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MILL'S HARM PRINCIPLE AND THE LEGITIMACY OF ABORTION LAWS: WHERE SHOULD THE STATE DRAW THE LINE?

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Abstract. The present study seeks to analyse the application of John Stuart Mill's Harm Principle to evaluate state intervention through abortion laws over women's reproductive autonomy. The principle given by Mill argues that intervention by the state over individual liberty is justified only when it is to prevent harm to others. The study explores whether abortion laws infringe upon or protect individual autonomy in the guise of state regulation to prevent harm to others. The study adopts a normative comparative legal analysis and reviews harm-based arguments in the development of law and policy concerning abortion rights. The application of Mill's Harm Principle to abortion laws clarifies whether existing abortion laws infringe upon or uphold individual liberty. The analysis shows how states adopt different approaches to abortion regulation, demonstrating different interpretations of the status of prenatal life, individual liberty and harm. While some jurisdictions adopt restrictive frameworks grounded in the moral interests of the society and protection of potential life, other jurisdictions limit interference by the state and prioritise reproductive autonomy. The present study adds to the legal scholarship by applying a classical liberal theory to contemporary abortion debates, offering policy recommendations to lawmakers for a balanced legal framework which respects reproductive autonomy while addressing state concerns.

Keywords: Abortion Laws, Reproductive Autonomy, Harm Principle, State Regulation, John Stuart Mill, Human Rights.

Introduction

In the recent past, a number of shifts in law and policy have occurred in different nations worldwide. These shifts have been both negative and positive for the reproductive rights of women. We have seen negative shifts like the overturning of Roe v Wade in the United States, which held that there was no constitutional right to abortion, and Poland's Constitutional Tribunal ruling that foetal abnormalities are not a legal ground for abortion. On the other hand, we have also seen some positive shifts, like the enshrinement of the right to abortion in the Constitution of France, the broadening of access to abortion in India through the amendment of

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the Medical Termination of Pregnancy Act 2021, and the abrogation of the Eighth Amendment of the Irish Constitution, which legalized abortion in certain cases.

There are nations with restrictive abortion laws and others with liberal abortion laws. What is interesting to note is how in the very recent past a few nations have moved towards recognizing individual liberty, while a few have diverged from the direction of recognizing and upholding individual liberty, which is the central tenet of Mill's harm principle. Canada is one of the few countries in the world which has not criminalised abortion, making it a realisation of Millian principle.

There continues to be considerable controversy worldwide due to the ethical and legal issues surrounding abortion. There is no single consistent philosophical basis for the regulation of abortion, with different states taking different legal approaches. The present paper seeks to explore the applicability of the Millian Harm Principle to abortion laws. It highlights the conflict between a state's interference to protect potential life and the exercise of individual liberty. The central problem addressed here is whether the Harm Principle is a viable normative framework for assessing the regulation of abortion and if so, how different jurisdictions deviate or align with the principle.

The article adopts a normative comparative legal analysis, with the purpose of comparison being not only descriptive but evaluative. The theoretical lens of John Stuart Mill's Harm Principle has been used to analyse the legal frameworks of selected jurisdictions. The different regulatory models of abortion law are reflected in the selected jurisdictions. France represents constitutional protection, Canada represents liberal decriminalisation, India represents conditional medical regulation, Poland represents restrictive moral legislation, and the United States represents the reversal of judicially recognised constitutional rights. These jurisdictions were selected to illustrate the distinct ways in which state interests are balanced against reproductive autonomy, allowing us to use Mill's Harm Principle to meaningfully evaluate the legitimacy of abortion regulation. Moreover, contemporary tensions between claims about protecting prenatal life, democratic decision-making and individual liberty are revealed by the recent legal developments in the selected jurisdictions. AI-assisted technology was used in the preparation of this article to check grammar and spelling.

1. Mill's Harm Principle and the Legitimacy of Abortion Laws: Where Should the State Draw the Line

1.1. Mill's Harm Principle

The salient distinction between harmful and harmless acts forms the foundation of a large portion of common law torts. When a person acts in a way that does not harm another person, that behaviour is considered an expression of their individual liberty and does not result in culpability under either criminal or civil laws (Epstein, 1995). On the other hand, when a person acts in a way which harms another or threatens their rights, then the society is justified in intervening, as per the rights violation view of the Harm Principle (Turner, 2014), and also according to Joel Feinberg's "*The Moral Limits of the Criminal Law"* (Epstein, 1995).

