

## **From Unjust and Partial Access to Just Legislation: Toward a New Paradigm of Abortion Law in Israel**

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This article critically analyzes the legislative history of abortion law in Israel and sheds new light on the problematic nature of its enforcement over the years. It also outlines a proposal for legislative reform in this context. The main argument is that the Israeli political context — which gave birth to the existing arrangement, and which at its heart lacks a fundamental concept of rights from which to derive the scope and validity of such an arrangement — has rendered Israeli abortion law an arrangement that contrary to the original intention of its framers is neither realistic nor enforceable. In practice, this implies the gradual creation of alternative mechanisms for abortion approvals that are implemented in parallel to the law rather than within it, and it is these mechanisms that actually delineate the scope of most abortions performed to this very day. What appears to be a legal abortion in Israel is in fact a safe illegal one. As a result, even when women are actually given the option to terminate an unwanted pregnancy, such access does not conform to the fundamental principles of justice.

Nevertheless, this specific case also profoundly illuminates the interrelations between law and social reality. At the end of the day, law's power to regiment social reality is rather limited. The ongoing failure of the existing arrangement to provide a response to women's needs has given birth to a social reality which is stronger than the law. In this context, legislation which restricts women's access to pregnancy termination in a manner contradictory to the real needs of women does not appear to change social reality respecting pregnancy termination, but rather fosters processes of nullification and circumvention of existing legislation, as well as a transition from a model of enforcement to a model of circumvention. Curiously, then, this article also uncovers the manner in which social reality curtails the power of law and undermines the effectiveness of its restrictive prohibitions.