

# The current policy framework in usa law medical essay

[Law](#)



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The legal framework afforded to abortion is the very foundation of its good or bad functioning. Laws found to be archaic have seen to be having no place in many countries and have thus faced an evolution.

## **1. 1 Abortion laws**

### **1. 1. 1 United States of America**

1. 1. 1. 1 A brief history of abortion  
In 1800, there was not a single abortion statute in America (Rose, 2008). In 1973, the U. S. Supreme Court in two cases (Roe v. Wade and Doe v. Bolton) decriminalized abortion nationwide. Abortions could still be banned after viability—with exceptions to protect a woman's life and health (Kaiser 2002, pg 1). Planned Parenthood of Southeastern Pennsylvania v. Casey, 1992 is the case which sets authority that laws prohibiting abortion are unconstitutional. Following the Casey decision, abortion restrictions in the United States continue to vary by state (United Nations 2002).

1. 1. 1. 2 The current policy framework in USA  
1. 1. 1. 2. 1 " Partial-birth Abortion" Bans  
In 2007, in the case Gonzales v. Carhart, the Supreme Court upheld a ban on partial-birth abortion . This reversed the course compared to earlier abortion rulings (Masci. et al. (2013 cited Pew Research Center 2013)). In USA, 19 states have laws banning " partial-birth" abortion (Guttmacher 2013).

1. 1. 1. 2. 2 Ultrasound laws  
In Casey 1992, the supreme court supported a state regulation which obliged that " informed consent" be given, at least 24 hours before having an abortion. The new ultrasound laws also obliged women to pass through a trans-vaginal ultrasound procedure before an abortion; therefore led to a more demanding consent (Masci. et al. (2013 cited Pew Research Center 2013)).

1. 1. 1. 2. 3 " Fetal Pain" Laws  
Nine states have put in place laws prohibiting abortions after

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20 weeks and for some countries it is earlier. These laws are backed by the reasoning that a fetus, carried for more than 20 weeks, can experience pain from an abortion procedure and so is to be prohibited (Maschi. et al. (2013 cited Pew Research Center 2013)).

1. 1. 1. 2. 4 " Born-Alive Infants Protection Act" According to " Born-Alive Infants Protection Act" (HR 2175) contains measures to give federal rights to a human fetus " born alive" at any stage of development. Any " live birth" that might occur during an attempted abortion is explicitly included (Maschi. et al. (2013 cited Pew Research Center 2013)).

### **1. 1. 1. 3 The other conditions**

1. 1. 1. 3. 1 Physician and Hospital Requirements In USA the majority of States require that a licensed physician carries out abortions while others deem it fit that it be carried out in a hospital before a specified point in the pregnancy, and lastly some require the intervention of a second physician after a specified point (Guttmacher 2013).

1. 1. 1. 3. 2 Gestational Limits 41 states prohibit abortions, after the foetal viability to the exception that the procedure is necessary to protect the woman's life or health (Guttmacher 2013).

1. 1. 1. 3. 3 Waiting Periods Some 26 states require women to wait, usually 24 hours, between when she receives counseling and the procedure is performed (Guttmacher 2013).

1. 1. 1. 3. 4 Parental Involvement Most States require parental intervention concerning a minor's decision to have an abortion. In some states one or both parents need to consent to the procedure while in others one or both parents must be notified and at last some requires both parental consent and notification (Guttmacher 2013).

1. 1. 1. 3. 5 The grounds on which abortion is permitted Grounds Permitted To

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save the life of the woman Yes To preserve physical health Yes To preserve mental health Yes Rape or incest Yes Fetal impairment Yes Economic or social reasons Yes Available on request Yes (United Nations 2002).

## 1. 1. 2 France

1. 1. 2. 1 A brief history of abortion Abortion has been a crime in France at least since the eighteenth century. Under Article 317 of the French Penal Code of 1810, both a woman and her abortionist could be imprisoned for long periods (Dorothy 1986, pg 278). In 1975, the Law No. 75-17 relaxed the abortion law of France. This law is commonly known as " La Loi Veil" and is still the applicable law in France (United Nations 2002). The law of 4 July 2001 extends the period permissible for abortions from 10 to 12 weeks of pregnancy. The new law also allows a pregnant girl under the age of 16 to ask for an abortion without consulting her parents first but has to be accompanied by an adult ( Direction générale de la Santé 2007, pg 2 ). 1. 1.