The Harm Principle given by Mill in "On liberty" strongly advocates for individual liberty as it states that "*the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others"* (Turner, 2014). Mill's Harm Principle acted as a safeguard for liberty and a check on the extent of governmental power during the nineteenth century. However, its use gradually changed towards the end of the 20th century to become a social control mechanism that is employed to justify significant government intervention of all kinds, including through the entire administrative and regulatory framework of the contemporary state, and not just through torts or criminal laws. The idea that formerly protected individual liberty was turned into a weapon against it (Epstein, 1995).

1.2. Concept of "others" and the problem of foetal status

The application of Mill's Harm Principle to abortion faces the difficulty that the concept of an "other" whose harm can justify intervention by the state is not clearly delineated. Mill himself did not give a detailed scientific or biological account of prenatal development, nor any explicit discussion of the moral status of the foetus. Thus, the question of foetal personhood is not resolved independently by his exposition of the Harm Principle; what the principle offers is only a framework for evaluating state intervention once the individual rights-bearing subjects have been defined. The analysis in this article proceeds on the interpretation widely used in contemporary theory that an individual meeting independent rights-bearing status within the legal community is protected by the Harm Principle.

Thus, for this article's purpose, the Harm Principle is used as a framework for evaluating how states justify abortion restrictions, and not as a definitive solution to the question of foetal personhood. The article analyses whether the justifications invoked by different jurisdictions correspond to identifiable harm to "others", or whether they reflect broader political, social, cultural or moral considerations. The philosophical debate of personhood of the foetus is not settled by this assumption, but the assumption allows the article to analyse how modern legal systems implicitly resolve that question while regulating abortion.

1.3 United States, overturning Roe v Wade

In the United States, the overruling of Roe (*Roe v. Wade | 410 U.S. 113 (1973)*) by the Supreme Court in Dobbs (*Dobbs v. Jackson Women's Health Organization 597 U.S. 215 (2022))* depended on several grounds for which Mill's principle is relevant. The majority opinion in Dobbs, written by Justice Alito, stated that the right to abortion is not explicitly provided in the Constitution, nor has it been "*deeply rooted in this Nation's history and tradition" (Washington v. Glucksberg 521 U. S. 702, 721 (1997)).* The Court further held that abortion is a matter that should be resolved by democratic means by legislature rather than the Court, as it is a matter of profound moral disagreement. The judiciary's role in balancing the rights of the mother and the unborn was rejected by the Court repeatedly.

The Court's contention that abortion is a matter of moral disagreement draws attention to the recent debate over the legal enforcement of morality. Currently, while the Harm Principle is formally acknowledged as providing a necessary condition for legislation, harm is not by itself a sufficient condition, as substantial harm reasons are given for nearly every moral transgression (Harcourt, 1999).

The Court added that since the right to abortion is not provided by the Constitution, the states which regulate abortion need only satisfy a rational basis review i.e., the law must have a reasonable relation to legitimate government interests (Eyer, 2018). In the present matter, the state's interest lay in protecting the foetus (unborn child), who can suffers harm by the exercise of personal autonomy by the mother. There appears to be a philosophical conflict between the reasoning of the majority opinion in Dobbs and the Harm Principle. Mill's principle centres around personal autonomy, which suggests viewing abortion as a private matter, particularly in the early stages, unless it directly harms "others" (Holtug, 2002). As the status of the foetus as an independent person is not universally recognized (Kurjak & Tripalo, 2004), neither is the decision of the mother universally viewed as causing harm to "others". However, the Court presumed the foetus to be an entity who suffered harm and needs protection by the state. which diverges from Mill's framework insofar as he did not explicitly consider the foetus to be a rights-holding person.

The Court's repeated emphasis on returning the question of abortion to the people and their elected representatives reflected a majoritarian stance which Mill had warned against. Mill had cautioned against the

"tyranny of the majority," as that might lead to infringement upon personal liberty even when there is no harm to others (Spafford, 1985). Mill remained sceptical of morally motivated legislation based on a majoritarian stance on morality.

Mill's political doctrine has two principles which he signals with unexpected clarity. One deals with matters over which the society has rightful jurisdiction, and the other deals with matters over which there is justification to intervene (Taylor, 2024). This distinction between the justification and jurisdiction becomes important to determine the legitimacy of state intervention. The central tenet of Mill's principle restricting use of coercion by the state only to prevent harm was potentially violated by the Dobbs decision, which allowed states to ban abortion following a rational basis view even when no clear non-moral harm is evident (Holtug, 2002).

The Harm Principle was arguably contravened in the Dobbs decision as it allowed the state to interfere with a woman's liberty merely based on contested moral beliefs about the personhood of the foetus, without any demonstrable and clear harm to others (Kurer, 1989). Collective morality has been privileged over individual autonomy by the Court's abandonment of the judiciary's role in protecting the rights of individuals and leaving the matter to the discretion of the legislature.

