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Rights to Abortion, Pro-Choice vs. Pro-Life: Case of Indonesia and the USA

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Abstract

Regarding protecting children's and women's human rights, the right to abortion remains controversial. In this regard, two ideologies promote children's rights: pro-life (which asserts that all individuals have the right to live) and pro-choice (which claims that women have the right to make their own reproductive decisions). Thus, nations have diverse perspectives regarding abortion laws. Few developing countries, like Indonesia, include religious and traditional beliefs in abortion legislation. In contrast, liberal nations, such as the United States, support the constitutional right to abortion. Consequently, a comparative analysis of the right to abortion in the setting of the legal systems of Indonesia and the United States was conducted for this study. According to the findings of this study, Indonesia's Criminal law prohibits abortion, and varying criminal penalties are enforced based on people's involvement in the abortion procedure. In the United States, abortion has been legal since the 1973 Roe v. Wade decision. This contributed to promoting associated ideas, such as same-sex marriage and intimacy. As revealed in "Dobbs vs. Jackson Women's Health Organization," the constitutional right to abortion was no longer supported in 2022, and varied criminal penalties were applied for unlawful abortions in different US states. In Texas, for example, illegal abortion is punishable by life imprisonment. In the context of the right to abortion, it is recommended that effective and transparent policies be implemented to protect women's human rights.

Keywords: Right to abortion, women's rights, human rights, Indonesia, USA, pro-choice, pro-life

Introduction

Millions of individuals are daily denied the right to choose whether and when to have children. The freedom from discrimination and violence (Kaczor, 2014). A person's entitlement to necessary medical care. 93 nations allow females to legally marry as children (Andaya & Mishtal, 2017). One in four people lives in a country that outlaws abortions, even when necessary to save a woman's life (Berer, 2020). Since the 1973 legalization of abortion in the United States, the largest societal and legal barriers to women obtaining an abortion have existed (Finer & Zolna, 2016). In Indonesia, abortion has become a significant issue. Many factors surround the

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abortion policy, but there are two opposing positions: pro-choice and pro-life. Millions of Indonesian women become pregnant inadvertently each year for various reasons (Erdman & Cook, 2020). Several women choose to terminate their pregnancies even though abortions are frequently prohibited by Indonesian legislation and the nation's social structure (Landiyanto, 2010). Those who support abortion often emphasize the rights of the woman seeking an abortion (Friberg-Fernros, 2018). Many pro-life advocates, on the other hand, highlight the rights of the fetus. The two opposing sides frequently employ broad stereotypes to describe each other, with pro-lifers calling pro-choice supporters "pro-abortion" and pro-choice supporters "pro-life." According to Smith and Son (Smith & Son, 2013), just around 8% of Americans are deemed to be adamantly pro-life, whereas 31% are adamantly pro-choice. The remaining majority was evenly divided about their support for legal abortion. In recent decades, abortion rates in the United States have decreased substantially (Francome, 2017). Since 1981, when abortion rates peaked, there has been a significant reduction in both incidence and rate. Since the early 1990s, there has been a progressive decline in the number of abortions in the United States; in 2011, there were 16.9 abortions per 1,000 women aged 15 to 44, the lowest rate since the procedure was legalized in 1973. (Biggs et al., 2015). In recent years, all racial and ethnic groups have suffered severe losses in most geographic areas (Beckman, 2018).

