

A LEAKED DRAFT, TERMINATION RIGHTS AND THE POLITICS

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

From the portals of the judiciary | Photo Credit: Getty Images/iStockphoto

It was something that literally no one expected, and from the portals of the Supreme Court of the United States — [a leaked draft of the court's decision on abortion law](#) indicating that a majority of the Justices might have just about agreed to overturn [the 1973 landmark *Roe vs Wade*](#) that legalised abortion in America. When [Politico got its hands on the 98-page draft](#), and other media organisations jumped on the bandwagon, all hell broke loose, and expectedly so. In an already divisive country, nothing rankles the partisans more than the sensitive subject of abortion.

Some have likened the [leaked document](#) as being the equivalent of the [Pentagon Papers](#) that surfaced during the Nixon era. In a country where leaks are not out of the ordinary, these have been mostly confined to the White House and the vast bureaucracies, but not from the sacred hallways of the Supreme Court. In fact, one argument has been that even in the heightened political environment of 2000, when the election of a President (George W. Bush/Al Gore) was being decided, there was not even a whisper about which way the Justices were leaning.

But not so this time around. Within a short period of time, the accusations have begun, with the needle of suspicion pointing to the Liberal Justices in the apex court, their clerks and allies, with the intention of alerting the nation about what was in store. According to the story, the first draft had the consent of five Conservative Justices with the Chief Justice, John Roberts, yet to weigh in. “The left continues its assault on the Supreme Court with an unprecedented breach of confidentiality, clearly meant to intimidate. The Justices mustn’t give in to this attempt to corrupt the process. Stay strong”, tweeted Republican Senator from Missouri, Josh Hawley.

Top Democrats were quick on the draw as well. In a statement, Senate Majority leader Charles Schumer and the Speaker of the House of Representatives, Nancy Pelosi, said, “If the report is accurate, the Supreme Court is poised to inflict that greatest restriction of rights in the past 50 years — not just on women but on all Americans. The Republican-appointed justices’ reported votes to overturn *Roe v Wade* would go down as an abomination, one of the worst and most damaging decisions in modern history.”

Out of the nine Justices, six have been appointed by Republican Presidents. Politico has stated that the so-called first draft was supposedly prepared by Justice Samuel Alito with the sole intention of overturning the Court’s ruling on *Roe vs Wade* and a 1992 decision in *Planned Parenthood vs Casey*. In the “Opinion of the Court”, Justice Alito is said to have written that “*Roe* was egregiously wrong from the start” and that it must be overruled. “It is time to heed the Constitution and return the issue of abortion to the people’s representatives”, he is said to have added.

Chief Justice Roberts would want a full-scale investigation into the leak which would most certainly involve the Federal Bureau of Investigation (FBI); and there is an element of uncertainty as to whether the top court will stay on schedule for a decision in June/July. The argument that the first draft need not necessarily be the final word on the subject has had few takers, with both supporters and opponents in a no-holds barred slanging match, with at least one conservative commentator describing the leak as amounting to an “insurrection” against the

top court.

There is, undoubtedly, a political angle to this, especially in the run-up to the mid-term elections of November 8 which is about six months away. More immediately, the leak will be seen as having an impact on the primaries that are scheduled in the next few weeks. In a national poll by Marquette Law School in January 2022, 72% were opposed to overturning *Roe vs Wade* as opposed to only 28% who were in favour. And Democratic lawmakers have once again come together to call for codifying *Roe vs Wade* into law — a task that is easier said than done given that the Democrats do not have 60 votes in the Senate and dissension within their ranks on getting rid of filibuster as a procedural tool.

“... the repercussions will be significant,” argued Aditi Vaidya of the Center for Health Systems and Policy in the School of Medicine of Tufts University this February. “The removal of the constitutional right to abortion will be felt most among low income people, people of color and rural communities across the country. As history so clearly tells us, banning abortion does not stop them from occurring, it pushes them underground, limiting access to safe abortions,” she added, pointing to dangerous methods, unqualified persons in procedures and online pharmacies peddling abortion pills.

Even as the heated debate has just started and is one that will intensify in the weeks ahead, statistics speak of about 6,30,000 reported abortions in the United States in 2019, down 18% from 2010; 57% of the women were in their twenties; African-American women had the highest rate of abortions, of 27 per 1,000 women aged between 15 years and 44 years. These are telling statistics that the Republicans and the Democrats need to keep in mind as they wrestle for political points.

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