The following table presents a comparison between the reasoning given in Dobbs v Jackson and Mill's Harm Principle.

Aspect	***Dobbs v Jackson***	***Mill's Harm Principle***
Source of Authority	Rights must be deeply rooted; the constitution should be interpreted through history and tradition.	Individual liberty must not be interfered with unless there is proof of harm to others
State's Role	States can regulate abortion through elected representatives.	States should not interfere unless there is harm to others by the personal decisions.
How is individual autonomy viewed?	If not protected by the Constitution, then subordinate to the interests of the state.	It is central and protected unless it causes any harm to others.
Moral reasoning	Moral views may form the basis for state regulation.	Moral views/disapproval cannot form the basis for state regulation.
Privacy and personal decision making	Abortion is not a constitutional right in this respect.	Abortion decisions fall within personal liberty and privacy.
Role of judiciary	Courts must allow the legislature to decide.	The Courts must protect individual liberty from majoritarian moral coercion.
Harm	The foetus is believed to be an "other" who is harmed by abortion.	Demonstrable harm to identifiable others is the justification for legal coercion within Mill's framework, rather than moral disagreement within society.

Table 1. A comparison between the reasoning given in Dobbs v Jackson and Mill's Harm Principle (prepared by the authors)

1.4. Ireland, abrogating the Eighth Amendment

In Ireland, the Eighth Amendment of the constitution added in 1983 provided under Article 40.3.3 that, "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect and, as far as practicable, by its laws to defend and vindicate that right." A particular moral and religious understanding of the unborn's moral status was reflected in the amendment, which was prioritised constitutionally over interpretations grounded in reproductive rights and individual

autonomy. The impact of this amendment was a total prohibition of abortion in Ireland (Carnegie & Roth, 2019).

Throughout the following years, the article was challenged and even amended. In the end, a referendum was held on the legalisation of abortion in 2018, where voters were asked for agreement with the phrase "*Provision may be made by law for the regulation of termination of pregnancies."* The majority voted in favour, which resulted in nullifying the eighth amendment (*Abortion Rights in Ireland*, n.d.). This was followed by the passing of the Health (Regulation of Termination of Pregnancy) Act 2018, which legalized abortion under specific circumstances up to 12 weeks.

The striking down of the amendment was a step in the direction towards individual autonomy of women, which is in line with the Millian principle of harm. The amendment can be seen as a moral-political imposition, in which a moral worldview was constitutionally entrenched.

Seen through the lens of the Millian principle, the amendment represents a paradigmatic case of illegitimate moral legislation which restricted bodily autonomy, prioritized a potential life over actual beings, and imposed a singular moral doctrine in a pluralist society. All this was done without a universally accepted and clear definition of the foetus as an individual with rights. The amendment was an instance of Mill's feared "tyranny of the majority" (Spafford, 1985). Even in cases like the death of Savita Halappanavar, the law had failed to meet the baseline of Mill's principle: to prevent harm and not cause it ("Savita Halappanavar," 2016).

Hence, the abrogation of the amendment in 2018 reclassified abortion as a self-regarding and not other-regarding act, especially during the early stages of pregnancy up to 12 weeks (Ten, 1968). It further restored moral choice from the State to the individual, accepting pluralism by permitting individuals to make decisions and act as per their own conscience except in case of demonstrable harm to others. Importantly, the definition of harm finds its basis in gestational limits (an empirical basis) rather than from a metaphysically imposed moral status at conception.

Abortion may be regarded as an "other-affecting" act if the foetus were a person, which would then pose a challenge to the analysis of the abrogation in light of the Millian principle (Ten, 1968). Mill's framework has provided a criterion for determining the threshold for a state's interference, even if abortion is not directly addressed. The moral status of the foetus requires personhood and sentience, the harm that is caused must not merely be inferred from moral doctrine but should be demonstrable and observable, and potential for life cannot be treated as equivalent to the actual capacity of experiencing suffering (Sazdovska, 2021). In light of these considerations, the prohibition of early abortion has not been justified, hence the amendment was rightly aborgated.