2. 2 The conditions for an abortion in France 1. 1. 2. 2. 1 A pregnancy that places a woman in a situation of distress. Article L. 2212-1 of the ' Code de la santé publique' allows any pregnant woman who feels a situation of distress to ask a doctor terminate her pregnancy, whether major or minor. Only the concerned woman can apply ( Direction générale de la Santé 2007, pg 2 ). 1.

1. 2. 2. 2 Termination of pregnancy Termination of pregnancy must be before the twelfth week of pregnancy or before the end of the fourteenth week after the last menstrual period. Besides this, There is one week waiting or " reflection" period before termination takes place, to the exception of urgent cases where this can be reduced to two days ( Direction générale de la Santé 2007, pg 2 ). Minors (girls under 18 years of age) and unmarried women

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must meet with a counselor during the week prior to the process and in the days immediately after ( Direction générale de la Santé 2007, pg 5 ). 1. 1. 2.

2. 3 Article L. 162 of the ' Code de la santé publique'Article 162-4: " A voluntary termination of pregnancy may be performed only by a

physician. The procedure may be carried out only in a public hospital establishment or in a private hospital establishment conforming to the provisions of Article L. 176 (Code de la Santé Publique)." Abortions

performed by the surgical technique are exclusively carried out in a health centre (hospital, clinic). The medical abortions are performed by either a

Health centre, or the cabinet of a doctor. Article L. 162-3. provides that a physician who has been approached by a woman with a view to the

termination of her pregnancy is required from the time of her first visit, to inform her of the medical risks to herself and to her future maternity, and of

the biological seriousness of the operation requested by her. 1. 1. 2. 2. 4

Article L. 162-12A Voluntary termination of pregnancy may also be

performed on therapeutic grounds. According to article L. 162-12 such terminations may be performed at any stage of gestation if two physicians

certify, after an examination and discussion, that the continuation of the pregnancy is seriously endangering the woman's health or that there is a

strong possibility that the unborn child is suffering from a particularly serious disease or condition considered as incurable at the time of the diagnosis. 1.

1. 2. 2. 5 The grounds on which abortion is permitted

## Grounds

### Permitted

To save the life of the woman Yes To preserve physical health Yes To preserve mental health Yes Rape or incest Yes Fetal impairment Yes Economic or social reasons Yes Available on request Yes (United Nations, 2002).

### 1. 1. 3 Mauritius

1. 1. 3. 1 A brief history of abortion Abortion was illegal in Mauritius under the Penal Code 1838 to the exception that it was necessary to save the life of a woman (United Nations 2002). Through educational campaigns carried out by the Government and the Mauritius Family Planning association (MFPA), contraception has increasingly been adopted by the population for limiting births and therefore tackled the issue of unsafe abortion in 1993 (United Nations 2002).

1. 1. 3. 2 Legal framework in Mauritius The recent amendment of the Criminal code Act 1838 has for effect to allow a pregnant woman to terminate the pregnancy. Such termination can, however, be carried out under the following circumstances, according to section 235A (2) of Penal Code 1838 which deals with authorised termination of pregnancy (Criminal Code Act 1838 Act 6/1838). Ground Permitted To save the life of the woman Yes To preserve physical and mental health Yes Rape or incest or sexual relations with minors [1] Yes Foetal impairment Yes Moreover, Section 235A also requires that the person providing treatment to terminate a pregnancy must be a specialist in obstetrics and gynaecology and should be providing the treatment in a prescribed institution. The actual prescribed institutions, that is, an institution where abortion can be carried out under the authorization of the Ministry of Health, are the 5 regional hospitals and <https://assignbuster.com/the-current-policy-framework-in-usa-law-medical-essay/>

some private clinics(Criminal Code Act 1838 Act 6/1838). The specialist may only provide treatment to terminate a pregnancy where another specialist in obstetrics and gynecology and other specialist in the relevant field share his opinion, formed in good faith that it is a genuine case falling under Sect 235A (2)[2](Criminal Code Act 1838 Act 6/1838). The pregnant woman must consent to this abortion, and if a minor must have the consent of parents, and must also be advised by a psychologist who will closely supervise the woman after the operation (Criminal Code Act 1838 Act 6/1838). On the other hand Sect 235 of the act provides for unlawful terminations of pregnancies except for those provide at section 235A. The sentence is 10 years penal servitude for a person who procures or attempt to procure the miscarriage of a woman and same for a woman who procures her own miscarriage (Criminal Code Act 1838 Act 6/1838).

