

Israel's Abortion Law and the Paradox of a Rightless Access to Pregnancy Terminations

(Published in *Research Handbook on International Abortion Law* (Mary Ziegler, ed, 2023)

Noya Rimalt*

Sivan is one of numerous Israeli women who had to manipulate their way to legal abortion by lying about the true reasons for their desire to end a pregnancy. Several years ago, she described this experience, highlighting the shame and humiliation that are inherent to abortion access in Israel:

I am married with children and four years ago we got into an unplanned pregnancy. We decided we could not have another child. It also sat on economic considerations. When I realized I needed to see a committee, I was shocked. Financial constraints are not considered a justifiable reason for abortion. I had to get confirmation from a psychiatrist that I was [mentally] incompetent. I thought, what does this say about the children I have? I didn't want to go in that direction. In the end I lied and said I betrayed my husband. The social worker told me: Do you understand the implications? She meant that if my husband wanted to divorce me there is documented evidence that I allegedly betrayed him. She went on to say: "Are you lying?" And I answered: "You are pushing me against the wall. It is a terrible injustice that I have to beg for my body, to lie to get autonomy. I felt helpless."¹

In Israel, abortion can only be legally performed under certain circumstances and with the approval of a public committee composed of two physicians, and a social worker. Permission for legal abortion can be granted when the pregnant woman is under marriage age (18) or over 40 or when the pregnancy is out of wedlock or the result of rape or incest. Health considerations relating to the pregnant woman's physical or mental health or to expected abnormalities in fetal development constitute two additional grounds for legal abortion. For married women like Sivan, who do not meet the age, criminal, or the health-related criteria, it is especially difficult to have legal access to abortion. Their best chance for getting a committee's permission to terminate their undesired pregnancy is by claiming that they committed adultery, even when it is not the case. Once they lie about the true reasons for requesting to end an unwanted pregnancy, official approval is almost always guaranteed. In 2020, the most recent year

* Professor of Law, Founding Co-director, The Forum for Gender, Law and Policy, Faculty of Law, The University of Haifa

¹ Hila Weissberg, "Abortion in the Land of Birth: This is How Israel Became a Country that Forces Women to Lie in order to Terminate an Unwanted Pregnancy," *Globes*, May 31, 2019, (Hebrew), (All translations from Hebrew are mine unless otherwise indicated).

for which data is available 17,548 females in Israel turned to the Pregnancy Termination Committees.² Some 99% of requests for pregnancy termination were approved, while only 197 applications were denied.³ The most common reason for abortion approvals in 2020 was that the pregnancy occurred out of marriage, accounting for about half of abortion approvals.⁴ Hence, while the formal letter of the law is quite restrictive, in practice, legal abortion is relatively easy to obtain.

This chapter explores this paradox of Israeli abortion law. It analyzes the political process that enabled the enactment of this law in the 1970s and explains how a conservative law, that denied women the right to make an autonomous decision whether to end a pregnancy or not, developed into a practice administered by the Pregnancy Termination Committees that makes abortion widely accessible. At the same time, the chapter highlights the various costs for women associated with current access to abortion. Since access to abortion in Israel is not based on a reasoning of rights and Israeli women depend on public committees that decide their reproductive fate, shame and humiliation are inseparable aspects of this process. As Sivan concluded in despair after having to lie her way to legal abortion: "It is a terrible injustice that I have to beg for my body, to lie to get autonomy."⁵

The chapter proceeds in three parts. Part I explores the legislative and political developments that led to the enactment of the abortion law in its current form. Part II uncovers the implications of abortion policies that on the one hand make abortion available to a significant number of women but on the other hand treat women as objects and deny them the right to make autonomous reproductive decisions. Part III focuses primarily on comparing abortion policies in Israel and the US and explains how this comparison sheds a more nuanced light on the diverse set of gendered obstacles that still undermine women's bodily integrity and freedom. In conclusion, I argue that from an international perspective Israel provides an intriguing example of a medical community that makes pregnancy terminations possible for a great number of women despite a restrictive legislation. This willingness is crucial for guaranteeing women access to legal abortion, but it is not sufficient. Abortion access that is not based on a recognition of women's basic right to make autonomous reproductive decisions, leaves structures of gender inequality intact. Indeed, individual women are granted access to abortion, but at the same time the legal procedure that forces women to beg for their bodies before a committee of three strangers and often to lie about the true reasons for seeking an abortion, perpetuates their status as second-class citizens.

The Birth of a Rightless Abortion Law

² *Pregnancy Terminations by Law 1990 – 2020*, Department of Information, The Ministry of Health, The State of Israel (Oct. 2021) (Hebrew) at 11, https://www.gov.il/BlobFolder/reports/abortions-by-law/he/files_publications_info_unit_preg1990_2020.pdf (hereinafter: *Pregnancy Terminations by Law 1990 – 2020*).

³ *Ibid.*, 11–12.

⁴ *Ibid.*, 17.

⁵ Weissberg, "Abortion in the Land of Birth."

In 1977, four years after *Roe v. Wade* was decided,⁶ Israel reformed its old abortion law that had criminalized the performance of all abortions. The new arrangement maintained a general criminal prohibition on the performance of abortions, while providing a few exceptions, which, when applicable, would allow a three-person committee to approve abortion.⁷ Originally, the Law specified five possible grounds for legal abortion : (1) The woman is under marriage age or over 40;⁸ (2) The pregnancy is the result of criminal, non-marital, or incestuous relations; (3) The fetus is likely to have a physical or mental defect; (4) Continuation of the pregnancy is likely to endanger the woman's life or cause her physical or mental harm; (5) Family or social conditions dictate the abortion. However, two years after the enactment of the original bill, the fifth ground for abortion — known as “the socioeconomic clause” — was repealed by the legislature and abortion approvals were ultimately restricted to only four permissible grounds.

The call for reformation of the old abortion law resulted from the confluence of several, often-conflicting political pressures, leading to seemingly odd political alliances. Most proponents of abortion reform did not necessarily draw a link between abortion legislation and women rights. These legislators and government officials were seeking new measures to respond to national concerns over declining population growth and the differential fertility rates between Arabs and Jews, which had its own unique relevance, considering the ongoing Israeli-Arab conflict.⁹ It was viewed as equally imperative to discourage high birth rates among poor Jewish families.¹⁰ Relevant figures at the time indicated that the old abortion law was mostly ignored and that black market abortions flourished.¹¹ The prevailing assumption among most supporters of abortion reform was that the creation of more realistic and enforceable legal norms would enable law enforcement authorities to better control the availability of abortions based on both pro-fertility and family-planning state interests. Their impetus for reform stemmed primarily from demographic concerns and they were aiming to secure

⁶ *Roe v. Wade*, 410 U.S. 113 (1973).

⁷ Amendment to the Penal Code 5737-1977, SH No. 619 p.82 (Isr.). The law was passed by the Israeli Parliament (Knesset) in January 1977. Section 12 to the law determined that it would come into effect one year after its enactment. The law's provisions were integrated into the Penal Code as sections 312-321 under a new chapter entitled “pregnancy termination.”

⁸ The legal age of marriage in Israel is 18. See Marriage Age Law (Amendment No. 6), 5774-2013, SH No. 2416 p. 58 (Isr.).

⁹ Surrounded by heavily populated Arab states and involved in numerous armed conflicts with a coalition of these states since its establishment in 1948, Israel's political agenda was shaped by persistent demographic anxiety and a resultant desire to promote extensive population growth among the Jewish sector of the population. Yael Yishai, *Between the Flag and the Banner: Women in Israeli Politics* (Buffalo: State University of New York Press, 1997), 212.