Aspect	***Before Repeal***	***After Repeal***	***Millian Evaluation***
Legal Status of Abortion	Abortion was banned in actual effect.	Under certain circumstances, legalized up to 12 weeks.	The repeal aligns better with the Millian principle reflecting individual autonomy.
The justification of the State	The life of the foetus is equal to the life of the mother based on moral and religious values.	Based on the considerations of health, privacy and human rights.	The pre-repeal law is opposed by Millian considerations as being morality-based coercion.
Individual autonomy	Individual autonomy was subordinated to the rights of the foetus	Individual autonomy can be exercised within limits.	The post-repeal position is more consistent with Mill's principle
Use of state powers	Paternalistic and Coercive.	Based on medical professionalism and choice.	The post-repeal approach aligns with Millian principle.
Harm	The harm to the pregnant	The harm to the pregnant	The post-repeal approach would

	woman is ignored while focusing only on the potential harm to the foetus.	woman is recognised and balanced against that of the foetus.	be supported by Mill.
Public policy	Moral absolutism was enforced.	Allows pluralism with policy accommodating diverse views.	The post-repeal policy would be favoured by Mill.

Table 2. Millian evaluation before and after the repeal of the eight Amendment. (Prepared by the authors)

The repeal of the eighth amendment moved the Irish State closer to Mill's ideal by allowing the freedom of women to choose in reproductive matters, at least in the early stages of pregnancy unless there is harm to others. This shift would have been applauded by Mill as a victory for individual autonomy and liberal democracy.

1.5 India, Amending the Medical Termination of Pregnancy Act, 1971

In India, the Medical Termination of Pregnancy Act, 1971 decriminalised abortion for the first time under certain circumstances such as threat to the life of the mother, pregnancy cause by rape, foetal abnormalities etc. on the opinion of medical practitioners, and that too up to twenty to twenty-four weeks (Pai & Chandra, 2023). These regulations in the MTP Act have attempted to legalize medical termination of pregnancy to some degree, but regrettably, the doctor's judgement is the only factor that determines whether permission is granted. These clauses deprive women of control over their own bodies rather than granting them the freedom to choose and have safe abortions (Maheshwari, 2017).

Abortion is permitted under the MTP Act of 1971 for medical reasons, when a woman's life or physical or mental health is in danger, and for humanitarian reasons where the pregnancy results from sexual offences like rape or having sex with a woman who is mentally ill. A pregnant lady who wants an abortion will obviously have to defend her decision. It is viewed as unacceptable to claim that a pregnancy was desired at the time of conception but is now undesirable. She must give justifications that satisfy the strict yet usually flexible requirements of the Act. This demonstrates that abortion is still subject to state-approved guidelines rather than the woman's rights (Purdy, 2006).

The woman's agency is suppressed by the overarching requirement of serious harm to her physical or mental health or severe physical or mental abnormality of the foetus, necessitating legal validation at every stage, and depriving her of her right to privacy, personal liberty, and reproductive choice. The Amendment made to the Medical Termination of Pregnancy Act, 1971 in 2021 increased the gestational limit to 24 weeks from 20 weeks for a special category of women, and allowed single women to legally access abortion. The Amendment was a progressive step towards granting autonomy to women, but the overall structure of the Act is still state-centric (Arora & Verma, 2022). It does not recognise and advance individual autonomy, and falls short of satisfying the Harm Principle by not endorsing reproductive autonomy as a foundational consideration in determining matters of law.

The Act was amended in 2021, which broadened access to abortion by improving confidentiality, extending the gestational limits, and allowing any woman, married or unmarried, to have access to abortion (Kumari & Kishore, 2021). However, the law provides for abortion not as a right of the woman which she may exercise under personal autonomy but as an exception to the criminal offence of abortion (Sinha & Sinha, 2024).

The MTP Act, 1971 did not allow women the right to choose abortion, but exhibited State's paternalism by permitting abortion only under specified conditions like grave injury to physical or mental health of women, risk to her life, rape/incest, or foetal abnormalities (Pai & Chandra, 2023). There was no autonomy, as no

other reasons could be considered than those specified. The provisions in the criminal law and the MTP Act showed state-centric morality with no regard given to individual autonomy (Barua et al., 2020). The Act imposed a limit of 20 weeks, and abortion was subject to the consent/opinion of medical practitioners who did not act as facilitators of individual autonomy, but as gatekeepers (Ajith & Student, 2024). The Act, through coercive paternalism, curbed 'self-regarding' rights, violating the core principle given by Mill that the best judge of one's own welfare is oneself.