## **1. 2 Different consequences of abortion legalization**

Abortion laws put in place cannot be put on test unless measured by the consequences brought or to be brought by.

### **1. 2. 1 Its consequence on health**

A first perspective of the consequence following legalization of abortion resides over whether having the procedure results in health consequences. In the case of abortion, there are two separate schools of thought. People on both sides of the issue have formed opinions based backed by the most persuading scientific evidence. Many pro-life supporters are firmly convinced there are dramatic consequences of abortion. Many of the complications they mention can and do happen, but they are rare (Lanier, 2009). Pro-

choice advocates insist abortion is safe. This is generally the case. However, it happens that practitioners downplay possible complications or fail to provide adequate information about what happens during the procedure. Women who inquire about the foetus or how much discomfort they can expect, may be given incomplete or false information. Sometimes this is an effort to spare the woman's feelings. In some cases, however, it is accomplished to make sure that the woman goes through the procedure (Lanier, 2009).

## **1. 2. 2 Abortion Legalization and its impacts on Women's Rights**

1. 2. 2. 1 Legal abortion strengthens women's rights Here Petchesky defends abortion as crucial to women's freedom and equality with men. Abortion in itself does not create reproductive freedom. It only makes the burdensome and fatalistic aspects of women's responsibility for pregnancy less total. It does not socialize that responsibility, empower a woman in her relations with men or society, or assure her of a liberated sexuality. It only allows her the space to move from one point in her life to the next, if she is a heterosexual woman; to navigate some of the more oppressive patriarchal and institutional forces that are beyond her control. Abortion is but one of many social conditions that encompass an economic and sexual self-determination. As such it is both minimal and indispensable (Petchesky (1990 cited Bender & Leone 1991, pg 178)). Abortion is a necessary, though far from sufficient, condition of women's essential right and need, not only for bodily health and self-determination, but also for control over their work, their sexuality, and their relations with others- including existing children. From this perspective,



abortion conducted under safe, affordable, and stigma-free conditions is neither a necessary evil nor a matter of private choice. Rather, it is a positive benefit that society has an obligation to provide for all who seek it, just as it provides education and health benefits (Petchesky (1990 cited Bender & Leone 1991, pg 179)).

1. 2. 2. 2 Legal abortion exploits women

The opposing viewpoint has also been put forward that is abortion legalization does not strengthen a woman's right but in fact exploits a woman. The author Daphne de Jong is of the view that legal abortion has destroyed, rather than promoted, women's rights (Daphne de Jong (1976 cited Bender & Leone 1991, pg 183)). If women must submit to abortion to preserve their way of life or profession, their monetary or societal status, they are pandering to a system devised and run by men for male convenience. The politics of sexism are perpetrated by accommodating to expedient societal structures which decree that pregnancy is mismatched with other activities, and that the responsibility of children belong to a mother only (Daphne de Jong (1976 cited Bender & Leone 1991, pg 183)). The most violent assault of woman's physical and psychic integrity is abortion. It is a profounder and more damaging assault than rape... (Daphne de Jong (1976 cited Bender & Leone 1991, pg 183)).

### **1. 2. 3 Its consequence on maternal mortality rate**

1. 2. 3. 1 Is there a direct relationship between legalizing abortion and maternal mortality rates (MMR)? Maternal mortality refers to the death of a woman while pregnant or within forty-two days of termination of pregnancy from any cause related to or aggravated by the pregnancy or its management. According to the United Nations Population Fund (UNFPA, <https://assignbuster.com/the-current-policy-framework-in-usa-law-medical-essay/>

200), more than 80% of maternal deaths arise from five direct causes: hemorrhage, sepsis (systemic infection), unsafe abortion, obstructed labour, or toxemia.[3] Contrary to what some organizations claim, there is no direct relationship between the legal status of abortion and maternal mortality rates (MMRs), or even between the legal status of abortion and rates of maternal death caused specifically by abortion (Minnesota Citizens Concerned for Life Global Outreach & National Right to Life Educational Trust Fund 2012). That means that though abortion is legal, it does not decrease maternal mortality, that is, it does not reduce maternal deaths caused by abortion. According to estimates from WHO, UNICEF, UNFPA, and the World Bank, the four countries that decreased their Maternal Mortality rates the most between 1990 and 2008 are the Maldives, Romania, Iran and Bhutan. Three of these countries (excepting Romania) have maintained bans on abortion (Minnesota Citizens Concerned for Life Global Outreach & National Right to Life Educational Trust Fund 2012, pg 2). The two previous paragraphs are to demonstrate that there is no relationship between the legal status of abortion and MMRs. Conversely, South Africa legalized abortion on demand in 1997, has since then experienced increasing MMRs to the extent that it nearly doubled the rate of 1990 by being 410 in 2008 The MMR of Canada, which permits abortion on demand increased 94 percent from 1990 to 2008 (Minnesota Citizens Concerned for Life Global Outreach & National Right to Life Educational Trust Fund 2012, pg 3). To conclude, it seems that policies legalizing abortion have a negative effect in that it leads to higher MMRs. This example is taken as to show the extent to which

