

# Roe V Wade and the Global Whirlwind Implications on Women's Reproductive Rights

Dr Theophilus Nwano Dr Lilian Akhirome-Omonfuegbe\*  
Faculty of Law, Benson Idahosa University, Benin City, Edo State, Nigeria  
\*laksirome@biu.edu.ng

*The research is financed by Asian Development Bank. No. 2006-A171(Sponsoring information)*

## Abstract

The quest for women to gain autonomy over their bodies in the exercise of their reproductive rights has been a long and arduous fight. Beginning from the ICPD where reproductive rights were elevated to a global pedestal and recognized as rights worthy of protection, state parties have signified devotion to the protection of these rights by diverse means. While some directly enacted laws to demonstrate their dedication, others resorted to amending the already existing laws to reflect their willingness to protect reproductive rights. This has seen the courts in many of such countries adjudicating in line with the legislative reforms in other to give women the power to enforce their reproductive rights. The case of *Roe v. Wade* has been a leading influence in giving women back the right to body autonomy. Thus the shocking overruling of the decision in that case has left many questioning the fate of women all over the world. This paper adopts the doctrinal methodology and involves an examination of the *Roe* case along with theoretical analysis of information necessary to answer pertinent questions arising from the overruling of the decision; it further intricately examines the implications of the overturning of the decision in this case as well as highlighting the inevitable consequences there from. This paper finds that the overruling holds dire repercussions for not only the women's rights to safe abortion but also the reproductive rights of women generally. This paper concludes that the law should be used as a tool to protect and not to deny rights and the courts should be void of sentiments in the discharge of their duty to interpret the law.

**Keywords:** Abortion, Reproductive Rights, Women's rights, Body Autonomy

**DOI:** 10.7176/JLPG/141-09

**Publication date:** April 30<sup>th</sup> 2024

## 1. Introduction

The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between men and women in matters of sexual relations and reproduction, including full respect for the bodily integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences. With the exception of the Maputo Protocol, the core international and regional human rights treaties do not explicitly address the issue of abortion. The Maputo Protocol requires State parties to: "...protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus."

Unsafe abortion is a large cause of maternal mortality in many developing countries, including Nigeria. In these countries, applying the right to liberty and security requires governments to improve services for treatment of unsafe abortion, to change restrictive laws regarding access to abortion and to ensure the provision of contraceptives and family services. The right to health, security and liberty have been applied by some national courts, especially in the west, to protect women's freedom to decide if, when and how often to bear children. In Canada, for instance, the Supreme Court held that restrictive abortion provisions are a violation of a woman's right to security of her person. This paper discusses the concept of abortion, the decision in *Roe v Wade* and the dire consequences of the Supreme Court overruling of that decision. The paper concludes by proposing recommendations for the promotion of reproductive rights in Nigeria.

## 2. Abortion

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) provides thus:

State parties to refrain from obstructing action by women in pursuit of their health goals..... barriers to women's access to appropriate health care include laws that criminalize procedures only needed by women and that punish women who undergo those procedures.

A good example of one of such procedures referred to above is abortion. WHO defines abortion as the 'discontinuance of a pregnancy before attaining viability.' Abortion can be either spontaneous, where it occurs naturally without any external inducement (usually referred to as a miscarriage) or it can be induced by

terminating the pregnancy.

At the core of feminist legal theory and the reproductive health discourse is the assertion that a woman has the right to choose whether to bear a child or not. This derives from the right to privacy and family life. Under international instruments, governments are obliged to respect and protect these fundamental rights by ensuring that women have access to reproductive care – which includes safe abortion. In Nigeria, the Penal and Criminal code prohibit induced abortions regardless of the duration of the pregnancy unless it is done for “the purpose of saving the life of the woman”. Consequently, due to these restrictions, women undergo unsafe abortions at the hands of quacks and this has led to the untimely death of many women and young girls as well as severe damage to the reproductive organs of those who survived the procedures. About 600,000 illegal abortions are believed to be carried out in Nigeria yearly.