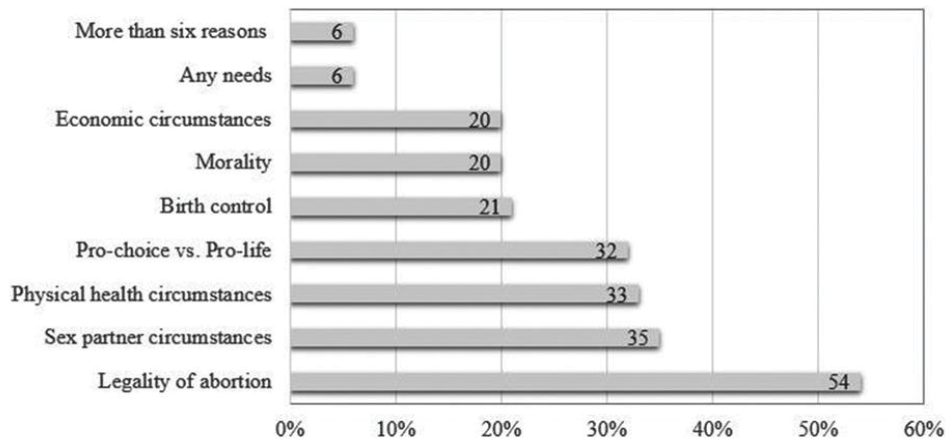


Figure 1: Different Dimensions of Public Opinion about Abortion During 15-year Period

Despite declining abortion rates, the public's opinions on whether abortion should be authorized in certain circumstances have remained relatively stable (Sutton & Borland, 2019). The majority continues to agree that abortion should be legal but that it should be subject to specific restrictions. Concurrently, pregnancy and birth rates have declined alongside abortion rates, particularly among adolescents. In 2013, the birth rate reached a record low (Beckman, 2017). On June 24, 2022, the United State Supreme Court reversed the *Roe v. Wade* judgment, securing a legal right to an abortion before fetal viability (Gostin & Reingold, 2022; Reingold & Gostin, 2022). The Indonesian legal system provides equal weight to women's reproductive rights and unborn children's right to life. A woman can choose her gestational age and even reject an unplanned pregnancy (Ariyad & Masyhar, 2020). Legal abortion is a component of

women's reproductive rights on one side. Conversely, the law protects the unborn child's life in the womb (Gerdt & Hudaya, 2016). Any attempt to purposefully threaten the fetus' life or harm its wellness is banned. Indonesians generally oppose abortion (Sampebulu, 2019). In other situations, such as when the mother's life is in jeopardy due to a dangerous pregnancy, abortion is legal. In certain labor scenarios, the doctor must conduct an abortion to save the mother's life. Abortion was permitted only in cases of emergency or rape victimization (Wiryani, Andang, & Nasser, 2020). This study tries to determine abortion rights in Indonesia and the United States by analyzing pro-life and pro-choice perspectives (Derrida, 2016).

Method

Choosing an efficient approach is essential for achieving the stated purpose of the study. Hence, the study examines abortion rights in Indonesia and the United States. To achieve this objective, a comparative analysis of the legal systems of Indonesia and the United States, with a focus on the right to abortion, was conducted. This explains the exploratory nature of this study and highlights the incorporation of a qualitative methodology in the present investigation. Thus, this study was inductive. Texts or phrases were used to obtain qualitative data for this investigation.

Thus, the primary sources for collecting the necessary data include various laws, statutes, and legal documents pertaining to abortion rights in the United States and Indonesia context. In addition to Hein Online, LexisNexis, JSTOR, Springer, MPDI, and other publications and articles, Hein Online, LexisNexis, JSTOR, Springer, and others were considered for collecting the necessary data for the present study, which focuses on pro-choice and pro-life ideas.