abortion may represent such substantial loss for the economy and thus deter the economy from progressing further.

### **1. 2. 4 Abortion legalization and its consequence on crime**

According to Levitt and Dubner (2005), there was a substantial drop in crimes in the United States during the 1990s. Researchers realized that the result of the 1973 Roe v. Wade Supreme Court ruling triggered, in fact, the trend in low criminality, considering it gave women the choice of not having a child when they did not want the child (European Journal of Social Sciences 2012). Steve Sailer, a writer and businessman criticised the Donohue and Levitt's study by focusing on its statistical defects. He put a logical argument and says that , following the theory of Donohue and Levitt, those babies born soon after 1973, that is, soon after legalization of abortion, should have proved to be law-abiding teens in the early '90s. However this was not really the case. Instead, according to FBI statistics, the murder rate in 1993 for those murders carried out by teens aged between 14 to 17 (born in 1975-1979, where the peak number of abortions occurred), was a horrifying 3. 6 times higher than those committed by teens who were of the same age in 1984 (who were born before legalization) (Sailer, 1999). Statistician David Murray (2001) confirmed that young males aged between 17 to 25 commit the majority of crimes. So according to the theory of Donohue and Levitt, the crime rate should have gone down. They did not. Instead, the number of crimes committed by older people (aged 25 or more) dropped first and they were born before Roe v. Wade, that is, before the legalization (Ertelt 2001). Murray also found that other countries with high abortion rates showed a large increase in crime about eighteen years after they legalized abortion.

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For example this was the case in Great Britain where the crime rate rose when it should have declined according to Donohue and Levitt's study (Ertelt 2001).

### **3. Research Methodology**

#### **3. 1 The appropriateness of a qualitative research**

For the purpose of this study, a qualitative research will be carried out. This method is most suited for this study due to the different characteristics it presents. For example an exploratory criterion is required and also having a descriptive focus on the question itself is also required.

#### **3. 2 The appropriateness and adequacy of methods of data collection**

Firstly, one method relevant and helpful will be that of, direct observation. In the direct observation method, the researcher is watching, and making notes for future use as they will be used in analysis of abortion in Mauritius.

Secondly, public records will be collected from external sources. For example, the researcher has collected data from the Guttmacher Institute website, which is one of the many external sources used for research purposes. These are the two main methods that will be used as the research design. The external sources include a number of institutes and organizations and their appropriateness in such a study of abortion consequences can be better understood by an explanation of the data retrieved from their websites or studies.

### 3. 3 Data collected

The relevant data have been collected from the different institutions cited above and each datum has its peculiar importance and contribution to the development of the fourth chapter: Analysis.

#### 3. 3. 1 Statistics and Figures USA

3. 3. 1. 1 Number of abortions in USA Figure 1 (Johnston 2011) (National Right to life Educational Trust Fund 2011)[4]\*By the end of 1970, four states had repealed their antiabortion laws, and eleven states had reformed them. The pre-1973 numbers listed are legal abortions (Guttmacher 2011, pg 2).

1. 1. 1 Explanation of figure 1 An analysis of Fig. 1 reveals that before Roe v. Wade (before the legalization of abortion), abortion was practiced or allowed in some states. The pre-1973 figures are therefore legal abortion. As from 1965, the number of abortions increased rapidly and reached 193, 491 in 1970. This was the result of the policies of different states put into place just before Roe v. Wade. Just 2 years before national legalization, the number of abortions was increasing at a decreasing rate. However these abortions were those performed only in some countries which had changed their anti-abortion laws. In 1973, when abortion was legalized in all the states of U. S, the number of abortions increased but was increasing at a decreasing rate. Such a trend continued till it reached a rate of 0 and was so in three consecutive years (1982, 1983, and 1984). The rate 0 implied that the number of abortions was neither increasing significantly nor decreasing significantly. During 1985-2010, the rate varied between -0. 05 to 0. 03. This means that the number was decreasing in some years and increasing in others while it also remained 0 over several years. The maximum gap noted

