially poor women and those who live in rural areas. Physicians and hospitals are not performing abortions because of repeated protests, harassment, and violence directed against abortion clinics and staff. Furthermore, many medical schools no longer provide training. While *Roe* energized the pro-life conservative social movement, it simultaneously demobilized social movement support for abortion rights. Instead of pressing for abortion reform in the states and at the national level, proponents of legal abortion, e.g. NARAL, were constantly placed on the defensive and repeatedly turned to the courts for protection. Reliance on the courts, in turn, diverted political energy away from forming a mass political movement for abortion rights that could have successfully countered the prospering Right-to-life movement.

Conclusion:

While much has been written on the abortion debate in both India and the U.S., no one has situated the two histories in relation to one another. In doing so, I sought to reveal the chiasmic structure, or cross-shaped configuration, of the initial movements and counter movements preceding and following the legalization of abortion in India and the U.S. In the U.S., feminists sought an end to state regulation of abortion; in India, feminists sought state regulation of abortion. In the U.S., anti-abortion activists worked to ban and curb abortion in the interest of a certain conception of social order, i.e. family and motherhood; in India, the state initiated legalized abortion, also in the interest of social order. The emerging puzzle is one full of contradictions and implications, which challenge any hard-and-fast definition of feminism and demonstrates the importance of understanding the historical, social, cultural contexts, and the larger political environment underlying the emergence and self-definition of feminist politics and activism in different settings.

Secondly, I evaluated the women's movements relationship to the state and the dilemmas inherent in feminist reliance on the state. By considering the FASDSP's and NARAL's self-defined purpose and initiatives in relation to the realized legislation and Court decisions, I hoped to identify the short-comings of women's movements reliance on state policy reform to achieve greater gender equality. Rhode (1994) recognized the state's dual role—not only responding to “expressed desires,” but also actively “legitimizing, suppressing, or redirecting them.” While the Forum and NARAL successfully enlisted the state on their behalf, securing formal rights, not all of their demands were incorporated or considered. Consequently, it is necessary to consider not only initial enactment of state policy, but also how particular state policies are or are not implemented.

While the Forum and NARAL achieved legal rights for women, the gap between formal rights and social realities remains, begging the question whether or not rights can be actually

achieved in a concrete sense by embodying them through the law. Feminist theorists fear that by only getting legislation passed, the foundations of such issues may remain unaddressed (Bush 1992). In India, PND and PNDT, despite their loopholes and relaxed implementation, banned SDTs, but failed to address the strong male preference in Indian culture and society. The FASDSP's request to continue consciousness-raising activities was not included in either PND or PNDT. The realization of the value of daughters must first be made within the family and reverberated out to the larger community before a legislative ban on SDTs can be truly successful. Likewise, U.S. second wave feminists located subordination of women in the private sphere as the root of female subordination and sought to make "the personal political." Yet, reliance and dependence on the Court, it has been argued, diverted attention and political energy away from forming a mass political movement for abortion rights that could have successfully countered the growing Right-to-Life Movement.

While feminist theorists remain divided on the problematic relationship between feminist activists and the state, the short-comings of women's movements reliance on state policy reform to achieve greater gender equality is illustrated by both FASDSP and NARAL. While it is easier to locate the inherent dilemmas, locating a "better" alternative proves to be more difficult. Formal rights are essential step towards gender equality, though a narrowing of actual rights and social realities, as well as further redefinition of the private and public sphere must still be achieved. By situating the histories of abortion politics in the U.S. and India together, it becomes glaringly apparent that liberalizing abortion laws does not promise a linear trajectory to women's liberation.

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