The legality of abortion has been a subject of debate globally, with some countries having stricter restrictions than others. Countries like Canada and the United Kingdom allow women to elect to have an abortion. At the core of the argument are questions like whether abortion is murder? Some activists believe that the fetus or embryo is a living thing and terminating it is murder. Other arguments arise out of religious perspective and yet others solely on moral and public policy grounds. Whatever point of view holds sway, the reality is that women are constantly terminating unwanted pregnancies and some of these women patronize quacks in trying to ‘hide away’ from condemnation and judgment.

The Human Rights Committee has also addressed the inhuman and degrading nature of maternal death arising from unskilled abortion in considering a report submitted by the government of Peru. In examining the country’s compliance with the Covenant, the Committee addressed the human rights of women, including the rights denied them by Peru’s restrictive criminal abortion law. In its Concluding Observations, the Committee expressed its concern that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape and that clandestine abortion are the main cause of maternal mortality in Peru. The Committee found that the restrictions of the criminal law subjected women to inhuman treatment. Moreover, the Committee explained that this criminal law prohibition was incompatible with other rights in the Covenant. The Committee said this would include women’s right to life, since men could request medical care for a life endangering condition without fear that they or their care-providers would face criminal investigation and prosecution. The Committee recommended that necessary legal measures should be taken to ensure compliance with the obligations to respect and guarantee the rights recognised in the Covenant. Moreover, the Committee explained that the provisions of the Civil and Penal Codes (of Peru) should be revised in light of the obligations laid down in the Covenant’, particularly the right of women to equal enjoyment of the rights under the Covenant.

The requirement that a country conform to human rights standards, if necessary by amending national laws, shows that governments can be expected to comply with the duties that their countries have undertaken to protect rights relating to reproductive and sexual health. A State is therefore responsible to require its health care providers and facilities to ensure women’s reasonable access to safe abortion and related health services, in accordance to international human rights law. Where a national law that strictly prohibits abortions is shown to result in maternal mortalities, the State can be obliged to consider legal reform so that its law complies with human rights standards for women’s health and dignity. National policies can therefore be expressed in laws that adequately balance limitations on abortion with women’s rights to safe abortion and access to health services necessary to protect their lives and dignity, and to be free from inhuman and degrading treatment.

Other Constitutional courts, including those of France, Italy and the Netherlands, have found that less restrictive abortion laws are consistent with women’s rights to liberty. This is because the punitive context of restrictive laws deters women from seeking safer terminations, especially in cases where the public at large and medical practitioners in particular are not informed that restrictively worded laws have an implied exception that allows safe abortion for the preservation of life and health.

Abortion is permitted in some African countries without strict legal restrictions. In South Africa and Zambia, women have an unfettered access to legal abortions as long as procedural requirements prescribed by law are observed. In 1996, South Africa enacted the Choice on Termination of Pregnancy Act, making its abortion law one of the most liberal in the world. The Act permits abortion without limitations during the first 12 weeks of pregnancy, within 20 weeks on numerous grounds and at any time if there is risk to the women’s life or of severe fetal impairment. The Act repealed a 1975 law that had prohibited abortion unless the pregnancy was a result of rape or incest, the mother’s life was in danger, or there was a fetal impairment.

In 1996, Burkina Faso amended its Penal Code to permit abortion at any stage of pregnancy when a woman’s life or health is endangered and in the case of severe fetal impairment. Abortion is also permitted during the first 10 weeks of pregnancy in cases of rape or incest. Under the previous law, abortion was prohibited unless perform to save a woman’s life. In other African nations like Egypt, the Criminal law makes no explicit exception to protect life and has been interpreted to permit abortion under such circumstances on the grounds of ‘necessity’. This is a general principle of criminal law, according to which certain crimes may be excused when they are committed as the sole means of saving one’s life or the life of another.

In Zambia, the law permits abortions on ‘social and economic grounds’ but this generally receives broad interpretations as medical personnel are typically allowed to consider a woman’s economic resources, her age, marital status and the number of her living children. In other countries, abortion is strictly prohibited or permitted only to save the woman’s life’. In Zimbabwe the threatened injury to the woman’s health must be either ‘serious or permanent’. In Senegal, the criminal law prohibits abortions and makes no explicit exception to protect life, even though it has been interpreted to permit abortion on the ground of necessity’.