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from one year to another year was a maximum decrease of 72, 000 and a maximum increase of 41, 700. 3. 3. 1. 2 US Population trend(United States Census Bureau 2013)[5]The above Fig. 2 is an illustration of the trend of the population in the United States of America. These estimates will be used to calculate the number of abortions as a percentage of the population in the years and also the trend in the population before and after legalization. Before Roe v. Wade, it can be noticed from the above diagram that the population was increasing at a rate of 0. 01 and that trend continued even after legalization of abortion up to 2011 , the latest year for which population data is available. That means the number of live births increased significantly to cover millions of abortions carried out each year.

### **3. 3. 2 Statistics and Figures France**

3. 3. 2. 1 Number of abortionsLegalization of abortion 1975[6](Johnston 2012) (Johnston 2010)In France, induced abortion was legalized in 1975. As from 1968 to 1974, abortions were still practiced, but they were clandestine ones. From 1975 -1976, the number of abortions had increased at an increasing rate due to it being legalized in that period.[7]From 1976 – 2007, the number of abortions increased almost every year at a decreasing and sometimes increasing rate. The number of abortions rarely decreased compared to the previous year and even where it decreased, it was insignificant.[8]3. 3. 2. 2 France population trend(INED 2008) (INED 2013)As is shown in the figure, the population has been increasing since the 1960's. However the number of annual abortions as a fraction of the yearly population has remained stable at a decimal of 0. 003-0. 004 since 1976.[9]

### 3. 3. 3 The four legal grounds in USA and France

3. 3. 3. 1 Abortion to save a woman's life3. 3. 3. 1. 1 An overview of the groundAlmost all countries allow abortion to be performed to save the life of the pregnant woman. Some countries provide lists of life-threatening situations but they are not meant to preclude the doctor's clinical judgment of what is life-threatening for a particular woman. For example, if a list of physical dangers to life is considered exhaustive, that would exclude mental health conditions that are life-threatening (WHO 2003, pg 85). The rationale behind such a ground is to avoid serious physical or mental injury to the woman, or to preclude aggravation of an existing physical ailment untreatable by regular medical procedures (Freedman 1991). It is an extremely rare case when abortion is required to save the mother's life. Actually a view was taken that abortion is never necessary to save a woman's life. Four hundred and eighty physicians have signed a public declaration stating: " I agree that there is never a situation in the law or in the ethical practice of medicine where a preborn child's life need be intentionally destroyed by procured abortion for the purpose of saving the life of the mother." ( American Life League)Due to significant medical advances, the danger of pregnancy to the mother has declined considerably since 1967. Yet even at that time Dr. Alan Guttmacher of Planned Parenthood acknowledged:" Today it is possible for almost any patient to be brought through pregnancy alive, unless she suffers from a fatal illness such as cancer or leukemia, and, if so, abortion would be unlikely to prolong, much less save, life."(Guttmacher (1967 cited AbortionFacts. com 2013))3. 3. 3. 1. 2 Case law for therapeutic abortion in USA and France3. 3. 3. 1. 2. 1

Roe v. Wade 410 U. S. 113 (1973) In this 1973 decision, the Supreme Court ruled that women have a constitutional right to abortion. The Court ruled that a woman's decision to have an abortion in the first trimester of pregnancy should be exclusively between herself and her physician, but that individual states could regulate abortion in the second trimester in ways designed to preserve and protect the woman's health; and that after foetal viability, or the third trimester of pregnancy, the states could regulate or even proscribe abortion unless the procedure was necessary to preserve the life or health of the mother.

3. 3. 3. 1. 2. 2 Cour de cassation, Assemblée plénière, Audience publique du 13 juillet 2001 N° de pourvoi: 98-19190 In this case Mrs X gave birth to a child born with a malformation affecting his right upper limb. The spouses filed a lawsuit against Mr. Y, the gynecologist, for compensation of damages in relation to the disability of the child. The spouses claim that they had given their consent to procure an abortion on the therapeutic ground in case there are any anomalies but the gynecologist had mistakenly underestimated the previous malformation, and had not made all the necessary care for the morphological study of the fetus. In this case la Cour de Cassation held that: The mistakes of the physician are in direct causal relationship with birth and disability suffered by the child and la Cour d'Appel failing to take into account this legal consequence has violated article 1137 of the Civil Code. This therefore allowed child to request for compensation for damage. However, the conditions for carrying out a therapeutic abortion were not present, in compliance to Article L. 2213-1 du Code de la santé Publique and thus regardless of any other reasons, the judgment of la Cour d'appel is legally justified.