¹⁰ In the 1960s, politicians began to realize that unmonitored incentives for population growth could lead to the intensification of another social problem: high birth rates among poor families. A Natality Committee, appointed by the Prime Minister to investigate the consequences of the government's indiscriminate pro-natalist policy, highlighted the problem of large families among the poor, who were mostly of North African and Middle Eastern origin, and recommended, for the first time, the development of programs for family planning among these sectors of the population. See Lotte Salzberger et al., *Patterns of Contraceptive Behavior Among Jerusalem Women Seeking Pregnancy Counseling, 1980-1989* (Jerusalem: Hebrew University of Jerusalem Press, 1991), 7.

¹¹ *Report of the Committee for the Study of the Ban on Induced Abortions*, 17(4) Public Health 427, 475 (1974) [hereinafter Gabai Committee Report].

government control in an area where legal norms had ceased to matter. For instance, Minister of Health Victor Shem-Tov explained during the preliminary parliamentary deliberation over the proposed reform:

In my opinion, the main problem we are facing is the need for family planning in Israel. There is a public misconception whereby family planning would necessarily lead to a decrease in birthrate... Family planning would cause regulation of the birthrate without decreasing the natural propagation in which we are necessarily interested, but rather the opposite: it may lead families currently having one or two children to increase the number of children, while families having a multitude of children... without having the ability to support and educate them, might perhaps reach a more desirable plan for the family.¹²

Similarly, Member of Keenest (MK) Haviv Shimony from the Labor Party who was trying to convince his fellow members of Knesset (Israeli Parliament) to endorse abortion reform argued:

I want to say gentlemen, that I am in favor of a large Jewish nation, especially after the Holocaust we had. But I am in favor of a large Jewish nation from all segments of population. It is not possible for 12% of families in Israel to give birth to more than 40% of children, and more than 50% of the rest will settle for one or two children.¹³

In sum, most proponents of the Bill focused on how wider access to abortion could serve national interests, particularly the ability to control fertility rates among the underprivileged strata, while still protecting the demographic interests of the State of Israel. At the same time, a demand for abortion reform came also from several advocates of women's rights in the Israeli Parliament. These advocates were joined by the emerging feminist movement, organized in the early 1970's primarily by American immigrants who were inspired by the rise of second wave feminism a decade earlier in the United States, and the Supreme Court ruling in *Roe v. Wade*.¹⁴ Together they called for a legislative reform that would recognize a woman's right to abortion.¹⁵

Support for abortion reform was thus diverse and represented two contradictory political agendas. A few proponents conceptualized the proposed reform as a clear issue of women's rights, while the vast majority endorsed this move based on national-demographic concerns that were completely detached from rights-based justifications. While each of the distinctive reasonings for abortion reform was initially put on the legislative agenda, the rights agenda was soon set aside. Advocates of women's rights in the Knesset realized that promoting a rights-based abortion law was impossible. They

¹² DK (1975) 1332 (Isr.).

¹³ DK (1976) 1603 (Isr.).

¹⁴ A personal perspective on the rise and formation of the Israeli feminist movement in the early 1970s and its contribution to the campaign for abortion reform can be found in the memoirs of Marcia Freedman. See Marcia Freedman, *Exile in the Promised Land* (New York: Firebrand, 1991), 96.

¹⁵ Yishai, *Between the Flag and the Banner*.

estimated that an emphasis on women's rights could hinder the potential for abortion reform and therefore united behind the demographic agenda to at least guarantee wider access to legal abortion for all women compared to the old legislation that imposed a strict criminal ban on all abortions. Hence, from relatively early on the legislative debate on abortion reform was not rights-based. The central question that was discussed was whether wider access to abortion would enable state officials to control fertility rates among the underprivileged strata, while not adversely affecting the demographic interests of the State of Israel.

These prevailing views on abortion reform should be understood in light of two significant characteristics of Israeli law and society in the early 1970s. First, an important aspect of Israeli society that played a role in shaping social and legal attitudes toward pregnancy terminations was national and patriarchal perceptions that ascribed women the duty to contribute to the nation's growth by fulfilling their maternal role.¹⁶ These perceptions were inspired by the national ethos which accompanied the foundation of the State in 1948, according to which the State of Israel was predestined to bring about the rejuvenation of the Jewish people in their homeland. Increasing the size of the Jewish population by encouraging women to have more children was also deemed vital to the country's political future in light of the Arab-Israeli conflict.¹⁷ Two wars in that period — the Six Days War of 1967 and the 1973 October War — between Israel and a coalition of Arab states further entrenched the national security and demographic agenda and rendered ideas of individual freedoms and gender equality secondary to public concerns relating to the Israeli-Arab conflict.

A second characteristic of the Israeli legal system that can shed light on the way most Israeli legislators approached the issue of abortion was the lack of a constitution and a Bill of Rights. Israel did not adopt a written constitution and a Bill of Rights upon its establishment. It was only in 1992 that the Knesset finally enacted two Basic Laws which enshrined several human rights and are now perceived as Israel's quasi-Bill of Rights.¹⁸ Legislation that was drafted in the 1970's was therefore formally immune from judicial review. Moreover, in the absence of a guiding framework of constitutional rights, legislators were not accustomed to considering the normative restraints of individual rights while formulating new legislation. These two characteristics of Israeli

¹⁶ Nitza Berkovitch, "Motherhood as a National Mission: The Construction of Womanhood in the Legal Discourse in Israel," *Women's Studies International Forum* 20 (1997): 605; Noya Rimalt, "Equality with a Vengeance: Female Conscientious Objectors in Pursuit of a Voice and Substantive Gender Equality," *Columbia Journal of Gender and the Law* 16 (2007): 99, 104-108.

¹⁷ David Ben Gurion, the Country's first Prime Minister and one of its founding fathers, articulated the prevailing notion of women's reproductive responsibility in his memoirs: "Every Jewish mother can and must understand that the unique situation of the Jewish People...imposes on her a sacred duty to do her utmost for the nation's rapid growth. One of the conditions for growth is that every family has at least four sons and daughters and the more the better." See David Ben Gurion, *Israel: A Personal History* (New York: Funk and Wagnalls, 1971), 839.

¹⁸ Basic Law: Human Dignity and Liberty, 5752-1992, SH No. 1391 (Isr.); Basic Law: Freedom of Occupation, 5754-1994, SH No. 1454 (Isr.). In 1995, in a landmark Supreme Court decision, the Court determined that these Basic Laws constitute Israel's constitutional bill of rights and formed the basis for the exercise of judicial review. See CA 6821/93 United Mizrahi Bank Ltd. v. Migdal Cooperative Village 49(4) PD 221 (1995) (Isr.).

law and society rendered arguments in favor of gender equality negligible and ineffective in shaping public and legislative discourse.¹⁹

It was within this context that the small number of advocates for women's rights in the Knesset were trying to promote an abortion reform that would provide better access and funding for women seeking to end an unwanted pregnancy. MK Haika Grossman, one of very few female legislators, was a key figure in this group. Grossman, chairperson of the Public Services Committee that was in charge of formulating the final version of the proposed abortion bill, refrained from any reference to women's rights when introducing the outline for legal reform to her fellow members of Knesset — most of them conservative secular and religious men. She formulated her arguments in a language that sought to assuage their national and demographic concerns. MK Grossman's goal was to guarantee the passage of the abortion bill by obtaining a legislative majority vote. She believed that this law held the promise of greater abortion access for women compared to the old legislation primarily because of the proposed socioeconomic grounds for abortion. She and other sponsors of this bill believed that adding these grounds as part of the planned reform would practically address the needs and interests of most women seeking abortion. The relevant data at the time indicated that most abortions were performed because of familial, economic, or social reasons and were not medically or criminally related.²⁰ Thus, the socioeconomic clause was considered by the Bill's feminist sponsors to be a significant expansion of women's access to legal abortion, and therefore was seen as a reasonable substitution for defining abortion as a woman's right. Under these circumstances the primary challenge for Grossman and other advocates of women's rights in the Knesset was to rhetorically frame the rationale for abortion reform and, especially, for adding a socioeconomic ground for abortion, in a way that addressed the concerns of most legislators.