Literature Review

Rights to Abortion

Even though abortion has been legal in the United States for the past four decades, attitudes on whether or not women should be able to have them and the circumstances and stages of their pregnancies remain highly contentious (Bird, Begun, & McKay, 2018). According to a previous public opinion study in 1976, 54% of Americans believed that abortion should only be permitted under limited circumstances. Since then, support has scarcely increased; generally, popular opinion influences legislation and policies only in part (Adamczyk, Kim, & Dillon, 2020). In 1973, when abortion became legal nationwide, barely fifty percent of Americans supported it; hence, legal challenges arose almost immediately (Adamczyk, 2017). Even though abortion has been legal in the United States for over four decades, attitudes remain fiercely split. According to Adamczyk and Valdimarsdóttir (2018), personal religious beliefs and actions are among the most influential determinants of rejection. Currently, more than half of all US states have passed legislation that does one or more of the following: (1) limit access to abortion services through TRAP laws (Reingold & Gostin, 2022); (2) mandate waiting periods, ultrasound viewings, and the reading of scripts about developing fetus authored by legislators before obtaining an abortion; (3) reduce the legal gestational age for abortion; and (4) reduce the number of abortion providers (Andaya & Mishtal, 2017). Their equivalents face similar challenges in other underdeveloped nations where abortion is stigmatized and

strictly prohibited. At the federal and state levels, legislation restricting access to abortion services and rights has been approved with unusual rapidity (Guttmacher Institute, 2016). Abortion-related fatalities occur at an alarming rate. According to data from the World Health Organization (WHO) (Reagan, 2022), between 15 and 50 percent of maternal deaths were unsafe abortions. Abortion activities may be permissible under panel law (*hukum positif*), particularly in Indonesia (Aeniwati & Kusriyah, 2021), if they are performed primarily to address a medical condition called *abortus provocateurs* (Saragi, 2021). The government has also passed regulations restricting abortion, including Health Law No. 36 of 2009 and Reproductive Health Regulation No. 61 of 2014. The rules concerning the abortion of female rape victims are inconsistent. The KUHP and RKUHP in Indonesia condemn abortion categorically and do not legalize it either. This consists of abortions carried out by rape victims (Ariyad & Masyhar, 2020). After the verdict, twenty-one states have completely or nearly completely banned abortion, with some allowing no exceptions for rape, incest, or nonfatal health concerns (McCann et al., 2022). Previous studies have utilized the notions of women's rights to procedural fairness, equality, and health and the contemporary jurisprudence developed by United Nations treaty-monitoring institutions and the European Court of Human Rights to formulate its corrective legal solutions (Ngwena, 2016). In a few decades, raising embryos in artificial wombs may be possible. The term "Ectogestation" raises major moral and legal difficulties, specifically with abortion rights (Bearak, Burke, & Jones, 2017). In nations that authorize abortion, regulations usually revolve around the viability threshold or the stage of embryonic development at which the fetus may survive outside the womb. From pro-life and pro-choice perspectives, the liberal and conservative principles can be combined to form a legally and morally valid foundation for post-ectogestational abortion regulations (Ngwena, 2016).

Pro-Life and Pro-Choice Concept

Allen and Griffin (Rye & Underhill, 2020) proposed in 1993 that pro-life and pro-choice individuals may also have situationist abortion stances: difficulties and regulation. People who oppose abortion yet support the option face a conundrum (Berer, 2017). Some regulated individuals support abortion restrictions but do not necessarily see the procedure negatively. Notwithstanding advancements for women in the public sphere, some nations are becoming more conservative in their attitudes toward legislation regarding reproductive rights (Brysk & Yang, 2023). It was predicted that individuals who supported absolutist attitudes would differ from those in these situationist positioning groups concerning their views on abortion and defining traits (Rye & Underhill, 2020). In the United States, abortion identity labels are utilized regularly. Often, "pro-choice" refers to varying degrees of support for the right to have an abortion (Jelinska & Yanow, 2018).