3. 3. 3. 1. 2. 3 Cour de



cassation, chambre civile 1 , Audience publique du 9 juillet 2009 N° de pourvoi: 08-12457 In this case Mrs X gave birth to Anaëlle who was suffering from agenesis of the right forearm, not detected during the thirteen ultrasounds. Mrs X and her husband filed a lawsuit against MM. Y. and Z. who were colleagues (general practitioners) and claimed compensation for damages on the basis of insufficient diligent examination, which failed to ensure the absence malformation of the fetus, thus depriving them of the possibility of an abortion on the grounds " therapeutic". La Cour de Cassation affirmed the decision of Cour d'appel as: It was not indicated how the disability, if had been detected, would have met to the exigencies of Article L. 162-12 du code de la santé Publique which is related to abortion for therapeutic motive. If the disability of the child did not meet the exigencies required by the law for a therapeutic abortion, did not mean that Mrs X had lost her chance of proceeding to an abortion (non-therapeutic abortion).

3. 3. 3. 2 Abortion on the ground of rape and incest

3. 3. 3. 2. 1 An overview of the ground

Typically, people on both sides of the abortion debate accept the premise that most women who become pregnant through sexual assault want abortions. (Reardon 1993) It naturally follows that the reason women want abortions in these very rare cases is because it will help them to put the assault behind them, recover more quickly, and avoid the additional trauma of giving birth to a " rapist's child." (Reardon 1993) However, evidence shows that abortion is not some magical surgery . Instead, it is a real life event which is always very stressful and often traumatic. Evidence indicates that abortion doesn't help and only causes further injury to an already bruised psyche (Reardon 1993). A study done at the University of

British Columbia's Department of Psychiatry, as reported in the March 3, 1978, issue of *Psychiatric News*, a publication of the American Psychiatric Association, showed that abortion often exacerbates a woman's psychological stress (Georgia Right to Life). Paradoxically, since conception does not occur immediately following intercourse, pregnancy can be eliminated in all rape cases if the rape victim receives immediate medical treatment by having all the male semen removed from her uterus ( Hillabrand (1975 cited Beckwith 1990). Pro-lifers emphasize that no matter the circumstances of conception; there should never be embarrassment about bringing a child into the world. Rape and incest victims need support and compassion, not a " quick-fix solution" like abortion. Abortion only adds to the trauma and injustice already inflicted upon the mother (Georgia Right to Life). The case against abortion of incest pregnancies is even stronger. Studies show that incest victims rarely ever voluntarily agree to an abortion (Maloof 1979, pg 84-85). Instead of viewing the pregnancy as unwanted, the incest victim is more likely to see the pregnancy as a way out of the incestuous relationship because the birth of her child will expose the sexual activity (Reardon 1993). 3. 3. 3. 2. 2 Case law for rape-related abortion in USA and France3. 3. 3. 2. 2. 1 *Hern v. Beye* ( United States Court of Appeals, Tenth Circuit No. 94-1205. -- June 08, 1995)For instance in the case of *Hern v. Beye* , the plaintiffs brought this action seeking to enjoin defendant from enforcing provisions of Colorado's constitution which forbid the funding of abortions except to save the life of an expectant mother. The United States District Court for the District of Colorado held that a state that participates in the Medicaid program must fund abortions for Medicaid-eligible women to

terminate pregnancies resulting from rape or incest. The Supreme Court affirmed and found that abortion funding restriction violates federal Medicaid law (Hyde amendment) insofar as it denies funding to Medicaid-eligible women seeking abortions to end pregnancies that are the result of rape or incest (see also: *Hope Medical Group for Women v. Edwards* (No. 94-30445. -- September 11, 1995 , United States Court of Appeals, Fifth Circuit)The 2009 version of the Hyde Amendment (federal Medicaid law) prohibits appropriated funds to be expended on abortion except in the cases of rape, incest or endangerment of the pregnant women's life (Lowen 2009).

### 3.3.3 Abortion on the ground of mental or physical health

#### 3.3.3.1 Overview of the ground

Such a ground allows the abortion procedure to be carried out in order to preserve the health of the woman. Medical definitions of mental health are not limited to extreme psychiatric illness but, instead, are much broader. The WHO constitution includes mental health and encompasses a variety of factors, " Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." (Ipas 2008)In *Roe v. Wade* (410 U. S. 113), Justice Blackmun writes, The detriment that the State would impose upon the pregnant woman by denying this choice [to terminate a pregnancy] altogether is apparent. ... Psychological harm may be imminent. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it (Ipas 2008).

