
BIASNESS TOWARDS FEMALE FOETUS IN INDIA: A STARK REALITY

APOORVA DIXIT, SIMRAN SINGH

Abstract: The emotional, sexual and psychological stereotyping of females begin when a girl child is born. In India, infanticide feticide, lack of education to girl child, child marriage, dowry, child sexual abuse are rampant. The Indian girl child and a woman still continue to deal with the lack of basic human rights. Abortion is an apparition to end a pregnancy through the expulsion of the foetus from the womb. Abortion is extremely poignant emotional area under discussion which involves some highly contentious and complex issues of law, medicine and ethics. The problem of unnecessary pregnancy and its termination is persistent problem which defies comprehensible answers. It's a very controversial topic on one hand and its concerns the individual right of a woman to take the decision regarding continuation or termination of her pregnancy and on the other hand, a control needs to be placed by the State to prevent any misuse of freedom to have an abortion. In India, lack of information, wide regional and rural-urban differences and a thin research base all makes it difficult for policy makers, administrators, and woman's health advocates to develop deliberate interventions. India faces a typical situation as far as abortion is concerned. Even though the Medical Termination of Pregnancy Act, 1971 (MTP Act), which allows abortion is certain circumstances as outlined in the Act, has existed for four decades, certified and legal abortion facilities account for only a quarter of all such private facilities in country. There is rampant illegal abortion practiced in India. Neither public nor private abortion services have fully measured up to the needs of abortion seekers. However, the modern Indian woman is more vocal about her rights to decide whether she would like to continue her pregnancy or to terminate it.

Keywords: Abortion, Foetus, Pregnancy, Medical.

Introduction: The preference for a son continues to be a prevalent norm in the traditional Indian household. This is evident from the declining sex ratio which has dropped to alarming levels, especially in the northern states according to Census 2001 reports. The Indian girl child and a woman still continue to deal with the lack of basic human rights. Abortion is an apparition to end a pregnancy through the expulsion of the fetus from the womb; it is extremely poignant emotional area under discussion which involves some highly contentious and complex issues of law, medicine and ethics. The problem of unnecessary pregnancy and its termination is persistent problem which defies comprehensible answers. It's a very controversial topic on one hand and its concerns the individual right of a woman to take the decision regarding continuation or termination of her pregnancy and on the other hand, a control needs to be placed by the State to prevent any misuse of freedom to have an abortion. In India, lack of information, wide regional and rural-urban differences and a thin research base all makes it difficult for policy makers, administrators, and woman's health advocates to develop deliberate interventions. Even though the Medical Termination of Pregnancy act (MTP Act), which allows abortion is certain circumstances as outlined in the Act, has existed for four decades, certified and legal abortion facilities account for only a quarter of all such private facilities in country, hence there is rampant illegal abortion practiced in India. However, the modern

Indian woman is more vocal about her rights to decide whether she would like to continue her pregnancy or to terminate it.

A woman is able to exercise her right to decide whether to, or when, she will conceive a child, which can be categorized under Right to life. Some woman may choose to use a contraceptives, natural family planning or abstinence to help her control her fertility. However, once conception has occurred, a new, separate and unique human being is created, a human being who has the same right to life as that of the woman. Therefore abortion should not be amongst the 'rights' extended to woman as part of their fertility control. A woman's fertility control is to be exercised before a new life has been created within her. A distinction needs to be made regarding the rights of the woman to prevent conception occurring and the rights which govern newly conceived human being.

Women who constitute half a human population have been discriminated, harassed and exploited irrespective of the country to which they belong, unmindful of the religion which they profess and oblivious of the timeframe in which they live. Everywhere women are confronted with many challenges. Female feticide is perhaps one of the worst forms of violence against women where a woman is denied her most basic and fundamental right i.e. "the right to life". Gender discrimination and atrocities against women are on the rise in the midst of progressive ideas of liberalization and

globalization. This is one example where scientific advancement has proven to be a bane to the society rather than a boon. The phenomenon of female feticide in India is not new, where female embryos or fetuses are selectively eliminated after pre-natal sex determination, thus eliminating girl child even before they are born

Female feticide is an expression of one of the worst forms of the violence against women where female fetuses are selectively aborted after pre-natal sex determination, thus avoiding the birth of girl child. Firstly, this common practice “rid them of the burden” was female infanticide where a girl child would be killed as soon as she was born. But now with the advancement in Science and Technology the procedure has become more convenient too. With the possibility of sex determination, when the fetus is a few months old, couples prefer to abort the child when they discover the fact that it’s a girl child. Life is snatched out of the hands of the girl even before she can fold her fingers to hold on to it.