In contrast, "pro-life" often refers to opposing abortion to varied degrees (Valdez et al., 2022). In the United States, pro-choice advocates argue that pro-lifers no longer care about the health and well-being of infants and young children after delivery, as their desire to defend the fetus's life has gone. In states with the harshest anti-abortion legislation, baby and child well-being indicators are much lower, according to empirical data (Medoff, 2016). In the United States, TRAP laws provide the greatest

barrier to access and availability of abortion care since they usually combine numerous regulations covering these concerns into a single statute (Guttmacher Institute, 2011). As of January 2016, 28 states had implemented TRAP legislation, making abortion more closely regulated than many surgical procedures, even those induced by pharmaceuticals such as Mifepristone and Misoprostol (Andaya & Mishtal, 2017). In May 2018, the Irish Constitution overturned one of the world's harshest limits on abortion (De Londras, 2020). After 35 years of legal cases, human rights activism, feminism, and legislative and political procedures, this referendum was held (Reagan, 2022). According to the law, abortion is now widely accessible in Ireland, but continued advocacy is necessary to ensure that the country complies with international human rights standards and that legislative protections for access to abortion treatment and rights are comprehensive (Taylor, Spillane, & Arulkumaran, 2020).

Results and Discussion

Rights to Abortion in Indonesia

Indonesia is an Islamic nation. Hence it prioritizes the application of Islamic law in every circumstance. Similarly, in the case of abortion, different ideas have been offered by religious leaders in Indonesia. In addition, the "Council of Indonesian Ulama or Majelis Ulama Indonesia" (MUI) plays a crucial role in modifying abortion law. In this sense, the medical and social components are receiving increased focus (Sampebulu, 2019). Yet, the council declaration of MUI at the National Congress of Ulama followed Muhammdiyah's belief (stating that abortion is forbidden as it destroys life value). Also, it accommodates NU's perceptions. MUI believes Islam prohibits all stages and kinds of abortion, including menstrual management. In other words, such methods are deemed "haram" unless the mother's life is in jeopardy due to various health issues (Ariyad & Masyhar, 2020). Hence, in Indonesia, the concept of pro-life is promoted in the context of abortion rather than pro-choice due to numerous religious restrictions.

The Fatwa MUI No. 4/2005 was utilized to reformulate Islamic law surrounding abortion. According to this doctrine, abortions performed voluntarily are prohibited (Wiryani et al., 2020). In the event of a health-related emergency, rape, or genetic defects, however, abortion is permissible. This fatwa is not legally binding in Indonesia, but it impacts the religious and social affairs of the affiliated Muslim community in Indonesia (Saragi, 2021).

Abortion in the Legal System of Indonesia

The "Indonesian legislation" has provisions for abortion and related matters. In the context of health, "Law No. 36/2009" and the "Indonesian penal code" (KUHP) are the two laws primarily responsible for the regulation of abortion. The "Indonesian Medical Doctor Code of Conduct" (IMDCC), therefore, also supports the application of these regulations (Tongat & Anggraeny, 2020). According to the KUHP, abortion is a criminal conduct for which various penalties have been established by law. Hence, the consequences vary based on the individual who decided to have an abortion and the impact that decision had on the mother. Generally, the individual participating in the abortion process is punished by the law. In addition, according to the Republic of

Indonesia and KUHP, pharmacists, physicians, and midwives who participate in the abortion process face professional sanctions (Aeniwati & Kusriyah, 2021). This law also stipulated that women who undergo an illegal abortion would face four years in prison.

In "Law No. 36/2009 on Health," regarding abortion stipulated at article 76-78. However, abortion is stated to be banned unless in particular circumstances. If the life of the mother or fetus is in jeopardy, Section 2 of this law permits the performance of certain medical treatments that may result in abortion (Fithri & Lubis, 2022). In contrast, medical techniques to terminate a fetus are prohibited because they violate ethical, social, and legal standards. Section 7b of the IMDCC also prohibits doctors from performing an abortion if it is the only way to preserve the mother's life. In addition to averting such life-threatening diseases for the mother and fetus, medical advancements have proven successful (Simangunsong, 2017).

In addition, hypertension or tuberculosis cannot be deemed an indication to perform an abortion. Before performing an abortion, the written approval of at least two doctors, the pregnant lady, and her husband is required. This regulation further specifies that abortions must be performed in a hospital setting. Hence, there are inconsistencies between Law No. 36/2009 and KUHP. KUHP argued that abortion is prohibited, although Law No. 36/2009 permitted abortion in specific circumstances. No suitable recommendations are offered in Law No. 23/2009 for identifying the permissible conditions for abortion (Elvandari, 2020).