However, abortion is still criminalized in Nigeria except when the life of a woman is at risk. In some northern regions of the country, where *sharia* law is widespread and *Boko Haram* is active, abortion services are not accessible at all. Administrative barriers, coupled with widespread patriarchal beliefs and practices, make access to abortion extremely limited for women, and even more out of reach for girls. To procure a legal abortion, a woman must obtain permission from a physician and a gynecologist, and many times providers demand consent from her husband too. Unmarried women or those who fail to gain their husband’s consent are often left with no safe options. Nigeria has one of the highest maternal mortality rates in the world, due in large part to unsafe abortion.

This paper posits that every woman should enjoy autonomy over her body, void of external influence such as political or otherwise, and such rights should not be denied. This paper however recognizes that the right to safe abortion, just like every other human right should be enforced within legal limits. Total prohibition of abortion is not the solution, as women and girls will always find ways to get these services outside legal ambits. A better approach would be the enactment of laws to safe guard the process as well as structured institutions who amongst other things will exercise supervisory roles over abortion procedures, in addition to monitoring and authenticating practitioners who carry out these procedures. For instance in South Africa, the Choice on Termination of Pregnancy Act is the regulatory act on abortion. The Act divides the gestational period into three parts for the sake of termination of pregnancy, thus- Up to and including 12 weeks gestation by dates, Above 12 weeks up to and including 20 weeks gestation by dates, Above 20 weeks gestation by dates. The Act provides that termination must be carried out by skilled and professional doctors and midwives for pregnancies up to and including 12 weeks gestation. However, where the pregnancy is above 12 weeks, only a qualified doctor can carry out the procedure and it must be under strict conditions. The Act has thus reduced the upper limit from the 28 weeks that is traditionally accepted as the limit for viability. The Act also governs the termination of pregnancy up to and including viability, thus including induction of labour and caesarean section. Another example is Australia, where abortion is now legal in all states and territories but under certain circumstances and it must be carried out by a registered doctor. Each state and territory in Australia, has different laws on abortion. In New South Wales for instance, abortion was erased from the Crimes Act of 1900 in 2019 and the Abortion Law Reform Act 2019 was enacted. Pregnant women are no longer at risk of prosecution for procuring their own abortion and doctors are now permitted to carry out the procedure after gaining informed consent up to 22 weeks of pregnancy. The law additionally provides that when the pregnancy is beyond 22 weeks, any abortions must be carried out in a hospital or approved health facility and the procedure must be done by a specialist medical practitioner who has consulted with another practitioner.

This paper therefore begs to answer the question, what happens to a Nigerian woman who has been raped and becomes pregnant? The present legal framework implies that she must therefore carry the pregnancy to term. This is without consideration for the mental and psychological impact on her. Our present stance on reproductive health leaves room for mental and emotional torture which is an infringement of women’s rights. Access to safe and legal abortions in certain circumstances is a prerequisite to safe guarding women’s health. Some countries allow abortion in cases where the pregnancy results from rape, incest or where there is serious fetal abnormality.

The issue of abortion remains a controversial discourse in several parts of Nigeria today. There are several advocacy groups today calling for the reform of abortion laws in Nigeria. The Campaign against Unwanted Pregnancy (CAUP) was launched on the 17<sup>th</sup> August 1991 to address this public health crisis through advocacy for reform of the abortion law, research, education and preparation of service providers, and development of a constituency to support provision of safe abortion to the full extent of the law. When carried out by a skilled provider in safe conditions, abortion is very safe. There is clearly a nexus between availability of legal abortion and the safety and survival of women. When legal restrictions are removed, the number of deaths from complications of induced abortion reaches almost nil. It is, therefore, imperative that the law be reformed to prevent Nigerian women from dying from unsafe abortions.