After the Public Services Committee, chaired by Grossman, agreed on a final draft of the Bill it was brought to the Knesset for further deliberation and approval. Grossman sought to rally broader support for the draft before the first, second and third votes.²¹ She was clinging to a rhetoric that addressed the sentiments of most legislators stressing: *"Opposition to the Law based on the demographic problem is irrelevant. [...] It is likely that following the Law's enactment, the overall number of abortions would decrease, as the medical committees would have no interest in approving numerous abortions unless doing so is justified according to the criteria provided by the Law. [...] The proposed bill does not seek to decrease the birthrate, but vice versa."*²²

¹⁹ Noga Morag-Levine, "Abortion in Israel: Community, Rights, and the Context of Compromise," *Law and Social Inquiry* 19 (1994): 313, 321.

²⁰ A report of a public committee that served as a basis for the proposed abortion reform referred specifically to this point, citing data from a 1969 study that revealed that among under-privileged groups, 82.1% of requests for pregnancy termination were based on socio-economic reasons. Gabai Committee Report, 469.

²¹ Knesset Bills are advanced in several stages, called readings. Every reading of a bill is adopted or rejected by a vote of the Knesset members present in the Plenum at the time. Between each reading there are debates within the Knesset committees, which prepare the bill for the next stage of legislation. After passing the third reading, the bill becomes a law of the State of Israel. See the Knesset official website, <https://main.knesset.gov.il/EN/activity/Pages/Legislation.aspx>, accessed May 20, 2022.

²² DK (1977) 1229 (Isr.).

Indeed, MK Grossman correctly estimated that nationally oriented perceptions provided the most significant unifying framework for garnering support for the proposed Bill. Moreover, focusing on the collective interests of the Jewish people in the Jewish State also addressed the concerns of potential opponents of the proposed abortion reform, most of them representatives of the religious and ultra-Orthodox parties in the Knesset.

Jewish religious attitudes towards abortion are nuanced and revolve around a distinction between necessary and unnecessary abortion that rests on the supremacy of maternal life and health in Jewish law.²³ In the eyes of ancient Jewish law the fetus has no legal status since it is deemed part of its mother rather than an independent entity.²⁴ Hence, religious opposition to the law in the Knesset did not mirror a typical Western pro-life stance. In addition, central to the religious position on abortion, were Jewish perceptions and interests concerning the purity and wholesomeness of the family. In the framework of such perceptions, it was easy to rally the support of Jewish Orthodox Members of Knesset to permit abortions in cases where the pregnancy did not stem from circumstances of a traditional family such as single women's pregnancies, or the pregnancies of married women in situations of adultery. This ground for abortion, which was defined as applying to all situations in which the pregnancy is "out of wedlock," enjoyed wide consensus from the outset. It was intended to allow abortion with no restrictions whatsoever for single women and married women who conceived out of wedlock, and were therefore expected to bear a child who, from a Jewish religious perspective, would be considered a "bastard."²⁵ The birth of children who are deemed "bastards" constitutes a threat to the continuity of the Jewish collective, because these children and their descendants are to be excluded from the Jewish community. Hence, it was in the name of religious perceptions regarding "proper" families and "proper" children that single and adulterous women were provided access to legal abortion almost unanimously.

As opposed to the "out of wedlock" grounds for abortion that were widely endorsed, the proposed socioeconomic grounds attracted fierce religious opposition. Since religious arguments against the Bill were motivated primarily by concerns regarding the value of large families and the perceived role of women as the guardians of the family, these MKs were primarily worried about granting access to abortions to married women based on socioeconomic considerations. This clause was perceived as a

²³ David M. Feldman, *Birth Control in Jewish Law: Marital Relations, Contraception, and Abortion As Set Forth in the Classic Texts of Jewish Law* (Lanham, MD: Rowman and Littlefield, 1995), 275; Yael Hashiloni Dolev, *A Life (Un)Worthy of Living: Reproductive Genetics In Israel and Germany* (Dordrecht, Netherlands: Springer 2007), 94, 99.

²⁴ *Ibid.*

²⁵ Under Jewish law a child born to a married woman as a result of an extramarital affair is considered a bastard (*mamzer*). This status excludes this child and his or her descendants from the Jewish community for 10 generations by forbidding them from marrying an ordinary (non-*mamzer*) Jewish spouse during that period. Philippa Strum, "Women and the Politics of Religion in Israel," *Human Rights Quarterly* 11 (1989) 483, 494.

symbolic and substantive threat to the Jewish family and traditional religious norms – primarily the biblical command to “be fruitful and multiply.”²⁶

The average fertility rate for ultra-Orthodox Jewish women is more than double the average birth rate in Israel.²⁷ Family planning and the use of contraceptives are incompatible with the community's prevailing ideology regarding the role of women in society.²⁸ This often leads to severe economic hardship among members of the ultra-Orthodox community and indeed this community is one of the poorest in Israel.²⁹ Yet, the hegemonic religious discourse presents large families as a mandatory religious norm to be followed, regardless of hardship.³⁰ Restricting married women's access to abortion in situations of social and financial hardship therefore serves a crucial interest of the ultra-Orthodox leadership in maintaining high birthrates among women of their community. More broadly it delivers a symbolic message regarding the proper role of women in society and the sanctity of large families.

Initially the religious opposition to adding socioeconomic considerations to the abortion bill was not successful. The Knesset approved the bill in 1977 authorizing the Pregnancy Termination Committees to permit abortions based on one of five possible grounds including harsh familial or social conditions of the woman or her environs. However, the ultra-Orthodox parties adhered to their specific opposition to the socioeconomic clause even after its final approval into law. Within the framework of the coalition agreement signed between the right-wing Likud party and these parties following the 1977 parliamentary elections, the ruling Likud party undertook to abolish the socioeconomic grounds for abortion. A Bill that proposed invalidating the socioeconomic clause was brought before the Knesset and approved into law in 1979.³¹ Thus, the provision which the Bill's feminist supporters considered to be the most significant in terms of expanding women's legal access to abortion was repealed shortly after the law was enacted.

The repeal of the socioeconomic clause had created a situation in which the abortion law in its final version was ultimately rendered quite distant from the reality to which

²⁶ Genesis 1:28. See also Dalila Amir & Niva Shoshi, “Israeli Abortion Law- Feminist And Gender Implications,” in *Studies of Law, Gender and Feminism*, ed. Daphne Barak Erez, Shlomit Yanisky Ravid, Yifat Bitton & Dana Pugatch (2007) (in Hebrew).

²⁷ The average fertility rate among the general Jewish population is 3.2 children per woman as opposed to 6.6 children among strictly ultra-Orthodox Jewish communities. This figure is related to the low marriage age among the ultra-Orthodox. See *Statistical Report on Haredi Society in Israel* (Jerusalem: Israel Democracy Institute, 2020), (in Hebrew).