Decision of Abortion

Life in Indonesia is complex and multifaceted. Several formal and traditional legal systems influence it. In Indonesia, the decision to have an abortion is heavily influenced by the legal system, the desire for privacy, societal restraints, and the refusal to seek legal and medical assistance (Marlina, Handoko, & Rahmad, 2022). According to WHO, however, the decision-making process surrounding an unintended pregnancy in the context of a single woman includes her interaction with a psychologist. It also entails supporting services and social pressure providers' willingness (Menchik & Trost, 2018). In contrast, unmarried women dealing with unwanted pregnancies in Indonesia confront significant challenges such as lack of family support, illegal abortion, societal stigmatization, infections, and bleeding to death. Hence, there are extremely few services in Indonesia that can legally perform abortions. Based on Law 36/2009, as in the Criminal Code (KUHP), it stipulates that abortion is prohibited. However, there are exceptions in certain cases, such as pregnancy due to rape. Therefore, the recent "Sexual Violence Elimination Law" in Indonesia has made it more difficult for sexually attacked women to obtain an abortion during an unwanted pregnancy (Tongat & Anggraeny, 2020).

Rights to Abortion in the USA

In 2022, the Supreme Court repealed the constitutional right to abortion, reversing a 50-year-old precedent. That was a turning point in the fight for women's rights. The 1973 "Roe vs. Wade" judgment expanded women's access to abortion. It was determined that Roe (the petitioner) had valid reasons to obtain an abortion in Texas (Beckman, 2017; Reagan, 2022). This contributed to developing criteria for "legal

abortion" in the United States. Yet, this precedent was repeatedly contested.

In addition, the Supreme Court ruled in *Dobbs v. Jackson Women's Health Organization* that there is a "constitutional right to abortion." Future verdicts may threaten the constitutional rights to same-sex marriage, same-sex intimacy, and contraception based on identical reasoning. It was the first time since 1789 that the court revoked a fundamental human right. This has affected the public's faith in the legal system. Consequently, abortion is restricted in over half of US states (Gostin & Reingold, 2022; Reingold & Gostin, 2022).

Abortion in the Legal System of the USA

The common law recognizes abortion as legal. The United States has long supported human rights and taken significant steps to defend the rights of minorities and other needy individuals. "Roe vs. Wade" ruled in 1973 that abortion was legal in the United States. Regarding the importance of the mother's health, it remained uncertain in this case that the state government would not discourage late-term abortions when "necessary to preserve the life or health of the mother, even if it would result in the death of a viable fetus" (Vilda et al., 2021). The *Doe v. Bolton* decision clarified this rule.

This made abortion permissible if a fetus was diagnosed with a disability or a mother was diagnosed with a health condition. Subsequently, in the 1992 case *Planned Parenthood v. Casey*, the Roe case's trimester restriction was lifted, and women were permitted to abort before viability. Thus, Congress passed the Born-Alive Infants Protection Act (BAIPA) in 2002. (Cohen & Joffe, 2020). It asserts the infants' human rights following an unsuccessful abortion attempt. The "Partial-Birth Abortion Ban Act" (PBABA) was passed in 2003. This law assisted in the prohibition of intact extraction and dilatation. The 2004 "Unborn Victims of Violence Act" charged the person who killed a pregnant woman, excluding the doctor or the pregnant lady during abortion procedures (Woodruff et al., 2018).