#### 3.3.3.2 Case law in USA and France

##### 3.3.3.2.1 *Doe v. Bolton* 410 U. S. 179 (1973)

*Roe v. Wade* was modified by another case decided the same day: *Doe v. Bolton*. In *Doe v. Bolton* the Court ruled that a woman's right to an

abortion could not be limited by the state if abortion was sought for reasons of maternal health. The Court defined health as " all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the well-being of the patient." This health exception expanded the right to abortion for any reason through all three trimesters of pregnancy (United States conference of Catholic Bishop). 3. 3. 3. 3. 2. 2 National Abortion Federation v. Gonzales In the case of National Abortion Federation v. Gonzales (United States Court of Appeals, Second Circuit, Docket No. 04-5201-CV. Argued: Oct. 6, 2005. January 31, 2006), it was declared that the federal statute prohibiting an abortion method, sometimes called " partial birth abortion", is unconstitutional for lack of an exception permitting the procedure to be used to protect the health of a pregnant woman. The Government appealed. Such an exception is constitutionally required for any statute prohibiting a method of abortion whenever " substantial medical authority supports the proposition that banning a particular abortion procedure could endanger women's health," Stenberg v. Carhart, 530 U. S. 914, 938, 120 S. Ct. 2597, 147 L. Ed. 2d 743 (2000). Thus the Supreme court affirmed that the lack of a health exception renders the Act unconstitutional. (See also Stenberg v. Carhart 530 U. S. 914 (2000))3. 3. 3. 3. 2. 3 Simat Corp v. Arizona Health Care Cost Containment System (AHCCCS) In this case review was granted to decide whether the state constitution permits the state and the Arizona Health Care Cost Containment System (AHCCCS) to refuse to fund medically necessary abortion procedures for pregnant women suffering from serious illness while, at the same time, funding such procedures for victims of rape or incest or when the abortion is necessary to

save the woman's life (Supreme Court of Arizona, No. CV-01-0324-PR. - October 22, 2002). The court of appeals held that the AHCCCS' funding scheme was constitutionally permitted and that insofar as the state scheme permits funding of abortions for one class of pregnant women, the state constitution will not permit it to deny funding for others for whom abortions are medically necessary to save the mother's health. 3. 3. 3. 3. 2. 4 Cour de Cassation, chambre criminelle, 31 January 1996 N° de pourvoi: 95-81319 Publié au bulletin In this case, 9 people introduced themselves in the procedure room where abortion was going to take place at the " Centre hospitalier universitaire de Tours", having as objective to prevent the abortion from taking place. The police intervention had to take place in order to make them vacate the place. Here la Cour de cassation recognized the sufferings of the staff of the center and a person whose abortion was delayed a week after the crime. The judgment states that the latter suffered a psychological injury and that the staffs were the victims of disruptions in their service and professional practice. 3. 3. 3. 4 Abortion on the ground of fetal anomalies 3. 3. 3. 4. 1 Overview of the ground This reason is increasingly permitted by countries with otherwise restrictive abortion laws because it is now possible to diagnose such conditions (WHO 2003, pg 87). In the decision of Karen Noelia Llantoy Huamán v. Peru (No. 1153/2003), the U. N. The Human Rights Committee acknowledged the negative mental health impact of denying an abortion to a woman carrying a pregnancy with anencephaly, a severe fetal deformity. The Committee describes the psychological effect on the woman as a violation of her human right to be free of cruel, inhuman and degrading treatment -which includes freedom from mental suffering