The initial motivation for creating CAUP was the concern of three medical doctors specialising in obstetrics and gynecology, who had to treat women with severe complications and morbidity who came to their hospitals for care in the aftermath of unsafe abortions. Many women were dying and many more suffered irreparable harm as a result of dangerous procedures. They viewed this as a public health crisis and wanted to take action to stop the unnecessary suffering and death. After the failed attempt to push for a change in the law, Professor Ransome-Kuti asked CAUP for data on the scope of unsafe abortion in Nigeria, in order to garner support from within the government. The Campaign realized that there were no reliable data with which to convince government

officials and others in the community of the seriousness of the problem.

Between 1995 and 1997, CAUP carried out a joint study with colleagues from the Alan Guttmacher Institute (AGI) in New York. Interviews for this national study were carried out in a sample of 672 health facilities, conducted by experienced physicians trained by CAUP and AGI. The study found that there were approximately 610,000 abortions a year, a rate of 25 abortions per 1,000 women aged 15- 44. This study is still considered the most authoritative research on abortion in Nigeria. Abortion is criminalized in Nigeria except when the life of a woman is at risk. In some northern regions of the country, where *sharia* law is widespread and *Boko Haram* is active, abortion services are not accessible at all. Administrative barriers, coupled with widespread patriarchal beliefs and practices, make access to abortion extremely limited for women, and even more out of reach for girls. To procure a legal abortion, a woman must obtain permission from a physician and a gynecologist, and many times providers demand consent from her husband too. Unmarried women or those who fail to gain their husband's consent are often left with no safe options. Nigeria has one of the highest maternal mortality rates in the world, due in large part to unsafe abortion.

Some states in Nigeria have spearheaded the proliferation of reproductive rights. For instance, several advocates working with the National Coalition for Reproductive Justice have been actively involved in promoting the consciousness and acceptance of reproductive rights in communities across Lagos, Nigeria. In furtherance of their purpose, they adopted the slogan - "*Safe abortion, my right; safe abortion, my choice. I say it loud, 'cause I'm proud of it. Safe abortion is my right!*" With this, they educate other women on reproductive health and their rights, including accessing safe abortion and postpartum hemorrhage and post abortion care. The International Women's Health Coalition, IWHC's newest grantee partner known as, Generation Initiative for Women and Youth Network (GIWYN), supports the National Coalition and trains its members to raise awareness in communities where access to sexual and reproductive information and services are hard to find. GIWYN is assessable via a hotline with a catchy name "*Ms. Rosy,*" through this line, they provide accurate and non-judgmental reproductive health and rights information to callers, including information on abortion. Since its launch in 2014, the hotline has received approximately 135,000 calls from across Nigeria. Because abortion is so severely restricted in Nigeria, GIWYN uses a harm reduction model, where trained professionals provide callers with accurate information on how to use the drug *misoprostol*, which is available over-the-counter and can be used to terminate unwanted pregnancies. For women who face innumerable barriers to accessing abortion services, using *misoprostol* is safer than the methods these women may otherwise resort to.

According to WHO, Abortions are safe when they are carried out with a method that is recommended by WHO and that is appropriate to the pregnancy duration, and when the person carrying out the abortion has the necessary skills. Such abortions can be done using tablets (medical abortion) or a simple outpatient procedure.

From the foregoing, this research submits that it is imperative that the Nigerian laws should align with and be reflective of this growing concept of reproductive health globally. Citing the example of Ireland, the prohibition of abortion in the United Kingdom and the subsequent Constitutional amendment of the created the leeway for women to travel outside Ireland to procure abortions. This indicates that a national prohibition will not stop women from procuring abortions, rather it opens up opportunities for them to procure such services outside and illegally. The preferable option is to have legislative guidelines on performance of abortion services. Nigeria can imbibe the example of South Africa where the CTOPA 1996 allows and eases access to safe abortions which in turn significantly reduced the incidents of deaths from unsafe and illegal abortions. The CTOPA also significantly, The Act expanded the criteria for eligibility for termination of pregnancy. It divides the gestational period into three parts for the sake of termination of pregnancy, thus- Up to and including 12 weeks gestation by dates, Above 12 weeks up to and including 20 weeks gestation by dates, Above 20 weeks gestation by dates. The Act provides that termination must be carried out by skilled and professional doctors and midwives for pregnancies up to and including 12 weeks gestation.