²⁸ Susan Martha Kahn, *Reproductive Jews: A Cultural Account of Assisted Conception in Israel* (Durham, NC: Duke University Press, 2000); Jacqueline Portugese, *Fertility Policy in Israel – The Politics of Religion, Gender and Nation* (Westport: Praeger, 1998), 45-47.

²⁹ According to recent data 42% of Ultra-orthodox families and 60% of children are categorized as poor. Israeli Democratic Institute, *Statistical Report*, 44.

³⁰ For instance, MK Yaakov Gross from the Religious Torah Front argued passionately when calling on Members of Knesset to object to the socioeconomic clause: “Gentlemen, we know from reality that there are families in Jerusalem, Bnei-Brak and all over the country that have eight children in one room, two rooms and neither think that because of this a pregnancy should be terminated....This is a sign that it is possible to live in two rooms with eight children and it is possible also to educate them.” DK (1977) 1239 (Isr.).

³¹ Penal law (Amendment No. 8), 5740-1979, SH No. 954 (Isr.).

it was meant to respond. As said, relevant data in the 1970's indicated that most abortions were performed by women who wished to terminate an unwanted pregnancy due to social, familial, economic, and personal reasons. In fact, these patterns of pregnancy terminations are evident to this day, worldwide. Several recent studies reveal that the most frequently cited reasons for having an abortion were socioeconomic concerns or the desire to limit childbearing.³² The socioeconomic clause was thus the most important grounds for abortion stipulated by the new legislation. Its repeal in 1979 undermined the significance of the entire abortion reform and had a disparate impact on married women in need of access to abortions.

Due to religious interests in encouraging “proper” family models, the Pregnancy Termination Committees were authorized to grant abortion approval to single women based strictly on their marital status and regardless of specific personal, social, or economic circumstances. Conversely, for married women, the socioeconomic clause provided the primary path to legal abortion in most cases. Thus, upon its repeal, the formal scope of access to abortion for married women was drastically diminished. According to the black letter of the law these women were left without formal legal access to abortion in most cases in which they sought to terminate an unwanted pregnancy.

Between Law in the Books and Law in Action

By the late 1980s, political pressure for greater control over the work of the Pregnancy Termination Committees grew. Members of the ultra-Orthodox parties who pushed for the repeal of the socioeconomic clause a decade earlier were hoping to see a significant decline in the number of abortions performed annually once women were denied access to legal abortion in circumstances of economic or familial hardship. However, relevant data in the 1980s indicated that the number of abortions performed annually was higher than expected.³³ Surveys that were conducted in those years indicated that the relative high number of abortions could be attributed to lenient approval policies employed by the Pregnancy Termination Committees.³⁴

In 1991, the Minister of Health appointed a public commission known as the Riftin Commission to investigate the decision-making process of the abortion committees. After one year of data collection, analysis and deliberations, the Riftin Commission submitted its final report.³⁵ The report was especially critical of the way the Pregnancy

³² Sophia Chae et al., “Reasons Why Women Have Induced Abortions: a Synthesis of Findings from 14 Countries,” *Contraception* 96 (2017): 233-241; Juan J Fernández, “Women’s Civil Rights and the Worldwide Liberalization of Abortion on Demand and for Socio-Economic Reasons,” *The Sociological Quarterly* (2021): 87-120; Antonia Biggs et al., “Understanding Why Women Seek Abortions in the US,” *BMC Women’s Health* 13 (2013): 29.

³³ Salzberger et al., *Patterns of Contraceptive Behavior*, 15; Delila Amir & David Navon, “The Politics of Abortion in Israel” (The Pinchas Sapir Center for Development, Working paper No. 13-89 56, 1989) (in Hebrew) [hereinafter Amir & Navon]. Specifically, the relevant figures reveal that in 1979, the number of authorized abortions was 15,925. In 1982, this figure increased to 16,829. In 1984, legal abortions reached the record high number of 18,948. *Ibid.*

³⁴ Salzberger et al., *Patterns of Contraceptive Behavior*, 13.

³⁵ Report of the Commission for Examining the Implementation of the Penal Law (The Riftin Commission Report) (examining the implementation of sections in the Penal Law that pertain to

Termination Committees interpreted and enforced the 'mental harm' grounds for abortion, anchored in Section 316(4) of the Penal Law, which allowed abortion approval where "continuation of the pregnancy may [...] cause ... mental harm to the woman." Specifically, the report found that in all but one of the hospitals examined, the Pregnancy Termination Committees used this section to grant approval for abortions in cases in which the real grounds were socioeconomic, rather than strictly medical grounds. The report concluded that over 70% of the Committees' abortion approvals citing potential risk to the woman's mental health were actually based on socioeconomic circumstances that were interpreted as contributing to the mental distress of the pregnant woman seeking an abortion.³⁶ Put differently, it turned out that most Pregnancy Termination Committees granted abortion permission to married women who experienced symptoms of mental distress as a result of the unwanted pregnancy combined with difficult family or economic circumstances.

For the Riftin Commission, this finding indicated that the socioeconomic ground, despite being formally stricken from the book of laws in 1979, continued to serve as a significant basis for approving legal abortions in Israel. The picture drawn by the Commission's final report was one in which the Pregnancy Termination Committees had become key players in expanding the legal boundaries of abortion approvals by employing a broad and flexible interpretation of the phrase "mental harm" provided in the law. If a married woman came forward and claimed that she was suffering from anxiety or stress because of the unwanted pregnancy and due to difficult family or personal circumstances, most Pregnancy Termination Committees perceived such a claim as meeting the legal requirement of "continuation of the pregnancy may [...] cause ... mental harm to the woman."

The Riftin Commission Report did not discuss the reasons for the apparent lenient abortion approval policies that were employed by most Pregnancy Termination Committees. Yet, one can argue that this more flexible interpretation of the law could be attributed to what seems to have been the medical community's desire to secure medically safe abortions for married women who were formally denied access to abortion in most cases in which they wanted to terminate an unwanted pregnancy. In other words, once the socioeconomic ground for abortion was repealed alternative mechanisms for abortion approvals were gradually created by members of the Pregnancy Terminations Committees. Instead of driving married women who sought abortions based on socioeconomic considerations to perform abortions "underground," and without proper medical supervision, an option was created for these women to perform a safe legal abortion in a hospital. In sum, the needs of married women appear to have been the primary reason for the lenient approval policies developed by the Pregnancy Termination Committees following the official repeal of the socioeconomic clause.

In an attempt to reinforce the exclusion of socioeconomic considerations from the black letter of the law and to reduce the total number of approved abortions, the Riftin Commission recommended to require a psychiatric evaluation from every pregnant

pregnancy terminations) (1992) (in Hebrew), <http://www.health.gov.il/PublicationsFiles/riptin.pdf>, accessed May 20, 2022 [hereinafter The Riftin Report].

³⁶ Ibid., 5.

woman who is seeking permission to end a pregnancy based on an alleged risk to her mental health.³⁷ The goal of the commission's recommendation was to restrict the "mental harm grounds" for abortion to circumstances wherein it can be clinically established that the woman suffers from a recognized psychiatric disorder and to prevent the Pregnancy Termination Committees from granting abortion approvals in cases where the woman's anxiety or stress are linked to her socio-economic conditions.

