

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Empowering Women's Choice: Revolutionizing Abortion Methods

SURYANSHU TRIPATHI¹

ABSTRACT

The debate over abortion highlights the complex and multifaceted nature of issues surrounding bodily autonomy and women's rights. "Abortion" means medically induced termination of pregnancy. It is done in case, where a pregnancy poses a life-threatening medical problem, or when foetus has a serious incurable medical condition. The philosophy behind abortion lies at the core of broader and non-compromising principle of bodily autonomy." Bodily autonomy" refers to a women's right to make decisions about their own body without interference from others, which extends to reproductive autonomy as held in the 2017 judgment of Justice K.S. Puttaswamy v. Union of India². It is jeopardized when an abortion is performed without the women's informed consent or by illegal procedures. Right of abortion ignites another issue of foeticide i.e., killing of foetus or unborn child using several medical technologies further highlighting the need for controlled and systematic use of the contemporary innovations in medical field. Author has attempted to explain the best approach to be adopted towards the Medical Termination of Pregnancy Act, 1971.

Keywords: Abortion, Foeticide, MTP act, Body Autonomy, PNDT act.

I. INTRODUCTION

Abortion, the process of terminating a pregnancy, has been a topic of controversy for decades. Modern abortion techniques have been developed to make the process safer and more accessible, but the debate about whether they are a friend or foe to India continues. India has a complex legal and social environment surrounding abortion and the use of modern techniques have been both praised for increasing access to safe abortions and criticized for ethical concerns.

On the one hand, modern abortion techniques have made the process safer and more accessible for women in India. Medical abortion, which involves taking medication to end a pregnancy, is now widely available and can be performed in the privacy of a woman's home.

This has reduced the need for surgical abortions, which can be more invasive and carry more risks. Additionally, advances in surgical techniques have made the procedure safer and more efficient, with reduced risk of complications.

¹ Author is a student at Gitarattan International Business School, New Delhi, India.

Overall, the debate about whether modern abortion techniques are a friend or foe to India is complex and multifaceted, discussed hereinafter.

II. BACKGROUND ON ABORTION

Abortion is medically induced termination of pregnancy. According to the Oxford Latin Dictionary, the term “abortio” (a miscarriage, whether caused or uncaused) and “abortivum” (An abortifacient, a drug that causes abortion) date back to the seventh century A.D.² The practice of abortion has been documented in India for centuries, with various methods used by women to terminate unwanted pregnancies. However, the legal and social status of abortion in India has evolved over time.

During British colonial rule, abortion was criminalized under the Indian Penal Code of 1860. From section 312 to 316 of the code made miscarriage a criminal offense for whosoever causes it, with no bona fide purpose of saving life of the women then that person would be liable with penalties including imprisonment and fines.

It is differentiated from miscarriage. Miscarriages happen spontaneously, whereas abortions are induced. This is the major distinction between the two. In other terms, a miscarriage is an unintended pregnancy termination, whereas an abortion is a planned one.³

Abortion is considered a healthcare need for millions of women and girls all around the globe. While the need for abortion is common, the access to safe and legal abortion is far from guaranteed.

There are two main techniques of abortion:

1. **Medical abortion (abortion pill)** – taking medicine to end the pregnancy: It does not need surgery or an anesthetic. This method of abortion involves administering medicines to terminate the pregnancy.
2. **Surgical abortion** – It is a method to end the pregnancy that entails an operation to remove the unborn child from the womb.

III. CLASSIFICATION OF ABORTION

² Jim Beckerman, Abortion is the word of the hour. But where did it come from? *Available at:* <https://www.northjersey.com/story/news/2022/05/06/abortion-definition-history-word-roe-v-wade-law/9646606002/> (Last visited on September 2, 2023)

³ Hexahealth Care Team, Miscarriage vs. Abortion - What is the Difference between Them? *Available at:* <https://www.hexahealth.com/blog/difference-between-miscarriage-and-abortion> (Last visited on September 2, 2023)

- a) **A spontaneous, or natural abortion**, is one that occurs because of an illness in the mother or the foetus or that is accidentally brought on by another factor. This kind of abortion could be seen as largely a medical issue.
- b) **A therapeutic abortion**: is one that is performed in good faith by a licensed medical professional who is confident that continuing the patient's pregnancy will put the patient's life in jeopardy or seriously harm her health. In some circumstances, where there is cause to suspect that the unborn child will have a mental or physical disability, therapeutic abortions are also carried out. The legal definition of a therapeutic abortion has been widened by the most recent amendment to India's abortion law.
- c) **Criminal Abortion**: Where, without any criminal justification there is deliberate interference with the course of pregnancy.⁴

IV. FEMALE FOETICIDE

Foeticide derived from foeticidal or foeticidal means the destruction of a foetus in the uterus; aborticide.

Female foeticide is the selective abortion of female foetuses to have a male child. It is a social evil that is prevalent in many parts of India, particularly in rural and underprivileged areas. The practice of female foeticide is a result of deep-rooted gender bias, patriarchal attitudes, and cultural preferences for male children.

Despite being illegal in India, female foeticide continues to be a widespread problem. The Medical Termination of Pregnancy (MTP) Act of 1971 was amended in 2002 to prohibit sex-selective abortions, but the implementation of the law has been weak.