Doctrine of viability: Viability means in general “capacity for survival” and is more specifically used to mean a capacity for living developing, or germinating under favourable conditions. The term here viable is used in context of pregnancy and viability of a foetus. It was held by Court that the State has an important and legitimate interest in protecting the potentiality of human life, when the foetus has become viable. It has been acknowledged in *Roe vs. Wade*, that State’s interest in potential human life becomes compelling at the point of viability and when the unborn child reaches this stage, the child becomes a party whose interest must be considered. In this and subsequent cases in US it was opined that “viable foetuses” are “persons” in the eyes of law which certain legal rights and privileges and the exclusion of viable foetus from a status of a person would be unsound, illogical and unjust. It was unanimously held that foetus having reached that period of prenatal maturity where it is capable of independent life apart from its mother is a person. It was further concluded that a viable status has the legal status of a fully born person in the eyes of law. And therefore state’s interest in protecting the life and health of viable foetus is not merely legitimate but compelling. It is sad that period between 25-28 weeks, a foetus actually is viable, that it begins to have a life of its own or that it now has the chance to survive.

Preference to either the rights of the mother or the unborn child: Right to expect protection throughout each stage of our life is a basic need. Just because child in mother’s womb is small and unseen does not mean those rights should be denied. The right to life is a core right without which all other rights are meaningless. In order to seek protection of the unborn there are some difficult decisions to be

made because many woman are in situation of injustice. Even though the enforcement of laws to protect unborn babies is difficult, this does not remove the need to seek just solutions. Right to life promotes the rights of unborn child in the struggle to reach just solution for all. The claimant suffered the abortion on account of the accident. The Karnataka High Court considered the death of the fetus in the womb at par with death of a minor and observed:

“In the case of abortion and death of the fetus in the womb should be considered on par with the death of a minor.”

But, the woman has the same rights as the other people. But these are often seen to be in conflict with those of her unborn child. A woman’s rights begin when the woman begins. To make an arbitrary line in time to bestow rights upon an individual puts all of society at risk. None of us has an absolute right to “control our body” as many abortion rights activists proclaim. Society the risk of harm to the unborn child is not by the third party but by his own mother. A woman ought not to have the right to harm or kill the unborn child living within her. With the development in medical and biological sciences it is seen that neglect at the early stage of pregnancy leads to structural damages. It is not acceptable, in any other context, for one person to trade off the life of another person against their own health or social or economic well-being. The only case when one life can be taken legitimately is when another life is at stake.

The Supreme Court in *S. Said-ud-Din vs. Commissioner* awarded compensation to a child, who was adversely affected due to the gas leakage, which was inhaled by her mother when the child was in the womb. The doctor who examined the child on the sixth day of its birth found symptoms including eruption of body and smarting of the eye as well as breathlessness. Therefore Supreme Court held that as the infant too was the victim of the Methyl Iso Cyanide poison, she was entitled to compensation. Even the Transfer of Property Act recognized the rights of stillborn child and several provisions of Indian Penal Code, 1980 also provide for punishment by reason of hurt or birth or abortion with regard to stillborn child.