Shortly after the publication of the Commission's report, the Minister of Health embraced its recommendations as a formal ministry policy. The Minister, who is authorized by law to issue administrative directives for the proper implementation of the Abortion Bill,³⁸ issued a directive in 1993 that announced the new policy regarding a psychiatric evaluation of every pregnant woman who requests abortion based on the "mental harm" ground.³⁹ This directive also determined that the new policy must be "strictly and consistently performed."⁴⁰ Responding to the continuing political pressure from the ultra-Orthodox parties, the Minister's ultimate goal was to reduce the total number of abortion approvals granted by the Committees by making it harder for married women to get permission to end undesired pregnancies in circumstances relating to personal, family or economic difficulties.

However, almost three decades after this directive was issued, relevant data suggest that this objective has not been achieved. While the Minister's intervention succeeded in reducing the number of abortion approvals based on the "mental harm" ground, other grounds for abortion became more popular over the following years, providing alternative legal paths for married women seeking to terminate unwanted pregnancies.

Recent official data regarding pregnancy terminations in Israel published by the Ministry of Health indicates that the main official reason for which women in Israel terminate pregnancies is "pregnancy out of wedlock".⁴¹ Almost half of abortions in 2020 (49.3%) were performed in accordance with Section 316(a)(2) of the Penal Law.⁴² In 2019 the relevant figure was 52.8%⁴³ and on average in the past two decades more than half of abortion permissions (53%) were granted annually to single women or to married women who declared that the pregnancy was the result of adulterous relations.⁴⁴ Although Section 316(2) joins the grounds of rape and incest with the grounds of pregnancy "out of wedlock", the Ministry of Health's report itself clarifies

³⁷ Ibid., 6-7.

³⁸ Section 321 of the Penal Law, 5737-1977, SH No. 864 p. 226 (Isr.).

³⁹ Director General Directive 23/93 Compliance with the Law and Regulations by the Pregnancy Committees – Operational Guidelines, Ministry of Health, Israel (Nov. 14, 1993) (in Hebrew), http://www.health.gov.il/hozer/mk23_1993.pdf (last access: 14.4.22).

⁴⁰ Ibid.

⁴¹ *Pregnancy Terminations by the Law, 1990-2020*, 17.

⁴² Ibid. In absolute numbers, 8102 abortions out of the total annual number of 16,355 were performed in 2022 based on the "out of wedlock" legal ground. Ibid., 18.

⁴³ Ibid., 17.

⁴⁴ Ibid. In term of abortion statistics in Israel, 2020 appears to be an unusual year because of the outbreak of the Covid-19 pandemic. Lockdowns and the suspension of the operation of the pregnancy termination committees for short periods during this year apparently contributed to a small decrease in the total number of abortion requests and approvals compared to 2019 particularly during lockdowns in the months of April and September 2020. Ibid., 15.

that abortion approvals based on this section are mostly attributed to circumstances of pregnancy out of wedlock.⁴⁵ This fact is also compatible with general data whereby rape and incest actually constitute a very small portion of the cases in which women request abortions.⁴⁶ Moreover, according to the Ministry of Health's statistics, nearly half (48%) of the abortion approvals were granted to married women in 2019. In addition, the relative share of married women in the total number of women approaching the committees has been gradually increasing in the past decade and a half.⁴⁷ When looked at together, these two facts — that the most popular grounds for legal abortions are those pertaining to pregnancies conceived out of wedlock, and that nearly half of the applicants for abortions are married women— are particularly revealing. Given that a large portion of the women who underwent legal abortion in Israel in recent years were married, and assuming that, in most instances, the decision to end the pregnancy rested on family or socioeconomic considerations, and not on strictly medical or criminal reasons, one is driven to conclude that a married woman requesting Committee's permission would be compelled to frame her reason for abortion in terms that conform to the precise letter of the Law. Of the four available grounds provided in the Law – the woman's age, pregnancy out of wedlock, a potential risk to the woman's physical or mental health and fetal abnormality – the main grounds that currently allow for some leeway for applicants are those of "pregnancy out of wedlock." These grounds are open not only to single women, but also to married women who have had extramarital sexual relations, or to those declaring to have done so in order to obtain the needed approval for terminating an unwanted pregnancy. An extremely high average rate of 53% of abortion annual approvals have been granted in the past two decades based on "out of wedlock" grounds. This seems to indicate that many of the married women seeking to terminate an unwanted pregnancy find refuge in this provision and are compelled to lie about the true reasons for requesting abortion approval from the Committees. It should be noted that this conclusion is supported not only by statistical data respecting the centrality of the "pregnancy out of wedlock" grounds within the total number of approvals granted for abortions annually, but also by anecdotal information gathered over the years from married women who underwent this procedure.⁴⁸ In this respect, Sivan's experience with the Pregnancy Termination

⁴⁵ While mentioning section 316(2) to the Penal law as the official legal ground for approving these types of requests for abortion, the Report specifically refers to "out of wedlock" as the specific category in this section based on which these types of requests may be approved. *Ibid.*

⁴⁶ This fact was also acknowledged by the Minister of Health back in 1975. When presenting the proposed abortion reform in the Knesset the Minister explained: "It is an open secret that only a small portion of abortion are performed due to legal grounds such as rape...Most [women] ...terminate an out of wedlock pregnancy or unintended pregnancy." DK (1975) 1322 (Isr.). Studies in the US and in other countries reveal similar data regarding the marginality of criminally related reasons for abortion. A comprehensive study in the United States that involved 1209 abortion patients found that rape accounted for 1% of reasons for abortion and incest for less than 0.5%. These figures remain unchanged over time. See: Lawrence B. Finer, Lori F. Frohwirth, Lindsay A. Dauphinee, Susheela Singh & Ann M. Moore, "Reasons U.S. Women have Abortions: Quantitative and Qualitative Perspectives," *Perspectives on Sexual and Reproductive Health* 37 (2005): 110, 113. For a broader comparative picture See Chae et al., "Reasons Women Have Induced Abortions."

⁴⁷ *Pregnancy Terminations by the Law, 1990-2020*, 42.

⁴⁸ See for instance: Aviva Lori, "Lies I told the Committee," *Ha'aretz*, August 8, 2007, <http://www.haaretz.co.il/misc/1.1127665> (in Hebrew); Einat Sagi Alfasa, "What's the Problem? Lie and Say the Pregnancy is not From Your Husband," *Ynet*, May 2, 2013,

Committee, that is discussed at the beginning of this chapter, represents the experience of many other married women for whom a false declaration of adultery is the only path for legal abortion.

Alongside the adultery grounds, about one fifth of pregnancy terminations (18.5% in 2019 and 17.9% in 2020) are performed due to reasons relating to potential risks to the woman's physical or mental health.⁴⁹ This is a relatively high rate compared to other developed countries. While in other countries the performance of abortions due to concerns for the health of the pregnant woman account for about 10% of these procedures,⁵⁰ in Israel the rate is almost double. Such data may also indicate that married women seeking to end an unwanted pregnancy find some degree of refuge in this provision as well, and that social and economic factors are still being considered by the Committees as part of the mental-health grounds, despite the restricting directive that was issued by the Minister of Health in 1993. An official report published by the office of the State Comptroller in 2016 sustains this conclusion.⁵¹ The report that is based on a two-year inspection of the work of the Pregnancy Termination Committees found inconsistencies in their procedural policies regarding the "mental harm" grounds. Specifically, the report concluded that while some committees require a psychiatric evaluation before approving abortion based on this ground, other committees disregard the ministerial directive and grant permission to abortion based on a medical certificate of a family doctor or a sole testimony of the pregnant woman herself regarding her mental wellbeing. Still, despite these official findings, it is important to note that the Minister's effort to decrease the number of abortions approved by the Pregnancy Termination Committees based on the "mental harm" grounds did not fail completely. The relative share of approved pregnancy terminations performed based on this ground has decreased by 31% since 1990 from 27.5% to 17.9% in 2020.⁵² This has happened in correlation with a significant increase in the relative use of the "out of wedlock" grounds. While in 1990, before the Minister's directive came into effect, pregnancy terminations based on the "out of wedlock" ground constituted 41.4% of all pregnancy terminations, by 2019, this figure had increased to 52.8%.⁵³ The most dramatic change in the relative rate of usage of these two legal grounds occurred in the years immediately following the Minister's directive that imposed the psychiatric evaluation requirement.⁵⁴ This fact, in turn, further supports the conclusion that the main refuge of married women seeking to end an unwanted pregnancy through existing legal mechanisms is currently found in the grounds of pregnancy "out of wedlock." Forced to choose between presenting themselves as 'mad' or 'bad', most married women prefer