This paper strongly advocates for the promulgation of regulatory guidelines such as those discussed above, as these are essential machinery for the promotion and protection of reproductive health and rights in Nigeria.

### **3. The Decision in *Roe v. Wade***

This case began as far back as 1970, when "Jane Roe" a fictional name used to protect the identity (due to the sensitivity of abortion issues at that time) of the plaintiff. She instituted a federal action against Henry Wade, the district attorney of Dallas County, Texas at that time, where she lived. The Supreme Court disputed Roe's aversion of an incontestable right to terminate pregnancy in any way and at any time. The court posited that it was important for the state to be able to create a balance between a woman's rights of privacy with a state's interest in regulating abortion. The court noted that only "compelling state interest" can vindicate regulations limiting "fundamental rights" such as privacy. Furthermore the court held that legislators must therefore produce statutes carefully in order to properly reflect the intention of the legislators in protecting valid state interests. The Court then attempted to balance the state's distinct compelling interests in the health of pregnant women and in the potential life of fetuses. It then decided that in the interest of the state and the pregnant woman's health,

abortion could be permitted latest “at approximately the end of the first trimester” of pregnancy.

On January 22<sup>nd</sup>, 1973, the Supreme Court ruled that excessive limitation of abortion by state laws is unconstitutional. In a majority opinion led by Justice H. Blackmun, the Court held that the laws of Texas criminalizing abortion was a direct infringement on a woman’s constitutional right of privacy. This right to privacy was held to be guaranteed in the Fourteenth Amendment which provides thus; (“...nor shall any state deprive any person of life, liberty, or property, without due process of law.

Based on this right of privacy, the U.S. Supreme Court in *Roe v. Wade* declared that women, after due advice from their qualified physicians, are eligible by law to elect abortion for any reason in the first trimester. From the second trimester onwards, the state’s Abortion Law is authorized to regulate abortion to protect maternal health, as well as to protect potential life in the third trimester. This implication of this decision is that the court in this case created a “trimester framework” which was the standard for regulating when a woman could access abortion. It meant that in the first trimester she had unrestricted access to elect an abortion. By the second trimester, the state restrictions would now apply, without obstructing her right to abortion as long as it was in the interest of her health. By the third trimester, the fetus is held to be viable and thus the state laws can prohibit abortion at this stage as it constitutes the best interest of the fetus, except the abortion at this stage is expedient to preserve the health or life of the mother.

Although based on a judicial interpretation of domestic constitutional rights, *Roe* became a landmark for advocates of abortion rights that engendered global legislative reforms. Subsequently, the Supreme Court replaced its “trimester framework” with a stricter standard set in the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey*. Nevertheless, the judgment in the *Roe* case remained the standard (before it was recently overturned) for movements around the world which pushed for recognition of reproductive health and self-determination as fundamental factors necessary for realization of women’s equality.

In the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the court declared that a law which required the consent of a spouse before a woman can procure an abortion, was invalid pursuant to the fourteenth amendment. The Supreme Court established that limitations on the right to abortion will be held unconstitutional where they are found to place an “undue burden” on a married woman seeking an abortion, as long as the abortion is before the fetus becomes viable. In this case however the Supreme Court affirmed the decision in *Roe v. Wade*, that it is unconstitutional for state laws to completely proscribe abortion. It however created some restrictions by pointing out that states are allowed to regulate abortions in order to protect the well-being and health of the mother as well as the fetus and may also outlaw abortions of viable fetus, but cannot criminalize abortions. Thus some scholars have noted that the case of *Roe* established the right to abortion but the case of *Planned Parenthood* provided restrictions on the enjoyment of this right. The court posited that in so far as the restrictions did not constitute an undue burden to the person seeking an abortion, the restrictions would apply, with an additional condition that that at the time of seeking such abortion, the fetus is not viable. The argument on many angles then was what constitutes undue burden? Is it financial, mental or otherwise? If the person seeking abortion is wealthy, the restrictions may be light but not so for a poor person who would require funds for transportation to the clinic because she lives in a rural area. This ambiguity gave many states the leeway to pass laws with varied restrictions such as the requirement of counselling, waiting periods, parental consent where the abortion is sought by a minor, in addition to other requirements such as number and qualifications of physicians to carry out the procedure and other hospital restrictions. The burden was now on the courts to determine which of these restrictions will be considered as burdensome. Significantly, the *Roe* and *Casey* (*Planned Parenthood case*) are both landmark cases that buttress the court’s interpretation and argument on abortion rights. This paved way for legislative reforms and judicial activism in many countries to reflect the growing consensus on a woman’s right to privacy and family life.