The 2016 judgment in *Whole Woman's Health v. Hellerstedt* prevented the imposition of restrictions on the operation of abortion clinics. Furthermore, in 2021, the "Women's Health Protection Act" formalized abortion rights into federal law (Addante et al., 2021). The "US House of Representatives passed the bill," however, the "US Senate rejected it." This indicates that the concept of pro-choice was adopted in the context of the right to abortion in the United States. However, this scenario changed radically in 2022 when the right to abortion was removed from the United States Constitution (Compton & Greer, 2022). Hence, different states in the United States have enacted varied penalties for unlawful abortions. In Texas, the maximum sentence for an illegal abortion was life in prison. In contrast, 10 to 15 years of jail was indicated in other US states (Macklin, 2022).

Conclusion

In several ways, international human rights (HR) law supports women's abortion rights. The right to health also incorporates reproductive and sexual rights. Abortion restrictions can affect girls and women's physical and mental health (Johnson, Lavelanet, & Schlitt, 2018). Delays in obtaining a safe abortion may result in gender-based violence and prejudice. In this perspective, pregnancy continuation is also

considered unhealthy. Hence, pro-life and pro-choice are widely respected notions regarding the right to abortion. The primary purpose of abortion regulations is to safeguard the human rights of the mother (pro-choice) and unborn (pro-life) (pro-life). Countries employ various abortion laws depending on religious and cultural norms (Erdman & Cook, 2020). This study examined the right to abortion in the context of the Indonesian and American legal systems. It has been observed that being an Islamic nation, Indonesia incorporates religious considerations into its abortion legislation.

Consequently, according to the KUHP, abortion is banned in Indonesia, although Law No. 23 outlines specific circumstances under which abortion is permissible, such as health-related difficulties and other specified events. In contrast, abortion became legal in the United States with *Roe v. Wade* in 1973. Women in the United States were granted the right to obtain an abortion without government or third-party approval. Also questioned by many legal professionals is this concept. Due to the "*Dobbs vs. Jackson Women's Health Organization*" judgment in 2022, abortion no longer remained constitutional in the United States.

Recommendations

Consider the following advice to prevent any infringement of the HR of pregnant women:

- Policies describing the permissible circumstances for abortion must be formulated transparently and severely. This will aid the constitution and legal system in comprehensively understanding the problem.
- Awareness campaigns should increase pregnant women's understanding of potential abortion-related problems. This will aid in the reduction of abortion-related mortality rates.
- In poorer nations, women should have equal rights to choose their abortion method. Counseling pregnant mothers with psychologists and healthcare professionals must be supported for this goal.

Implications of the Study

This research has been useful in determining the status of abortion rights in Indonesia and the United States. It has helped define the distinctions between abortion-related laws and legislation in the two countries. Almost little previous research has compared the abortion laws and regulations of Indonesia and the United States. This research has assisted in closing this gap. In addition, the present work will successfully stimulate future academics to perform additional analysis on the area under investigation.

This study will also effectively persuade governments to adopt actions to promote clear and transparent abortion laws and regulations. It will also enable the human rights of pregnant women by persuading different legislative authorities to grant women the necessary ability to make their own body-related decisions. This will successfully produce a variety of recommendations and regulations that can be adopted in Indonesian Law No. 23 to present clear instances in which abortion is lawful.

Research Limitations and Future Research

This research contains certain limitations that can be mentioned in future research. Due to data availability, the present study focused primarily on the right to abortion in the legal systems of Indonesia and the United States; women's human rights were not emphasized in this context. Due to limited literature analysis, the present study also hampered an effective comprehension of the need for the constitutional right to abortion. This was because of the limited timeframe.

Hence, future research can concentrate on women's attitudes regarding the right to abortion. Also, they might examine the significance of abortion legislation in other nations to understand the situation better. The significance of the constitutional right to abortion in the context of women's human rights can likewise be the subject of future research.