<http://www.ynet.co.il/articles/0,7340,L-4374951,00.html>, last accessed April 13, 2022 (in Hebrew); Weissberg, "Abortion in the Land of Birth."

⁴⁹ *Pregnancy Terminations by the Law 1990 – 2020*, 17.

⁵⁰ Chae et al., "Reasons Women Have Induced Abortions."

⁵¹ Annual report by State Comptroller Office, *Induced Abortions*, Health ministry, May. 24, 2016, <https://www.mevaker.gov.il/sites/DigitalLibrary/Pages/Reports/169-17.aspx>, last accessed April 14, 2022 (in Hebrew).

⁵² *Pregnancy Terminations by the Law 1990 – 2020*, 17.

⁵³ *Ibid.*

⁵⁴ In 1990, 41.4% of abortion approvals were based on "out of wedlock" considerations. In 1995, this number increased to 47.8% and in 2000, it reached a record high of 53.9%. Ever since then, this figure has remained relatively steady. *Ibid.*

to be categorized as 'bad' due to the more severe stigma and implications of being labeled as mentally incompetent. As Sivan, whose personal account of her experience before the Pregnancy Termination Committee is cited at the beginning of this chapter explained: "I had to get confirmation from a psychiatrist that I was [mentally] incompetent. I thought, what does this say about the children I have? I didn't want to go in that direction. In the end I lied and said I betrayed my husband."⁵⁵ Hence, to get abortion approval most married women are compelled to falsely declare that their pregnancy is the result of extramarital relations, and the medical community is apparently inclined to accept these statements to provide safe abortions in a hospital to this large group of women.

In sum, following the intervention of the Minister of Health in the work of the Committees in the early 1990's, the efforts made by the Pregnancy Termination Committees to expand married women's legal access to pregnancy termination, previously focused on the "mental harm" grounds, were diverted to the "adultery" grounds. These grounds have become the primary law-circumventing route for abortion approval today.

Rights v. Access: A Grim Reality of Reproductive Injustice and Gender Inequality

The most recent abortion statistics in Israel, published by the Ministry of Health, reveal that in 2020, 99% of all requests for legal abortions were approved by the Pregnancy Termination Committees.⁵⁶ This trend of very high percentage of abortion permissions appear to be steady over the years. Once approved by the Committees, many abortions are also funded by the state.⁵⁷ Based on these facts and figures some commentators describe Israel's abortion law and policy as surprisingly "liberal" and "uncontroversial."⁵⁸

However, as the previous section of this chapter reveals, the Israeli case study deserves a more nuanced analysis. An attempt to evaluate Israel's abortion policies by focusing exclusively on the high percentage of Committees' approvals of pregnancy terminations misses part of the story. Specifically, this focus overlooks two additional and crucial aspects inherent to Israel's abortion legal regime. First, it ignores the complex role of the medical community in making access to abortion possible for a great number of women notwithstanding a restrictive legislation that forces women to

⁵⁵ Weissberg, "Abortion in the Land of Birth."

⁵⁶ *Pregnancy Terminations by the Law 1990 – 2020*, 12.

⁵⁷ For many years, public funding was available for medically necessary abortions, for women who were victims of rape and to women under 20 or over 40. Women who did not meet any of these criteria had to pay for their legal abortion. In 2014, the age cutoff for publicly funded abortion was amended from 20 to 33. Consequently, a greater proportion of pregnancy terminations are now part of the package of medical services included in the "health basket" that is provided, free of charge, to all Israeli citizens. For government official information regarding abortion funding see <https://www.gov.il/he/service/pregnancy-termination-permission>, last accessed April 13, 2022.

⁵⁸ See for instance: Debra Kamin, "Israel Abortion Law Now Among World's Most Liberal," *Times of Israel*, January 6, 2014, <http://www.timesofisrael.com/israels-abortion-law-now-among-worlds-most-liberal/>, last visited May 20, 2022 ; Yair Rosenberg, "On Israel's Liberal Abortion Policies," *Tablet*, June 16, 2015, <http://www.tab-letmag.com/scroll/191538/on-israels-liberal-abortion-policies>, accessed May 20, 2022; Allison Kaplan Sommer, "Shhh! Don't Tell Evangelical Supporters of Israel, but Abortion There Is Legal — and Often It's Free," *Ha'aretz*, May 20, 2019.

beg for their bodies before a committee of three strangers and often to lie about the true reasons for seeking an abortion. In an interview that was conducted a couple of years ago by Prof. Michelle Oberman as part of her academic study of Israel's abortion law, Dr. Drorit Hochner, an obstetrician-gynecologist who had been the chair of a Pregnancy Termination Committee in the Jerusalem area for four decades explained: "In general we want to help women. Because you know, when a woman comes, a married woman, with kind of a normal environment. When she comes and asks for an abortion, it means that she is in agony: she needs it."⁵⁹ The social worker who has been part of Dr. Hochner's Committee for 18 years and was also interviewed for Oberman's study was more explicit and added:

...the major problem is the married woman. So, you know, during the conversation, probably not in the beginning, but more middle, if there's a married woman, and she doesn't have a reason, and I know that the committee's not going to approve it, I will tell her that. And really the only way to get it approved is to send her to a psychiatrist...But there are occasionally women who've expressed a lot of anger about that. They think it's ridiculous. They think that the psychiatrists are making money off their situation. They have no psychological problem; they don't need to see a psychiatrist. And I try to explain that this is the law. For now, this is the way it is, and I am trying to help them."⁶⁰

Hence, it seems that many doctors and health care providers that are part of the Pregnancy Termination Committees want "to help" women qualify for a legal abortion. Due to their apparent commitment to securing medically safe abortions primarily for married women, these committee members have no other choice but to cooperate with a culture of lies that developed because of a problematic abortion legislation. This common attitude can thus explain the extremely high rate of Committee's abortion approvals in Israel. As another member of a Pregnancy Termination Committee explained in this context: "We don't judge her. If she wants to study for her exams and can't have a child now, that's fine. The only time a woman will be denied is when she won't use one of the [formal] excuses."⁶¹ To be sure, not all members of the medical community share these sentiments. Several religious hospitals in Israel do not operate abortion committees on a regular basis and in practice avoid approving and performing abortions in most instances.⁶² However, there are enough abortion committees throughout the country that convene regularly and approve almost all requests for abortion. At the same time, it is important to acknowledge that members of the abortion committees can make access to abortion possible, but they cannot undo the shame and degradation that are inherent to the procedure as a whole. As this chapter uncovered, access to legal abortion in Israel comes with a heavy price tag especially for married women. In most instances of unwanted pregnancy these women must lie in order to

⁵⁹ Michelle Oberman, "How Abortion Laws Do and Don't Work," *Wisconsin Journal of Law, Gender, and Society* 36 (2022): 171.