#### **4. Implications for overruling the decision in *Roe v. Wade***

The news of the overruling of the decision by Supreme Court of the United States in the case of *Roe v. Wade*, was received with widespread apprehension. This decision, has evoked global debate. The US Supreme Court recently voted to strike down the decision that ruled that the United States Constitution protects a pregnant woman's choice to have an abortion. The case protected the right to abortion in many US States; consequently the overruling will allow the prohibition of abortion in over 26 states.

On the 24<sup>th</sup> of June 2022 the case of *Dobbs v. Jackson Women’s Health Organization*, came before the US Supreme Court seeking to declare a Michigan state law on abortion as illegal and in a shocking twist of events, the Supreme Court proceeded to overrule the decision of *Roe v. Wade* which had been in existence for over five decades. Justice Alito, in delivering the judgment noted that the right to abortion no longer exists. He noted that all other court decisions affirming the decision in *Roe* must also be overruled because they were “egregiously wrong” and “exceptionally weak.” He further submitted that these decisions were damaging and amounted to judicial abuse of authority. In a 78 page opinion, the judge further expatiated that there is no inherent right to privacy or personal autonomy in the United States constitution and therefore no evidence that the constant

reliance by courts in the past on the right to privacy is unfounded.

#### *4.1 Implications for Women in the United States*

This decision implies that women in America have been stripped of their right to abortion, after enjoying this right for half a century. This leaves the American women at the mercy of their various state laws. These state laws vary in their provisions, while some have total prohibitions on abortion accompanied by penalties for breach of the laws, others have additional conditions as pre requisite to access abortion, such as, funding for clinics, legal protection for the clinic practitioners et al. However in states like Washington DC, abortion remains legal because they have been legal even before the *Roe* case. While states like Kansas has an ongoing constitutional amendment to amend the constitution to expressly provide that the state does not grant a right to abortion, neither does it provide funding for abortions.

Activists have declared that this decision has taken America's reproductive laws several steps backwards in terms of development. This paper submits that this amounts to retrogression after having paved the way for several countries in terms of developing and enhancing their legal framework on reproductive rights. Consequently, abortion will no longer be accessible in many parts of the United States and many anticipate that the areas with restrictive laws should expect more restrictions. This paper further posits that the ban on abortion is not only a restriction on the right to abortion but rather a restriction of much broader rights, which encompass the right to body autonomy. This paper further posits that other rights entrenched in the woman's reproductive right, such as IVF, Surrogacy, by implication will also be affected by this decision. Justice Clarence Thomas asserts that certain other landmark rulings should also be reconsidered, including established rights to contraception access, same-sex relationships, and same-sex marriage. This exposes the inherent resentment of many men towards the promotion of reproductive rights of women and how they are willing to grab any opportunity to suppress this right and how easily power and office is being abused and used as a tool for subjugating and oppressing women even in civilized societies.

Medical and mental health experts have pointed out that the ruling has no scientific basis and they fear that it could trigger potentially devastating health consequences which would invariably result in increased maternal mortality rates. They further raised some other concerns on the implications of the overruling of the decision in *Roe* case which include that an estimated 36 million women and other people who may become pregnant will lose access to safe abortions services, which will invariably increase the search for abortion in the hands of unqualified personnel. Anti-abortion laws are not supported by the medical community because they are not based on scientific evidence. The president of the United States of America Joe Biden put it succinctly thus; "this tragic error of the court, will have devastating health implications and is expected to increase maternal mortality rates, particularly among People of Color and other marginalized groups, according to health experts." The limitation of reproductive rights could result in millions of American women having no choice but to carry a pregnancy to term, irrespective of whether or not it jeopardizes their health. Some other women may as a last resort, seek unsafe measures to terminate a pregnancy on their own. This also by implication means that survivors of sexual violence may be forced to give birth to the children of their abuser- which will have devastating mental and emotional consequences for both the victim and the child in future.