Aspect	***MTP Act 1971***	***Amendment 2021***	***Millian evaluation***
Foundation of access	Access provided in certain exceptional circumstances of medical emergencies	Access broadened but yet not given as a matter of right, still subjected to certain circumstances, only the ambit is broadened	MTP Act 1971 is coercive paternalist and the 2021 amendment also does not fully recognise individual autonomy
Gestational limit	Till 20 weeks	Extended to 24 weeks	The amendment has closer alignment with harm thresholds as it is based on foetal development and viability
Pregnant woman's autonomy	Very limited, medical practitioners decide about the legitimacy of abortion.	Some autonomy has been given, however not complete	The 1971 Act violates individual autonomy whereas the amendment of 2021 is an improvement.
Medical Practitioners' role	Approval of the medical practitioners is necessary	Approval of the medical practitioners remains necessary	Mill advocated for a facilitative and not paternalistic role.
Moral neutrality	Reflected medical and moral paternalism	Retained morally filtered criterion, not fully neutral	Mill advocated for a neutral law free from majoritarian morality or moral paternalism
Abortion as a crime	The Act provided an exception to the general criminality of abortion	Abortion not decriminalized, still just an exception to general criminality	Both the Acts remain inconsistent with the Millian liberty principle.

Table 3. Millian evaluation of the MTP Act before and after the Amendment of 2021 (Prepared by the authors)

If viewed through Mill's lens, the law treats abortion as a qualified permitted act rather than a right grounded in self-ownership. The woman cannot exercise autonomy over her body which remains under the state's authority. The development in the MTP framework shows a shift towards liberalization in laws and away from strict control (Arora & Verma, 2022). However, it is a long way from the law recognizing abortion as a right of the individual and not a state-conferred privilege.

1.6. France enshrines right to abortion in Constitution

In March 2024, a nation enshrined the right to abortion explicitly in its constitution, with France becoming the first nation to do so (Ray, 2024). This holds immense political and philosophical significance in the light of the global threat that was posed to the reproductive rights of women following the overturning of *Roe v Wade.* The amendment in the constitution reinforces the role of the state in protecting individual autonomy from social and state coercion, aligning with Millian liberalism. The amendment in the constitution was made to guarantee women the right to have recourse to abortion. The amendment upheld "*the freedom of women to have recourse to voluntary termination of pregnancy"* (Beauchemin & Boulet, 2024)**.**

In 2022, when *Roe v Wade* was overturned, a stark message was delivered to feminists worldwide that reproductive rights remain vulnerable worldwide, even in developed nations. The judgment had previously affirmed the constitutional right to abortion in the United States, and its overturning returned the power to

regulate abortion to the US States. This resulted in passing of legislation by several states banning abortion, and similar trends could be observed in parts of Europe (Coen-Sanchez et al., 2022). All these events led to the amendment in France's Constitution.

Mill's principle endorses the idea of individuals having sovereignty over their bodies. France's constitutional amendment aligns with Mill's principles and his call to protect individual autonomy from unwarranted coercion by the State. Abortion is a self-regarding action as it is a personal decision concerning the body of the individual. The critics of this view in the foetal personhood debate argue that abortion causes harm to the foetus. However, again, Mill's principle talks of harm to "others", and "others" are sentient rights-bearing individuals. France's constitution now implicitly provides that early-stage foetuses do not possess personhood. Thus, Mill's principle would not justify any state intervention in cases of abortion on the basis of preventing harm to the foetus. Moreover, the amendment to the French constitution serves as a safeguard against the "tyranny of the majority", against which Mill warns, by ensuring that the shift in populist politics and public opinion does not affect reproductive rights. France's decision to enshrine the right to abortion in its constitution demonstrates its commitment towards individual autonomy and resistance to majoritarian encroachment. This is an affirmation of individual autonomy, if viewed through the lens of Mill's principle. It further strengthens the foundation for reproductive rights worldwide in an uncertain global landscape, and so does more than merely securing the right to abortion in France.

Aspect of Mill's Harm Principle	***Corresponding feature in the French Constitutional Amendment of 2024***
Individual autonomy in self-regarding actions	The amendment upholds individual autonomy by guaranteeing the woman's right to choose.
Extent of State intervention	State intervention is not warranted in matters of abortion, as abortion does not constitute harm to others, as upheld by the amendment.
Majoritarianism	The amendment protects reproductive rights from being overridden by religious or political majoritarianism.
Liberty	The liberty of women to make reproductive choices has been affirmed.
Non-interference by State	Abortion being a matter of individual conscience has been argued in accordance with Mill to remain beyond the interference by the State.
Direct and tangible harm	Moral or potential harm cannot be sufficient grounds for interference. France's interpretation aligns with Mill's views.