⁶⁰ *Ibid.*, 174.

⁶¹ *Ibid.*

⁶² Adir Yanko, "The Halacha before the Law: 'Here They Will Not Allow You To Perform Abortion,'" *Ynet*, January 16, 2017 (Hebrew).

obtain a committee's approval for abortion. In the past, these lies centered mostly on false medical claims regarding their mental instability. Today, the path to legal abortion more commonly involves a public declaration of adultery. Such a declaration before a three-person Pregnancy Termination Committee is not only humiliating. It also carries potentially harmful consequences for these women in the future, particularly in divorce and child custody cases.⁶³ Moreover, while married women pay the heaviest price for Israel's abortion policies, these policies deprive all women of their bodily autonomy and treat them as objects. Mairav Zonszein, an unmarried Israeli woman who found herself six weeks pregnant with a 5-month-old baby at home described the deep sense of humiliation and helplessness that she experienced once discovering that she was totally dependent on a public committee's approval for ending this unplanned and undesired pregnancy:

As I waited to register, it began to sink in: I had no control, no privacy and no anonymity over this intimate, difficult matter pertaining strictly to my own body. The idea that anyone but me had the power to decide my family's fate and mine was harrowing. Israel's abortion policy, it hit me, was the opposite of liberal [...] Israel's policy sends a message to women that while the state will facilitate our abortions in practice, it refuses – in principle — to grant us the freedom to make that decision ourselves. And that is an infringement of our basic rights to bodily integrity and privacy.⁶⁴

Hence, the fact that most requests for abortion are approved by the Pregnancy Termination Committees does not make Israel's abortion policies “liberal.” Instead, the reality of abortion access in Israel provides an intriguing example of a medical community that makes abortion available to a great number of women despite a restrictive and illiberal legislation. In practical terms this means that all women are treated as objects and in addition married women need to be characterized as “adulteress” or “mentally unstable” by members of the Pregnancy Termination Committee before they can grant them abortion approval.

A second troubling aspect of Israel's abortion policies that is obscured by official statistics is the presumed large number of private illegal abortions performed in Israel annually. Alongside the problematics of married women having to lie their way to legal abortion, it may be safely assumed that some of the cases of unwanted pregnancies eventually find their way to the illegal market of abortions. The prevalent assumption is that Israel still has a significant black market for abortions.⁶⁵ A critical report issued by the State Comptroller Office a couple of years ago determined that the Ministry of

⁶³ For example, in Jewish law, adultery constitutes a ground for divorce and may be a factor in property settlements, custody of children and the denial of alimony. Pascale Fournier, Pascal McDougall & Merissa Lichtsztral, “Secular Rights and Religious Wrongs? Family Law, Religion and Women In Israel,” *William and Mary Journal of Women and Law* 18 (2011-2012): 333.

⁶⁴ Mairav Zonszein, “Israel's Abortion Committees,” *New York Times*, June 12, 2015.

⁶⁵ Statistics from a 2013 survey commissioned by the New Family organization in Israel. See Renee Ghert-Zand, “Black Market Abortions in Israel,” *The Sisterhood: Jewish Daily Forward* (February 5, 2013).

Health is making no effort to collect relevant data on the extent of illegal abortions in Israel and therefore there is no reliable information on this issue.⁶⁶ Based on anecdotal evidence it can be assumed that the demand for private illegal abortions comes primarily from women who are not willing to endure the humiliation associated with the committee procedure.⁶⁷ In addition, some black-market abortions occur in situations of young women or girls who are trying to hide their pregnancy and therefore want to avoid filing an official request to abortion to a public committee.⁶⁸ In any case, for these women, illegal abortions can jeopardize their health and burden them with a financial cost considerably higher than the customary cost of pregnancy termination procedures in the public health system.

Compared to American women, Israeli women still seem to be better off in terms of the availability of public funding for some abortions and in terms of the relative ease of obtaining an (il)legal abortion in a hospital. Indeed, in 1973, when the United States Supreme Court announced its decision in *Roe v. Wade* and employed a framework of constitutional rights to justify the right to abortion,⁶⁹ it appeared to be a stunning victory for American women's struggle for full citizenship. At the time, *Roe* represented a legal framework for abortion that Israeli women could not obtain. Most Israeli legislators who voted for abortion reform in the 1970s did it only because it appeared to be serving demographic state interests. These legislators did not see the link between abortion reform and women's fundamental rights and ended up enacting a problematic legislation that denies women the right to choose to end an unwanted pregnancy and treats them like objects. However, almost half a century after *Roe v. Wade* was decided, American women's constitutional right to abortion has been taken away by the Court in its recent decision in *Dobbs v. Jackson Women's Health Organization*.⁷⁰ After years of legislative measures curtailing abortion rights and with a majority of conservative justices in the Court, the anti-abortion movement has finally achieved its decades-long goal to remove federal protection for abortion. In *Dobbs*, the Supreme Court deliberated the constitutionality of a Mississippi state law that banned abortions after 15 weeks of pregnancy. It marked the first time the Court has agreed to rule on the constitutionality of a pre-viability abortion ban since *Roe*. State officials in that case have asked the justices to overturn *Roe v. Wade* and a majority of the Court sided with Mississippi and abolished the constitutional right to abortion.

But irrespective of the Court decision in *Dobbs*, it is important to recognize that the provision of abortion in the United States has been transformed in ways that have left millions of women, particularly poor women and women of color, without access to these services even before *Roe* was officially overturned. The shrinking number of

⁶⁶ Annual report by State Comptroller Office.

⁶⁷ Weissberg, "Abortion in the Land of Birth."

⁶⁸ Itay Gal, "A Young Woman Had Illegal Abortion and Almost Died," *Ynet*, January 15, 2013, <https://www.ynet.co.il/articles/0,7340,L-4332680,00.html>, accessed May 20, 2022 (in Hebrew).

⁶⁹ *Roe*, 410 U.S. at 151-157.

⁷⁰ 597 U.S. _ (2022).

abortion clinics in many states,⁷¹ the denial of public funding,⁷² the growing number of medical personnel and health care providers that refused to perform abortions,⁷³ and numerous other restrictions on abortion providers and patients that were imposed over the years,⁷⁴ had gradually turned the formal constitutional right to abortion into a hollow right for a growing number of American women. Moreover, practices of harassment of abortion providers, violence against them and intimidation have been effective in deterring many in the medical community from performing abortions.⁷⁵ Indeed, many American doctors shied away from abortion not only due to religious convictions but also out of fear even when *Roe* was still standing.⁷⁶ Hence, while Israeli women could at least manipulate their way to legal abortion (often with the support of medical health practitioners), some American women had been increasingly deprived of *Roe*'s promise long before the recent Court decision in *Dobbs*. In this respect Israel and the United States provide two opposite examples of women's realities of reproductive rights in the past five decades. While Israel's abortion legal regime denies women the right to choose

⁷¹ Overall, the number of abortion clinics in the US dropped from 452 in 1994 to 272 in 2014. See Holly Yan, "These Six States Have One Abortion Clinic Left. Missouri Could Become the First State with Zero," CNN, May 29, 2019, <https://edition.cnn.com/2019/05/29/health/six-states-with-1-abortion-clinic-map-trnd/index.html>, April 14, 2022. Some of the states that experienced the highest drops are Ohio with 10 remaining abortion clinics in 2018 compared to 45 in 1992. Missouri went down from 12 to 2 clinics during the same years and Louisiana from 17 to 3. Mississippi went from 8 facilities in 1992 to 1 remaining in 2018. Currently there are six states with only one abortion providing facility left. Jessica Arons, "The Last Clinics Standing," ACLU, <https://www.aclu.org/issues/reproductive-freedom/abortion/last-clinics-standing>, accessed April 14, 2022.