#### *4.2 Implication for Women in The United Kingdom*

The UK [Abortion Act 1967 \(which was amended by the Human Fertilization and Embryology Act 1990\)](#) states that an abortion is legal if it is performed by a registered medical practitioner, and then authorized by two registered practitioners acting in good faith. The Act lists four circumstances in which an abortion will be legal, provided at least two registered practitioners have formed an opinion (The practitioner who terminates the pregnancy need not necessarily be one of the two practitioners who have given an opinion and certified that one or more of the permitted grounds for an abortion exist.) and concluded that an abortion is the best option.

Activists and scholars in the United Kingdom argue that though the abortion laws in the UK are more comprehensive than the United States, however they fear that the rise in anti- abortion activism stemming from the overturning of *Roe* case may have serious implications for reproductive rights generally in the UK. It is argued that though the Abortion Act provisions are better than the laws in most countries, it is far from perfect and if the anti-abortion movement were to gain the monumental "victory" of overturning *Roe v Wade*, groups in the UK and across the world will become bolder and more ruthless.

#### *4.3 Implication for Women in Africa*

The effects of overturning the decision in the *Roe* case could also reverberate in the African continent. Many organizations funded by the United States and rely on their monetary assistance may feel pressured to fulfill directive on abortion healthcare, family planning and contraceptive healthcare. Consequently, African beneficiaries of organizations, such as the United States Agency for International Development, will be at their financial mercy and possibly succumb to pressure to amend their Constitutions to reflect the U.S Supreme Court's interpretation of reproductive rights, and this may lead to total ban on abortion. This Supreme Court

decision on the *Roe* case by implication will affect global development proponents who should prepare to be faced with a decline in US financing in terms of contraception, sexual education, and gender-related public health incentives in developing countries, in future. The Supreme Court's ruling should prompt the advocates of international aid of the need to keep at the efforts to increase the standard and accessibility of all-inclusive sexual health and education programs, which is inclusive of safe abortion in developing nations. Studies have shown over time that women in Africa are at a higher risk of dying from unsafe abortion. Thus the decision in the *Roe* case has long been salient tool to combat abortion laws and advocate for safe and regulated abortion for women and girls the world over. For instance, Tunisia previously only allowed access to safe abortion for population control purposes, subsequently liberalized the law nine months after the decision in *Roe v Wade* thereby allowing women to access the procedure when they require it. Similarly, Cape Verde by 1986 began permitting abortion on request prior to 12 weeks gestation which also reflects the decision in the *Roe* case.

This paper submits that the implications for a country like Nigeria where abortion is still illegal (except where it is to save the life of the mother), will be that the agitation for promotion and enforcement of reproductive health and rights may become crippled seeing that the civilized nation which have been cited as an example for several decades has suddenly retrogressed in downward motion regarding reproductive health and rights of women. It is worthy of note that case laws in African countries- Nigeria inclusive, are usually influenced by decisions of foreign jurisdictions. Though not binding in Nigeria they have persuasive authority thus, this decision on the *Roe* case could have devastating effects on future cases on reproductive rights generally.