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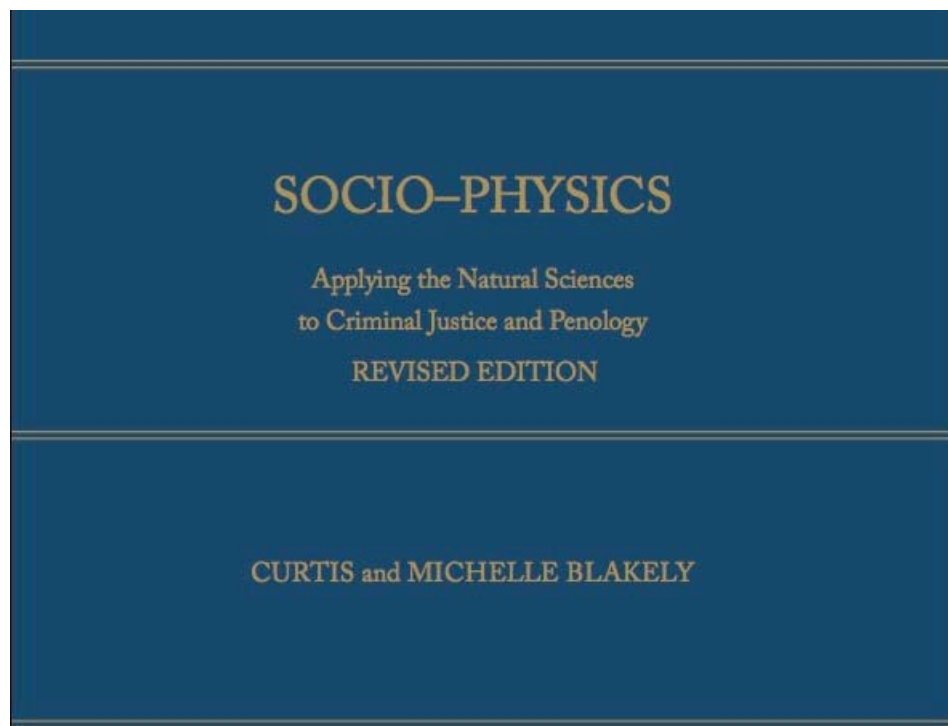


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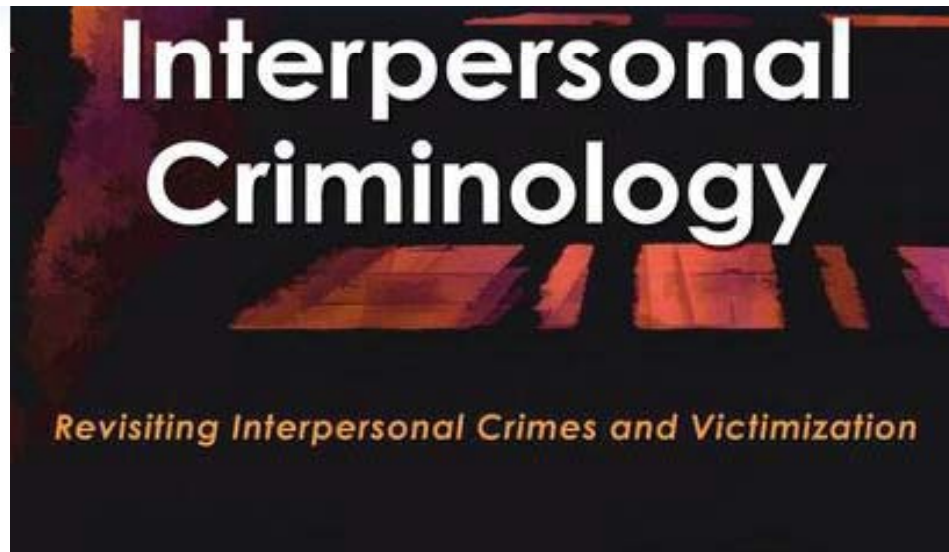


