

# Should access to abortion be a human right?

A briefing on: E-petition 619334 to: "Include abortion rights in the Bill of Rights"

*To be debated in Westminster Hall on 28th November 2022 at 4.30pm*

---

In June 2022, the Government rejected calls to include access to abortion in the Bill of Rights. Justice Secretary Dominic Raab believed it was unnecessary and warned against creating a situation where abortion law was decided through litigation rather than by Parliament.<sup>1</sup>

E-petition 619334 calls on the Government to include abortion rights in the Bill of Rights. The petition text justifies this position based on:

- The European Convention on Human Rights
- The overturn of Roe v Wade in the United States
- Concerns that women may not receive medical treatment for ectopic pregnancies, miscarriages or other conditions that endanger their health.

This briefing examines each of these points, as well as international law around abortion, and the implications of making abortion a right.

## EUROPEAN CONVENTION

The European Court of Human Rights has consistently held that: "A broad margin was specifically accorded to determining what persons were protected by Article 2 [right to life] of the Convention".<sup>2</sup>

**Member States are given a "margin of appreciation" regarding abortion laws.** The Court has, however, criticised some States for applying their abortion laws in an arbitrary or discriminatory manner. Its rulings on abortion include:

- 1. Pregnancy is not solely a private matter:** "Article 8 (1) [the right to private life] cannot be interpreted as meaning that pregnancy and its termination are, as a principle, solely a matter of the private life of the mother."<sup>3</sup> Similarly, "[T]he woman's right to respect for her private life must be weighed against other competing rights and freedoms invoked including those of the unborn child."<sup>4</sup>
- 2. The humanity of the foetus is recognised.** While the Court has never ruled as to whether Article 2 of the Convention protects the unborn child, it held that: "... it may be regarded as common ground between States that the embryo/foetus belongs to the human race."<sup>5</sup>
- 3. The unborn child may be protected under Article 3.** In 1992, the Court's former Commission accepted in principle the applicability of Article 3 (freedom from inhuman and degrading treatment) to the unborn child.<sup>6</sup>
- 4.** In 2022, when considering a case involving coerced abortion, the Court ruled that **abortion in the absence of informed consent is contrary to human dignity** and violates Article 3, stating: "It was an egregious form of inhuman and degrading treatment which not only resulted in a serious immediate damage to her health – that is the loss of her unborn child – but also entailed long-lasting negative physical and psychological effects..."<sup>7</sup>

## DEVELOPMENTS IN THE US

Since Roe v Wade has been overturned, the authority to enact abortion laws rests with the State legislatures. The situation in the US is now more analogous to that in the UK, where abortion laws are decided by democratic legislatures, rather than by the judiciary. The overturn of a Court decision in the United States has no direct implications for abortion law in the UK, which is regulated by Acts of Parliament.

## INTERNATIONAL LAW

### UN Treaties

The Supreme Court decision has also brought the USA into line with international law **which has never recognised abortion as a human right. None of the nine core treaties of the United Nations recognises abortion as a human right** (including the Convention on the Elimination of all forms of Discrimination Against Women). The general rule of interpretation of treaties is set out in Article 31 of the Vienna Convention on the Law of Treaties. Statements from UN committees cannot change this. In the 2007 ruling in Jones v Saudi Arabia, the Law Lords confirmed the non-judicial nature of such committees means that the legal authority of their recommendations is "slight".<sup>8</sup> The United Kingdom Government confirmed its support for this position.

The dualist approach taken by the UK in respect of international law means **treaties that have been ratified must be incorporated into domestic law before they have a domestic effect.** While our courts can take international law into account if appropriate and relevant to the case at hand, there is no obligation to consider the views, recommendations or general comments of treaty bodies as legally binding.<sup>9</sup>

Several human rights instruments **recognise the right to life of children before birth.** *The Declaration of the Rights of the Child* states: "... the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth..." It continues: "... the need for such special safeguards has been recognised in the *Universal Declaration of Human Rights*..."<sup>10</sup> This was reaffirmed in 1989 by the *Convention on the Rights of the Child*. The UK has ratified all three of these treaties.

### Other international examples

- On 19 October 2022, an attempt to insert a right to abortion into the **Constitution of France** was rejected in the French Senate by 172 votes to 139. (On 24 November 2022, the National Assembly voted in favour of a similar proposal, but it is unlikely to progress any further.) Opposition to President Emmanuel Macron's attempts to introduce a right to abortion into the EU Charter of Fundamental Rights means it is also likely to fail. Macron's proposal, however, demonstrates that a right to abortion is not currently recognised by the European Convention.
- Only one constitution has ever enshrined an explicit right to abortion<sup>11</sup> — the 1974 **Constitution of Yugoslavia** that also proclaimed Communist dictator Josip Broz "Tito" president for life. However, abortion was only lawful up to 10 weeks' gestation. This was far more restrictive than UK abortion law.