⁷² Although states can decide to use their own funds to cover the costs of at least some abortions, most states stick to the Hyde Amendment restricted federal standard for abortion funding. The Hyde Amendment bars the use of federal funds to pay for abortion, except to save the life of the woman, or if the pregnancy arises from incest or rape. This impacts poor women the most. Research data that was collected over 20 years shows that 18–35% of women would have opted for abortion had it been covered by Medicaid. Even when poor women do obtain an abortion, their access is limited and over 60% would have wanted to get an abortion in an earlier stage of the pregnancy when it is safer and more easily obtained. Heather D. Boonstra, Guttmacher Institute, *Guttmacher Policy Review*, Vol 10, Issue 1 (March 5, 2007), <https://www.guttmacher.org/gpr/2007/03/heart-matter-public-funding-abortion-poor-women-united-states>, (last access: 14.4.22).

⁷³ The so-called religious refusal law allows health care providers to refuse providing health care services such as abortion on grounds of their faith. See: Planned Parenthood, *Religious Refusal Laws and Reproductive Health Care*, <https://www.plannedparenthoodaction.org/issues/birth-control/religious-refusal-and-reproductive-health>, accessed April 14, 2022.

⁷⁴ The Targeted Regulation of Abortion Providers (TRAP) are aimed at creating medically unnecessary and often time impossible standards in order to limit access to abortion, including building code limitations on abortion providing clinics as well as strict requirements on physicians and hospital liaisons. Guttmacher Institute, *Targeted Regulation Of Abortion Providers (TRAP) Laws*, Guttmacher Institute (Jan. 2020), <https://www.guttmacher.org/evidence-you-can-use/targeted-regulation-abortion-providers-trap-laws>; Arons "The Last Clinic Standing."

⁷⁵ National Abortion Federation, *2020 Violence and Disruption Statistics* (2021) (In 2020, Abortion providers reported an increase in vandalism, assault and battery, death threats, threats of harm, stalking, and the use of hoax devices or deliveries of suspicious packages compared to the number of similar reported incidents in 2019), https://5aa1b2xfmfh2e2mk03kk8rsx-wpengine.netdna-ssl.com/wp-content/uploads/2020_NAF_VD_Stats.pdf. For a memoir written by a son of an OB-GYN that documents his father's experiences in the abortion wars of the 1980s and early 90s when the anti-abortion organization Operation Rescue raged through the Buffalo area blocked abortion clinics, threatened doctors performing abortion and publicly labeled them as baby killers. See Eyal Press, *Absolute Convictions: My Father, a City, and the Conflict that Divided America* (New York: Picador, 2007).

⁷⁶ Eyal Press, "In Medicine, a Lack of Courage Has Helped Put *Roe* in Jeopardy," *New York Times*, January 21, 2022.

to end an unwanted pregnancy but offers them a rightless access to abortion, *Roe v. Wade*'s formal constitutional right to abortion had failed throughout the years to guarantee actual access to abortion services for all women.

Moreover, Spain and more recently Mexico provide two additional comparative examples of how a formal right to abortion does not necessarily guarantee access to the procedure. Spain liberalized its abortion law in 2010, allowing all women to terminate an undesired pregnancy in the first 14 weeks of pregnancy.⁷⁷ However, recent data indicate that the maps of where abortions are available are drawn primarily by the number and locations of doctors who are willing to perform abortions.⁷⁸ Many doctors object to abortion on conscientious grounds and consequently, there are many areas in Spain where (legal) abortions are not performed at all. In Mexico, a recent Supreme Court decision ruled that it is unconstitutional to criminalize abortion, but widespread hostility towards abortion among doctors and other health personnel similarly jeopardizes women's ability to exercise their newly granted right to choose to terminate an unwanted pregnancy.⁷⁹

Hence, the American example as well as recent developments in countries like Mexico or Spain reveal that individual physicians as well as the medical community at large can play a key role in ensuring that abortion services are available to women. In this respect, Israel stands unique when compared to other countries with regard to its medical community who appear to be largely committed to implementing the country's restrictive and illiberal abortion legislation in a manner that at least guarantees access.

Conclusion

In the early 1970s, when the Israeli legislature started deliberating abortion reform, the American Supreme Court decision in *Roe v. Wade*, that had been just announced, signaled what seemed to be a new era for women's reproductive rights. However, *Roe*'s conceptualization of abortion as a woman's fundamental right had no impact on the legislative debate over abortion reform in Israel. Instead, most legislators, including a few pragmatic feminist lawmakers, united behind a proposed Bill that while granting women wider access to abortion compared to the old legislation denied them the right to abortion on demand.

Hence, originally, Israel chose a very different path for abortion reform compared to the US. It was a path that was not designed to protect the sexual and reproductive health rights of women but rather to provide access to abortion in cases where terminating the pregnancy serves the demographic interests of the State. This complete disregard to the rights of women as part of the legislative process led to the enactment of a restrictive law that limited the number of legal grounds for abortion. Nonetheless, almost five

⁷⁷ Center for Reproductive Rights, Spain's Abortion Provisions, <https://maps.reproductiverights.org/world-abortion-laws/spains-abortion-provisions>, accessed April 14, 2022.

⁷⁸ Nicholas Casey, "Abortion is Legal in Spain. Doctors are Unmoved," *New York Times*, September 22, 2021.

⁷⁹ Natalie Kitroeff, Oscar Lopez, "Abortion Is No Longer a Crime in Mexico. But Will Doctors Object?" *New York Times*, September 15, 2021; Melissa Ayala, "The Fight for Abortion Rights in Mexico Isn't Over," *New York Times*, September 21, 2021.

decades later, the comparison between the US and Israel uncovers a much more nuanced picture. As the promise of *Roe v. Wade* vanishes, in Israel, an opposite trend of a growing gap between a restrictive legislation and its lenient interpretation by the Pregnancy Termination Committees make abortion accessible for women who are willing to bear the costs associated with this access.

In today's reality of abortion politics world-wide, the practical benefit of actual access to abortion should not be lightly disregarded. Yet, as this chapter demonstrates, abortion access that is not based on a recognition of women's basic right to make autonomous reproductive decisions, leaves structures of gender inequality intact. The Pregnancy Termination Committees can make access to abortion possible, but they cannot undo the shame and degradation that are inherent to the process of abortion approval. Indeed, individual women are granted access to abortion, but at the same time the legal process that forces women to beg for their bodies before a committee of three strangers and often lie about the true reasons for seeking an abortion, perpetuates their status as second-class citizens.

In sum, the experience of Israeli women seeking to end an undesired pregnancy adds another dimension to the analysis of contemporary global realities of abortion rights and access. This experience sheds light on some of the hardships that are still inherent to women's efforts to gain full control over their bodies and to make autonomous reproductive decisions that are key to their claim to equal citizenship. As these legal hardships continue to restrict women's reproductive choices and as the American Supreme Court eliminates the 50-year-old constitutional right to abortion, it remains uncertain whether the goal of true equality and freedom for all women around the globe can be accomplished in the 21st century.