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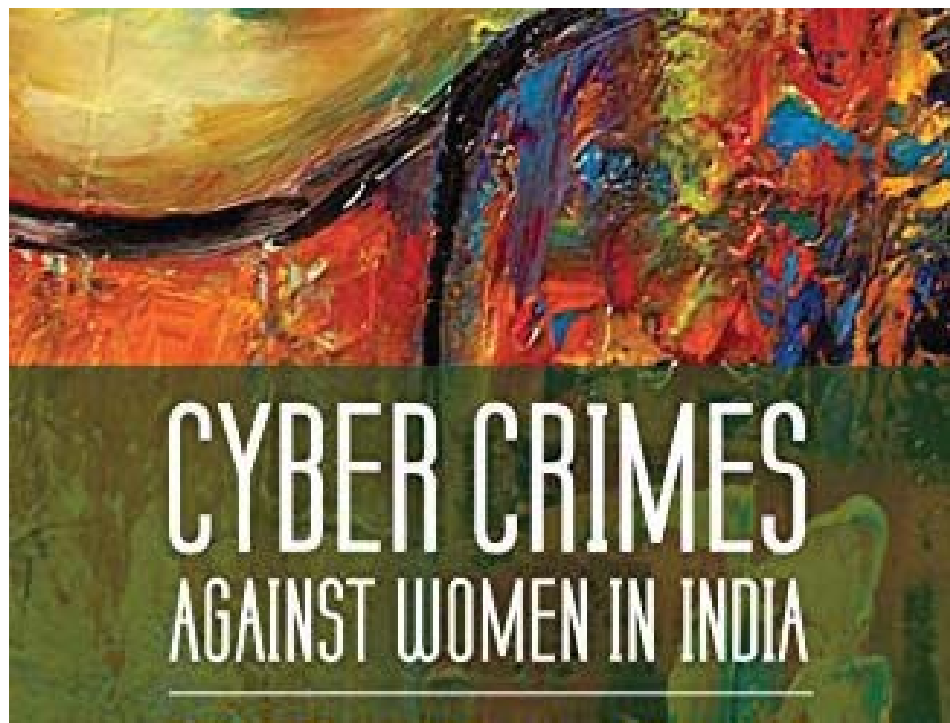


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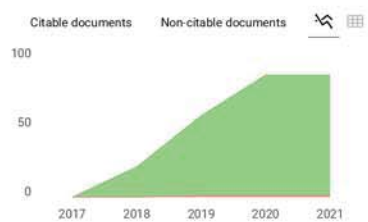
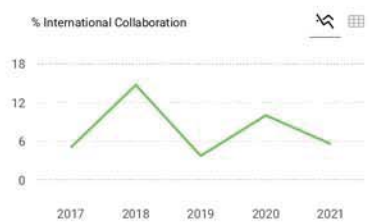
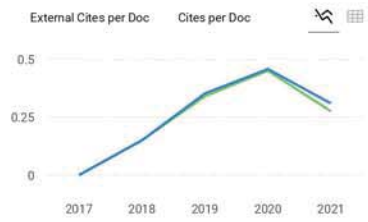
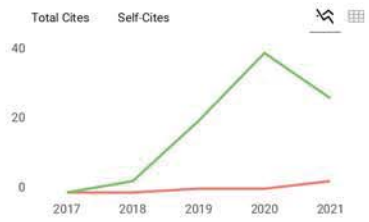
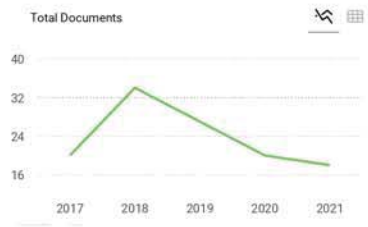
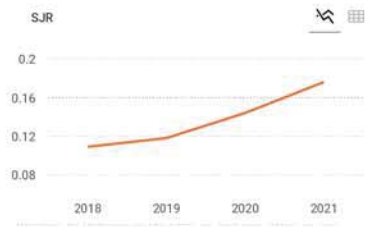
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