(Ipas 2008). However, being pro-life often support the argument that the value of human life cannot be measured by one's abilities or lack thereof. As human beings, we have unalienable rights despite any physical, mental or emotional disabilities we may have. Denying another's humanity on this basis opens the door to other forms of " mercy killing."(Georgia Right to life)3. 3. 3. 4. 2 Case law for USA and France3. 3. 3. 4. 2. 1 Willis v. Wu (Supreme Court Of South Carolina No. 25915. -- December 20, 2004)Jennie Willis (Mother), the mother of Thomas Willis (Child), brought a " wrongful life" action on behalf of Child against Donald S. Wu (Physician). Child alleges, because Physician failed to adequately and timely diagnose his condition by prenatal testing and inform Mother the results, Mother was denied the opportunity to decide whether to terminate the pregnancy while legally allowed to do so. The Supreme Court stated that the physician owed a duty to Child in utero and breached his duty, proximately causing Child to be born with a severe congenital defect. Nevertheless the Court embraced the reasoning espoused by a majority of courts rejecting a wrongful life cause of action, and concludes that being born with a naturally occurring defect or impairment does not constitute a legally cognizable injury in such an action. The court recognized the severe nature of the Child's impairment. Nevertheless, the court found that Child's argument is untenable in that a child who already has been born should have the chance to prove it would have been better if he had never had been born at all. The judgement was consequently reversed.

### **3. 3. 3. 4. 2. 2 Fruiterman v. Granata (Supreme Court of Virginia, Record Nos. 071894, 071897. -- October 31, 2008)**

Julie Granata and Joseph Granata (the Granatas) each filed a separate but identical motion for judgment in the circuit court, alleging that Jan Paul Fruiterman undertook to provide obstetrical services and prenatal care for the couple, thereby establishing a physician-patient relationship with both Julie and Joseph. Additionally, the Granatas alleged that, if Julie had known about the condition of her fetuses during the first trimester, she would have elected to terminate the pregnancy. As a direct and proximate result of the Doctors' alleged negligence of not having informed them about chorionic villus sampling (CVS), a test to determine anomaly, Julie and Joseph claimed damages. In these wrongful birth cases, the circuit court sustained a jury verdict in favor of the mother. So here the doctor appealed to the decision of the court against the mother. On the other hand, for the case brought by the father, the father appealed as the decision operated in favour of the doctor. The Supreme court reversed the judgment of the circuit court in the Doctors' appeal. The evidence was insufficient as a matter of law to prove to a reasonable degree of medical probability that if Julie had undergone CVS, the result would have been positive for Down syndrome. The Supreme Court affirmed the judgment of the circuit court in Joseph's appeal. The evidence was insufficient as a matter of law to prove that he had a physician-patient relationship with the doctor.

3. 3. 3. 4. 2. 3 Cour de Cassation, Assemblée plénière, Audience publique, 28 November 2001 N° de pourvoi: 00-11197 Publié au bulletin

In this case Mrs X gave birth to a child with trisomy. The spouses X filed a lawsuit in compensation for their moral and material prejudice against Ms. Y., gynecologist, monitoring X's

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pregnancy, whom they accused of not having prescribed amniocentesis required by the patient. Ms. Y. appealed on the ground that: 1° A doctor is required to advise a pregnant woman to practice a chromosome test or amniocentesis only when there is risk that the fetus is attained by chromosomal aberration La Cour de cassation held that la cour d'appel deprived his decision of a legal basis by not being able to explain how the two previous pregnancies, having no link with a chromosomal aberration, were likely to lead to the conclusion that Mrs. X. was a " patient at risk" 2° the implementation of the civil liability of a physician assumes the existence of a causal link between the facts attributed to him and the injury. La Cour de Cassation held that the Court of appeal did not characterize the existence of a causal link between the failure to carry these examinations, detecting fetal anomaly, and the loss of chance to abort on the ground of therapeutic abortion, and thus deprived decision of legal basis under article 1147 of the civil Code

### **3. 3. 4 Mauritius**

3. 3. 4. 1 Population estimates The population estimate will be used just to try to reach to a conclusion on the number of abortions to be carried out as the result of being legalized. (IMF 2011)[10] The figure above is the population estimates of Mauritius over the several years. Mauritius has constantly experienced increases in the total number of citizens. These data will be used to further analyse the figures of abortion in relation to its population as there are different conclusions brought about by different institutions as to the number of illegal abortions which had taken place before legalization and which is still taking place. After confirming the figures and giving the

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foremost logical number of illegal abortions actually taking place, the researcher will then proceed to analyze how effective are the four grounds and what are their impacts : are they helping to reduce illegal abortion? What is the number of abortions which has taken place under the four grounds since legalization? 3. 3. 4. 2 Overview of the groundsThe grounds have been of intense debate at the parliamentary sessions and they will be analysed in the next chapter. 3. 3. 4. 3 Consequences of legalizationLegalisation has been very recent. The consequences of the 4 grounds have not been flagrant yet. Thus, the comparative analysis will be used as a source to determine several or to try to foresee some of the most obvious consequences entailing. This will apply for both the legal consequences and social ones.