Table 4. Corresponding features in the French Constitutional Amendment of 2024 of Mill's Harm Principle (Prepared by the authors)

1.7. Poland: Restrictive Regulation

In Europe, there are nations with restrictive abortion laws, one of which is Poland, which has one of the most restrictive abortion laws since the passing of a law which criminalised abortion in 1993 (Nowicka, 1996). Until 2020, abortion was legal on grounds of rape, incest, foetal abnormalities or when the mother's life or health is at risk. In 2020, there was a ruling by the Constitutional Tribunal which removed foetal abnormalities as a valid ground for abortion (Furgalska & Londras, 2022; Wiak, 2021) . Until 2020, a large number of abortions were conducted on that ground, and the ruling was met by international condemnation and widespread protests (Bucholc, 2022).

Recent years have seen an intensification in the enforcement of this law, resulting in fear amongst doctors of being prosecuted and women being denied critical healthcare even in situations which pose a threat to their lives (Krajewska, 2022; *Poland*, 2023). The European Court of Human Rights also ruled that the denial of

abortion in cases which involve foetal malformation violates women's right to private life under Article 8 of the European Convention on Human Rights (Kapelańska-Pręgowska, 2021; Fenwick, 2012).

The key tenets of Mill's Harm Principle are violated by the ruling. It is a clear violation of individual autonomy as it forces women to continue pregnancies even in cases of severe foetal impairment (*Abortion Ruling*, 2020). It represents an unjust exercise of a state's powers, where the state is the one inflicting harm by forcing women to carry pregnancies against their will. The coercion exercised by the state is enforcement of moral orthodoxy which is contrary to the core ideas of Mill's liberal theory.

Aspect	Before Ruling	After Ruling	Millian Evaluation
Legal grounds for abortion	1.Risk to woman's life or health 2.Rape/incest 3.Severe foetal impairment	1. Risk to woman's life or health 2. Rape/incest	Individual autonomy has been absent throughout but after the ruling it worsened.
Abortion in cases of foetal anomaly	Abortion allowed in cases of fatally or severely impaired pregnancies.	Abortion not allowed in any case of foetal anomaly even if the foetus is nonviable	Psychological and physical harm to women was prevented before the ruling; after the ruling suffering is imposed upon women without preventing actual harm to others
Legal Framework	Limited and clear access was allowed by the Act of 1993.	The ruling narrowed the interpretation overriding part of the Act.	The interpretation based on moral imposition in the ruling is objected to on Millian grounds as it is a form of coercion by the State.
Access to abortion	It was possible under the exceptions provided	Access became severely limited due to fear of prosecution among medical practitioners.	The State causes harm by fear, violating non-coercive governance. Medical care is deterred by legal ambiguity.
Response by the public	Rights groups raised concerns and criticism.	Protests led by masses.	The State's prioritizing of dominant ideologies over individual liberty indicates "tyranny of majority". The public dissent is also reflective of Mill's fear of moral majoritarianism.
Ruling by the European Court of Human Rights	No direct challenge	The right to private life under Article 8 of the European Convention of Human Rights is violated by denial of abortion in cases of foetal abnormalities.	The Ruling given by the European Court of Human Rights supported the Millian view that reproductive decisions fall under the sphere of individual liberty and private life.

Table 5. Millian evaluation before and after the Ruling by the European Court of Human Rights (Prepared by the authors)

1.8. Realization of Millian liberalism: The Canadian Model

Two sources of control or interference with individual liberty were identified by Mill, one being the state and the other being the opinion of the society. Mill realised that social opinion could threaten individual choices as strongly as state interference. However, interference by the state restricts everyone's choice (Peart, n.d.).

When we look at Canadian law and the absence of criminal restrictions on abortion, we can see a coherent and unique realisation of Millian liberalism. Canada is one of the few countries in the world which has not criminalised abortion. Since 1988, after the Supreme Court's ruling in R v Morgentaler (*R. v. Morgentaler* -

SCC Cases, n.d.) held that restrictions on abortion by the Criminal Code were unconstitutional, abortion has been a private and medically regulated matter which is governed by the general principles of medical ethics and provisional health care frameworks. There are no criminal provisions which criminalize abortion.

The judgment that was passed in 1988 was deeply Millian in spirit as it upheld the right to life, liberty and security of the person. The judgment affirmed Mill's Principle by denying the legitimacy of procedural gatekeeping as a condition of liberty, recognizing that demonstrable harm cannot be substituted by moral consensus, and affirming that individuals are sovereign over their own bodies. The Canadian position underscores the principle that only real harm can be used as a constraint on freedom and not mere moral discomfort.

Conclusions

First, there are significant differences in the way the different jurisdictions interpret the concept of harm in the context of abortion. The justification behind restricting abortion is protecting prenatal life, but there are significant variations across different jurisdictions in the extent of treatment of the foetus as a legally protected "other".

