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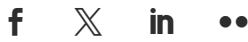
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Access to Abortion at the Federal Level: Another Step Towards Reproductive Justice in Mexico



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About Alma Beltran y Puga

Alma is a Professor of Law at Iberoamericana University, Mexico City, Mexico. She holds a PhD in Law from the University of Los Andes (Colombia) and a Master of Laws from Columbia University (USA). Her research focuses on gender, law and social movements in Latin America. She is also an affiliated researcher at the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School, and a current member of Red Alas, a Latin American network of legal scholars working to advance gender studies in

The Mexican Supreme Court of Justice's recent ruling on abortion is a landmark decision promoting reproductive justice for women in the country. Not only does the Court clearly develop the notion of what reproductive justice means within the constitutional law framework, but it also sends a significant legal message to public health authorities: access to safe abortions should be provided in public health institutions at the federal level. The lawsuit was filed by GIRE, a women's rights organization dedicated to the defense of reproductive rights in Mexico. The NGO claimed that designating abortion a crime in the federal penal code was based on discriminatory gender stereotypes.

As a federal country, Mexico has multi-layered legal jurisdictions. The first is the federal sphere: federal laws regulate public health institutions and social security benefits for workers in formal jobs and in public offices. The Federal Criminal Code thus regulates what can be considered a crime for public health institutions at this level, such as the Mexican Social Security Institute (IMSS) and the Social Institute for Public Officers (ISSTE), across the country. According to the government, the IMSS welfare program provided health services for 21.8 million people in 2022. The regulation of abortion varies depending on the scope of the legislation, meaning whether it is a state or a federal law. State laws differ in their treatment of abortion. In twelve states of Mexico, abortion has been decriminalised in the first trimester (12 weeks) of pregnancy, and twenty further states establish circumstances where abortion is legal, such as when there are risks for women's health and life, sexual violence, foetal malformations, and economic reasons.

In reviewing the criminal code of the state of Coahuila, the Supreme Court of Mexico has been clear about the discriminatory effects of criminalising abortion in its ruling in 2021 on the Action of Unconstitutionality 148/2017, emphasising the importance of framing abortion as a matter of constitutional rights, where a woman's right to choose is respected, instead of constituting a crime. In this context, the recent ruling of the Supreme Court on the *amparo* filed by GIRE has a significant impact because it will apply to all public health institutions at the federal level, which in the past have been reluctant to provide abortion services due to the restrictive legal framework (Amparo 267/2023). Amparo is a constitutional action that is used by individuals and social organisations to claim violations of fundamental rights against the State, but due to its technical language and complicated procedural aspects, it has become a difficult tool to access justice in the country.

Given the Court's ruling, abortion is no longer considered a crime under federal law, but rather a fundamental right to exercise reproductive freedom, entailing women's right to choose whether to continue with an unwanted pregnancy. Thus the Court recognises abortion as an important component of achieving reproductive justice, putting the bodies of persons who can bear children at the centre of constitutional

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protection. This fundamental step has taken into consideration the historic claims of the women's rights movement in Mexico, advocating for abortion to be taken seriously as a public health and social justice issue. In this sense, GIRE's high-impact litigation has also advanced access to justice for women more broadly. The amparo presented is not based on a specific case of a woman being denied abortion services in a federal hospital, but on the legitimate interests of women as a collective group who are discriminated against by maternity roles imposed by law.

The successful arguments of GIRE's amparo are a huge turning point for public interest litigation to advance gender equality in Mexico. It means the scope of the amparo to recognise historic gender inequalities embedded in laws originating in the twentieth century has been affirmed. These laws, such as the 1931 Federal Criminal Code, were difficult to submit to constitutional review given the timeframe of amparo lawsuits, which establish a maximum of 15 days after the violation occurred to file the action, and require proof of direct causal damage to an individual's rights. In reviewing this lawsuit, the Court has opened the door for the protection of the collective interests of women regarding reproductive health issues more widely, which can be claimed at any time through amparo if a fundamental rights violation persists in the law.

For all these reasons, the case brought by GIRE represents a historic contest against forms of gender discrimination enduring in criminal law, including the policing and surveillance of women's reproductive freedom. After more than forty years of feminist legal mobilisation, access to a safe abortion as a fundamental right enshrined in the Constitution of Mexico has been definitively acknowledged by the Supreme Court's jurisprudence, premised on the right to choose whether to reproduce, the right to substantive gender equality, and the right to protection for health.

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