Thus, special legislation Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 was enacted with a main objective to prevent female foeticide and regulate the use of diagnostic techniques like, ultrasonography, fetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood, or any other tissue, for sex determination. This act permits sex selective abortions to detect:

1. Chromosomal abnormality
2. genetic metabolic diseases
3. Genetic disorder

⁴ Asit K. Bose, Abortion in India: A legal study, *available at*: <https://www.jstor.org/stable/43950391> (Last Visited on September 2, 2023)

4. Sex linked diseases in foetus.

5. congenital anomalies

Section 4 of the act provides for the qualification of person for the qualification to use these techniques:

- (i) The pregnant woman's age is above thirty-five years.
- (ii) The woman has undergone two or more spontaneous abortions or foetal loss.
- (iii) The pregnant woman had been exposed to agents such as drugs, radiation, infection, or chemicals.
- (iv) that woman or her spouse has a family history of mental illness or physical deformities or any other genetic disease;⁵

In case *Centre for inquiry vs. Union of India*⁶, apex court issues certain guidelines for center and state to efficiently implement this act, like conducting awareness campaigns, prompt action against any person and genetic centres, labs, clinics need to be registered.

Various efforts have been made by the government and non-governmental organizations to address this issue. These include awareness campaigns, providing incentives for families to have daughters, stricter enforcement of the law, and increasing access to education and healthcare for girls.

V. MODERN ABORTION TECHNIQUES

Abortion care is a fundamental part of women's reproductive health care. Surgical and medical abortion methods are safe and effective throughout the gestational age range wherein abortions are performed. Although risks increase with the gestational age of the pregnancy being terminated, rates of complications remain low and comparable between surgical and medical techniques.⁷

Medication abortion, also known as the abortion pill or medical abortion, involves taking pills to end the pregnancy. This method is generally used for pregnancies up to 10 weeks gestation. The medication is a mixture of misoprostol and mifepristone.⁸ These pills effectively cut off the progesterone influence in a woman who wants to end her pregnancy. The first pill, mifepristone,

⁵ Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 (ACT NO. 57 OF 1994)

⁶ Writ Petition (civil) 301 of 2000

⁷ Kapp N, Lohr PA., Modern methods to induce abortion: Safety, efficacy, and choice, *available at: <https://www.sciencedirect.com/science/article/abs/pii/S1521693419301762?via%3Dihub>* (Last visited on September 2, 2023)

⁸ <https://www.mother.ly/health-wellness/womens-health/plan-c-abortion-pills/> (Last visited on September 2, 2023)

is taken in the presence of a healthcare provider, while the second pill, misoprostol, is taken at home 24 to 48 hours later.

Surgical abortion is another common technique used in India. It involves a minor surgical procedure to remove the foetus and placenta from the uterus. This can be done using either vacuum aspiration or dilation and curettage (D&C) methods. Vacuum aspiration is typically used for pregnancies up to 12 weeks gestation, while D&C is used for pregnancies between 12 and 24 weeks.

VI. LEGISLATIVE STATUTES

The *Medical Termination of Pregnancy Act, 1971* and *Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994* aims at maintaining a boundary line between the use of medical technologies for ensuring women's right to a safe abortion and to exercise her bodily autonomy, on one side while using medical advancements as a means of illicit feticide, on the other.

These acts derive their force from the Article 21 of the constitution of India which provides for right to life and personal liberty, it has a wide ambit and includes within itself the reproductive autonomy of women to choose abortion. While the right to an abortion should be preserved in India, more focus should be placed on the conditions that lead to one, such as illiteracy, a lack of access to or knowledge of contraceptive methods, insufficient follow-up with contraception acceptors, and a lack of motivation.⁹

To ensure that modern abortion techniques are used in a responsible and ethical manner, it is important to address the root causes of female feticide, such as gender inequality and cultural norms that value male children over female children. This can be achieved through education, advocacy, and policy initiatives that promote gender equality.

VII. SUGGESTIONS

It is important to continue to have open and honest conversations about the use of modern abortion techniques in India, and to work towards creating an environment that prioritizes women's health and autonomy while also upholding ethical standards.

In conclusion, modern abortion techniques can be a valuable tool for women who wish to make decisions about their own bodies and lives. However, the use of these techniques to discriminate against female fetuses is a violation of women's rights and should be condemned. We need to

⁹ Bhatia MS, Bohra N. The other side of abortion, available at: <https://pubmed.ncbi.nlm.nih.gov/2333252/> (Last visited on September 2, 2023)

work towards promoting gender equality and addressing the underlying causes of female feticide to ensure that all women have access to safe and legal reproductive healthcare.

VIII. REFERENCES

1. Jim Beckerman, Abortion is the word of the hour. But where did it come from?
<https://www.northjersey.com/story/news/2022/05/06/abortion-definition-history-word-roe-v-wade-law/9646606002/>
2. Hexahealth Care Team, Miscarriage vs Abortion - What is the Difference between them?
<https://www.hexahealth.com/blog/difference-between-miscarriage-and-abortion>
3. Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 (ACT NO. 57 OF 1994)
4. Kapp N, Lohr PA., Modern methods to induce abortion: Safety, efficacy, and choice.
<https://www.hexahealth.com/blog/difference-between-miscarriage-and-abortion>