Second, some jurisdictions which limit State intervention and emphasise reproductive autonomy align more closely with Millian principles of liberalism. France and Canada appear to reflect the idea that personal liberty must not be restricted when demonstrable harm to others is absent, providing relatively strong protection to individuals in making reproductive decisions.

Third, it can be observed that restrictive abortion regimes rely on broader political and moral considerations rather than narrowly defined harm-based reasoning. The influence of majoritarian moral perspectives on protecting prenatal life is reflected in Poland and the USA.

Fourth, there are many jurisdictions which adopt regulatory frameworks of a hybrid in nature, which recognise reproductive autonomy but also retain state oversight. India, for instance, represents such jurisdictions where abortion is permitted under certain conditions while remaining mediated through medical authorization and a legal framework.

The analysis shows how states adopt different approaches to abortion regulation demonstrating different interpretations of the status of prenatal life, individual liberty and harm. While some jurisdictions adopt restrictive frameworks grounded in the moral interests of the society and protection of potential life, other jurisdictions limit interference by the state and prioritise reproductive autonomy.

The Harm Principle does not resolve the question of foetal personhood and underlying philosophical debates, but it offers a useful lens for examining the regulatory choices of the States which in diverse ways try to balance moral claims and individual autonomy in regulating abortion. According to the principle, the justification for state intervention must be demonstrable harm to others, rather than moral disagreement alone. Despite its limitation of not determining independently the status of the foetus as a relevant "other", it provides a valuable normative framework for analysing the regulatory choices of states.

The article has contributed in two ways to existing scholarship. First, it has demonstrated how contemporary legal debates like the debate on abortion can be illuminated by a classical liberal theory. Second, the conceptual challenges which arise in the application of philosophical principles of liberty to bioethical issues are also highlighted by the article. In the ongoing debate on reproductive rights, a more nuanced dialogue is encouraged between comparative constitutional law and legal philosophy.

References

Gargano D.V. ., & Lim, T. H. (n.d.) *Abortion Rights in Ireland: The Eighth Amendment and the Path to Repeal*. Oxford Constitutions of the World. https://oxcon.ouplaw.com/page/705
Abortion ruling: Nightmare for Polish women – DW – 10/23/2020. (n.d.). Dw.Com. Retrieved April 28, 2025, from https://www.dw.com/en/opinion-abortion-ruling-is-a-nightmare-for-polish-women/a-55380732
Ajith, B., & Student, L. (2024). A Critical Analysis Of The Medical Termination Of Pregnancy (Amendment) Act 2021 And Its Implications On Reproductive Health Care International Journal of Creative Research Thoughts. 12(4).
Arora, V., & Verma, I. C. (2022). Comment: The Medical Termination of Pregnancy (Amendment) Act, 2021: A step towards liberation. Indian Journal of Medical Ethics, 7(1), 1–7. https://doi.org/10.20529/IJME.2021.036
Barua, A., Rastogi, A., Deepa, V., Jain, D., Gupte, M., Mallik, R., & Dalvie, S. (2020). The MTP 2020 Amendment Bill: anti-rights subjectivity. *Sexual and reproductive health matters*, *28*(1), 1795447. https://doi.org/10.1080/26410397.2020.1795447.
Beauchemin, A., & Boulet, L. (2024). Impact of a Constitutionally Recognized Right to Abortion: Analysis of the French Case. Völkerrechtsblog. https://doi.org/10.17176/20240402-230149-0
Bucholc, M. (2022). Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon. *Hague Journal on the Rule of Law*, 14(1), 73–99. https://doi.org/10.1007/s40803-022-00167-9
Carnegie, A., & Roth, R. (2019). From the Grassroots to the Oireachtas. *Health and Human Rights*, 21(2), 109–120.
Coen-Sanchez, K., Ebenso, B., El-Mowafi, I. M., Berghs, M., Idriss-Wheeler, D., & Yaya, S. (2022). Repercussions of overturning Roe v. Wade for women across systems and beyond borders. *Reproductive Health*, 19(1), 184. https://doi.org/10.1186/s12978-022-01490-y
Epstein, R. A. (1995). The Harm Principle—And How It Grew. *The University of Toronto Law Journal*, 45(4), 369–417. https://doi.org/10.2307/825731
Eyer, K. (2018). The Canon of Rational Basis Review. *Notre Dame Law Review*, 93(3), 1317.
Fenwick, D. (2012). The modern abortion jurisprudence under Article 8 of the European Convention on Human Rights. *Medical Law International*, 12(3–4), 249–276. https://doi.org/10.1177/0968533212466658
Furgalska, M., & Londras, F. de. (2022). Rights, Lawfare and Reproduction: Reflections on the Polish Constitutional Tribunal's Abortion Decision. *Israel Law Review*, 55(3), 285–301. https://doi.org/10.1017/S002122372100025X
Harcourt, B. E. (1999). The Collapse of the Harm Principle. *The Journal of Criminal Law and Criminology* 90(1), 109–194. https://doi.org/10.2307/1144164
Holtug, N. (2002). The Harm Principle. *Ethical Theory and Moral Practice*, 5(4), 357–389. https://doi.org/10.1023/A:1021328520077
Kapelańska-Pręgowska, J. (2021). The Scales of the European Court of Human Rights. *Health and Human Rights*, 23(2), 213–224.
Krajewska, A. (2022). Revisiting Polish Abortion Law: Doctors and Institutions in a Restrictive Regime. *Social & Legal Studies*, 31(3), 409–438. https://doi.org/10.1177/09646639211040171
Kumari, S., & Kishore, J. (2021). Medical Termination of Pregnancy (Amendment Bill, 2021): Is it Enough for Indian Women Regarding Comprehensive Abortion Care? *Indian Journal of Community Medicine*, 46(3), 367–369. https://doi.org/10.4103/ijcm.IJCM_468_20
Kurer, O. (1989). John Stuart Mill on Government Intervention. *History of Political Thought*, 10(3), 457–480.
Kurjak, A., & Tripalo, A. (2004). The Facts And Doubts About Beginning Of The Human Life And Personality. *Bosnian Journal of Basic Medical Sciences*, 4(1), 5–14.
Maheshwari, S. (2017). Reproductive Autonomy in India. *NALSAR Student Law Review*, 11, 27–52.
Nowicka, W. (1996). The effects of the 1993 anti-abortion law in Poland. *Entre Nous* (Copenhagen, Denmark), 34–35, 13–15.
Pai, Satvik. N., & Chandra, K. S. (2023). Medical Termination of Pregnancy Act of India: Treading the Path between Practical and Ethical Reproductive Justice. *Indian Journal of Community Medicine*, 48(4), 510–513. https://doi.org/10.4103/ijcm.ijcm_540_22
Peart, S. J. (n.d.). Mill's Harm Principle: A Study in the Application of "On Liberty". John W. Parker and Son
Poland: Abortion Witch Hunt Targets Women, Doctors. *Human Rights Watch* (2023, September 14). https://www.hrw.org/news/2023/09/14/poland-abortion-witch-hunt-targets-women-doctors
Purdy, L. (2006). Women's reproductive autonomy: Medicalisation and beyond. *Journal of Medical Ethics*, 32(5), 287–291. https://doi.org/10.1136/jme.2004.013193
R. v. Morgentaler—SCC Cases. (n.d.). https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1053/index.do