This paper further argues that the consequences of the decision in *Roe* case are not confined to abortion rights. The court in the *Roe* case had hitherto given recognition to the right to privacy which by extension includes a right to make personal decisions about one's family or one's body. It covers decisions concerning child bearing and rearing, marriage, right to decide whether or not to have children as well as timing and spacing which invariably includes matters of contraception use- these are all rights as recognized by International instruments. Respect and recognition of a woman's right to make decisions about her body is a core requirement in the promotion of gender equality in educational, economical and political spheres. Suffice it to say that an unplanned pregnancy can whittle down a woman's chances of advancing in any of these areas. Unlike her male counterparts who will not have to be saddled with the discomfort and complications of pregnancy and consequent tasks of raising children while also trying to advance a career or education. Pursuant to this, this paper makes the following recommendations;

## 5. Recommendations and Conclusion

- Nigeria is long overdue for legislative reform which should include the enactment of specific Reproductive Health Laws. Legal reforms should actively promote and advance women's rights. Thus the prohibition of abortion should be erased and more liberal laws and regulatory guidelines are required to foster protection of women's rights.
- The requirement for domestication of International laws remains a fundamental hurdle to enjoyment of the provisions of several International instruments which have hitherto been ratified by Nigeria. Therefore international instruments such as CEDAW and The Additional Protocol on Women's Right to The African Charter 2003 should be speedily domesticated to aid its enforcement and implementation by the courts.
- Education and knowledge are key tools in attaining freedom. The same goes for reproductive health and rights. The place of education and awareness cannot be overemphasized. Pursuant to this, conferences, seminars, and any social means by which information can be disseminated should be funded and sponsored by Government and NGOs in order to enlighten women on their rights and how to enforce them.

It is apparent that the world has been awakened to a new consciousness that reproductive rights are human rights which should be protected by all means. This awakening has prompted the enactment of reproductive rights laws in several countries to show their commitment to the protection of women. Unfortunately in some countries, for instance, Nigeria despite existing body of laws which indirectly protect these rights, there is yet to be an established and well defined comprehensive legal framework for the implementation, enforcement, and protection of the rights of women. This paper posits that the consequences of the decision in *Roe* case are not confined to abortion rights. The court ruling had initially buttressed a woman's right to privacy which by extension includes a right to make personal decisions about her family and body- which are all rights recognized by International instruments. Thus the effect of the court's overruling could have far reaching consequences on the rights of women over their bodies as well as all other incidental rights, such as right to and ability to access contraception. It is therefore imperative that the law must be seen as an essential tool in the promotion and protection of rights at all times. Consequently, the courts are called upon to be minded in the fulfillment of their obligation, to give untainted credence to the provisions of the law. It is incumbent on the judiciary at all times to be impartial and unruffled by sentiments in the due discharge of their duties, after all the judiciary is the last

hope of the common man. Thus there is need for the judiciary to be an active and uncompromised ally in the protection and promotion of women's reproductive rights universally. This paper hopes that the age-long battle for freedom and respect for women's rights will not be in vain.

### References

- Lawrence, S. et al. (2001). Persistence of Web References in Scientific Research. *Computer*. 34, 26-31. doi:10.1109/2.901164, <http://dx.doi.org/10.1109/2.901164>
- Smith, Joe, (1999), One of Volvo's core values. [Online] Available: <http://www.volvo.com/environment/index.htm> (July 7, 1999)
- Strunk, W., Jr., & White, E. B. (1979). *The elements of style*. (3rd ed.). New York: Macmillan, (Chapter 4).
- Van der Geer, J., Hanraads, J. A. J., & Lupton R. A. (2000). The art of writing a scientific article. *Journal of Scientific Communications*, 163, 51-59

**First A. Author (M'76–SM'81–F'87)** and the other authors may include biographies at the end of regular papers. Biographies are often not included in conference-related papers. This author became a Member (M) of Association XXXX in 1976, a Senior Member (SM) in 1981, and a Fellow (F) in 1987. The first paragraph may contain a place and/or date of birth (list place, then date). Next, the author's educational background is listed. The degrees should be listed with type of degree in what field, which institution, city, state, and country, and year degree was earned. The author's major field of study should be lower-cased.

**Second A. Author (M'76–SM'81–F'87)** and the other authors may include biographies at the end of regular papers. Biographies are often not included in conference-related papers. This author became a Member (M) of Association XXXX in 1976, a Senior Member (SM) in 1981, and a Fellow (F) in 1987. The first paragraph may contain a place and/or date of birth (list place, then date). Next, the author's educational background is listed. The degrees should be listed with type of degree in what field, which institution, city, state, and country, and year degree was earned. The author's major field of study should be lower-cased.