## MEDICAL TREATMENT

Medical treatment to protect the life or long-term health of a pregnant woman was legal long before the abortion Act 1967 entered into force and is independent of it. The petition text presents no evidence that women are not being treated for ectopic pregnancies, natural miscarriages or serious pregnancy complications in the UK nor does it indicate why this would not be the case in the future.

## IMPLICATIONS OF A RIGHT TO ABORTION

Including abortion within the Bill of Rights is likely to result in continuous litigation to establish the extent of such a right. The decision in the US to recognise a Constitutional right to abortion resulted in making the appointment of judges a highly contentious issue. Calls to "enshrine" a right to abortion in the UK "risks bringing our courts into the political arena as in the United States".<sup>12</sup>

There could also be profound implications for abortion practice in the UK. The petition does not spell out exactly how its supporters envisage abortion access changing, but creating an absolute "right" to abortion would logically mean removing any restrictions. The worst implications of this could include:

- The removal of any gestational limits, allowing abortion up to birth
- Abortion based on the gender of the foetus
- The removal of medical safeguards, including the involvement of doctors
- Erosion of conscience rights for medical professionals

## CURRENT UK LAW

As the Bill of Rights is aimed at upholding the primacy of UK law, it is not clear why Parliament would lose the authority to determine the UK's abortion laws.

Almost 50 years on from Roe v Wade, America is re-examining the impact of the liberalisation of abortion on women and society prompting some in the UK to call for the further liberalisation of our laws. However, the UK already has some of the most permissive abortion legislation in Europe. Women in Britain do not require easier access to abortion, not least as a significant number of abortions are carried out on wanted pregnancies.<sup>13</sup> When faced with a crisis pregnancy women need and often lack, emotional support and advice on how the pregnancy might be continued to provide some form of certainty in a difficult, frightening situation.<sup>14,15</sup>

## CONCLUSION

This petition asks the Government to reverse its position on including abortion in the Bill of Rights, but the concept of making abortion a right is based on a flawed understanding of the legal issues. Contrary to the assumptions of those bringing the petition:

- The European Convention on Human Rights does not recognise a right to abortion.
- The decision by the US Supreme Court to overturn Roe v Wade does not undermine UK law.
- Abortion legislation has no bearing on treatment for conditions such as ectopic pregnancy.

**For more information, please contact Liam Gibson on: [liamgibson@spuc.org.uk](mailto:liamgibson@spuc.org.uk)**

## ENDNOTES

1. <https://hansard.parliament.uk/commons/2022-06-29/debates/94395DD9-EB52-4A2B-9340-AFB76DEF37AB/Engagements>
2. A, B & C v Ireland (App 25579/05), 16 December 2010, at § 185.
3. Bruggemann and Scheuten v FDR (App 6959/75) Eur Comm HR (1981) 3 EHRR 244 at § 60.
4. A, B and C v Ireland, §§ 213-214.
5. Vo, at § 84.
6. H v Norway (App 17004/90), Decision of inadmissibility of the former Commission, 19 May 1992.
7. SFK v Russia (App 5578/12), 11 October 2022 at § 81.
8. Jones v Saudi Arabia [2007] 1 AC 270 at § 23.
9. In the Miller case <https://www.bailii.org/uk/cases/UKSC/2017/5.html> the UKSC addressed the UK's dualist approach to international law. See also <https://researchbriefings.files.parliament.uk/documents/CBP-9010/CBP-9010.pdf>
10. UN General Assembly, *Declaration of the Rights of the Child*, 20 November 1959, A/RES/1386(XIV).
11. Article 191. "It is a human right freely to decide on family planning." *Constitution of the Socialist Federal Republic of Yugoslavia* (1974).
12. Robert Buckland MP, "We must urgently review the Bill of Rights" *Daily Telegraph*, 8 August 2022.
13. Donald P Sullins, "Affective and substance abuse disorders following abortion by pregnancy intention in the United States: a longitudinal cohort study." *Medicina* (2019) 55, 11, 741.
14. S Allanson and J Astbury, "The abortion decision: reasons and ambivalence", (1995) *J Psychosomatic Obstetrics & Gynecology* 16:123-36.
15. M Kirkman et al "Abortion is a difficult solution to a problem: A discursive analysis of interviews with women considering or undergoing abortion in Australia", (2011) *Women's Studies International Forum* 34: 121-29.



SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN

Unit B, 3 Whitacre Mews, Stannary Street, London SE11 4AB, UK

TEL: +44 (0)20 7091 7091 WEB: [www.spuc.org.uk](http://www.spuc.org.uk)



SAT1122