Ray, N. (2024, March 6). France Becomes First Country to Guarantee a Constitutional Right to Abortion. Center for Reproductive Rights. https://reproductiverights.org/france-guarantees-constitutional-right-abortion/
Savita Halappanavar: HSE settles medical negligence case out of court. (2016, March 10). *BBC News*. https://www.bbc.com/news/world-europe-35771734
Sazdovska, I. (2021). The Moral Status of the Fetus and the Concept of Personhood. *International Journal of Sciences: Basic and Applied Research (IJSBAR)*, *57*(1), 153-161. https://www.gssrr.org/JournalOfBasicAndApplied/article/view/12504.
Sinha A, Sinha R. Recent Amendment in the Medical Termination of Pregnancy Act in India: Empowering Women's Health. Indian J Public Health. 2024 Jan 1;68(1):130-132. doi: 10.4103/ijph.ijph_569_23. Epub 2024 Apr 4. PMID: 39096257.
Spafford, D. (1985). Mill's Majority Principle. *Canadian Journal of Political Science*, 985;18(3):599-608. doi:10.1017/S0008423900032479
Taylor, M. (2024). The harm threshold and Mill's harm principle. *Theoretical Medicine and Bioethics*, 45(1), 5–23. https://doi.org/10.1007/s11017-023-09652-0
Ten, C. L. (1968). Mill on Self-regarding Actions. *Philosophy*, 43(163), 29–37. https://doi.org/10.1017/S0031819100008834
Turner, P. N. (2014). "Harm" and Mill's Harm Principle. *Ethics*, 124(2), 299–326. https://doi.org/10.1086/673436
Wiak, K. (2021). Judgement of the Polish Constitutional Tribunal of 22 October 2020 (K 1/20) on Eugenic Abortion. Teka Komisji Prawniczej PAN Oddział w Lublinie, 14(2), Article 2. https://doi.org/10.32084/tekapr.2021.14.2-35

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