Abortion, many people believe, is a moral issue, but it is also a constitutional issue. Over the years, many countries have legislated and implemented liberal laws, often in response to vociferous advocacy of women’s group. For example abortion is legalized in Canada, Denmark, Germany, Netherlands, Norway, Singapore and Sweden. India has a terrible sex ratio and this is mostly because of female feticide, rampant illegally in many parts of the country. Sex selective abortion is matter of great concern. The social and demographic implication of sex selective abortions are grave. Sex selective abortion happen in two steps,

the first to determine the sex of the fetus and the second is to obtain an abortion if the fetus is not of the desired sex. Sex determination technology arrived in India in 1975 for determination of genetic abnormalities after enactment of Medical Termination of Pregnancy Act. Hence the government has wanted to make abortion as an offence under IPC. The position of Indian Courts on abortion is based on Section 312 of IPC. Section 312 punishes a person for causing miscarriage to a woman. The offence is punishable with imprisonment up to a period of 7 years including fine, even if it is caused by the woman herself. It indicates that the word miscarriage has been used synonymously with abortion. This section of IPC takes away the right of abortion of a woman. According to this section, the woman has no right to choice, but as a consequence of a woman forfeiting the right to abort, the Court recognizes the right of unborn child to life. According to the Indian Law, abortion is an offence and punishment for it is imprisonment up to seven years including a fine.

Reasons for Female Feticide: Girl babies are often killed for financial reason.

Earning power: men are usually the main income earners, either because they are more employable or earn higher wages for the same work, or because they are able to do more agricultural work in subsistence economies. Since male babies have greater income potential, they are less likely to be killed. **Potential pensions:** in many society parents depend on their children to look after them in old age. But in many of these cultures a girl leaves her parental family to join her husband's family when she marries. The result is that parents with sons gain extra resource for their old age, when their sons marry, while parents with daughter lose their potential pensions when they marry and move away. This gives parents a strong reason to prefer male children. Some parent who can't afford to manage a large family will end up killing female babies. Girls are considered a drain on family resources during their childhood without bringing economic benefits later on.

Dowry: some girl babies are killed so that the family doesn't have to pay a dowry when they get married. In Indian society it is a tradition for parents of the bride to give a dowry to the groom and his family. The dowry consists of large amount of money and valuable goods. For families with several daughters this can be a serious financial burden.

Government policies have also increased female infanticide as an unpredicted side-effect. For example when Chinese Government introduced a One Child per Family policy there was a surge in female infanticide. Families needed to have a son because of their higher potential, so a girl baby was an economic

disaster for them, and there was a strong motive to ensure that girl babies did not survive.

There are four other key issues:-

- Obsession to have a son due to religious, cultural and traditional values.
- Position of girls and women in society and the practice of dowry.
- Misuse of modern technology for sex selection.
- Two child norm policy of certain state governments.

Female feticide is the practice that involves pre- natal sex determination and a subsequent abortion if the sex of the fetus is female. While the methods of the detection may vary from amniocentesis and chronic villus sampling to ultra sonography, the reasons often cited are family pressure, the expenditure required for having a girl child and the perennial desire of the patriarchal society to have a son, an heir, and a successor. The opposite of courage in our society is not cowardice but conformity. So people who don't care to carry this burden often end up conforming to the ludicrous norms.

Concerns by Judiciary on Abortion: Supreme Court directed 9 companies to supply the information about the machines sold to the various clinics in last 5 years. The same information was sent to particular states so as to launch prosecution against those bodies using ultra sound machines that had filed to get themselves registered under the Act. The Court directed the ultra sound machines to be seized if they were being used without registration. The Indian Medical Association (IMA), Indian Radiologist Association (IRA) and the Federation of Obstetricians and Gynecologists Societies of India (FOGSI) were asked to furnish the details of member using these machines. Since the Supreme Court directive 99 cases were registered and in 232 cases ultra sound machines, other equipment and records were seized.

Public Interest litigation was filed in Supreme Court by concerned health activists. In Centre for enquiry into Health and allied Themes [CEHAT] vs. Union of India, the Supreme Court of India has issued notices to the Indian Government and the States with Union Territories on a petition seeking stricter implementation of laws that ban per-natal sex selection testes and sex selective abortion in India. Supreme Court observed that the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT) that it meant to prevent female feticide in India, has failed. The petition brought to the Court's attention the rampant practice of sex selection abortions in many part of country, with doctors in discriminately conducting sex determination tests and carrying out abortions because of lax implementation of the PCPNDT Act. The discovery of large number of female fetuses in a

well at a house of a doctor in Punjab was pointer to the impunity with which provision of PCPNDT Act are being violated. This imbalance would have serious repercussions for Indian Society in future, especially on the status of women, the petitioner said, leading to increased sexual violence, trafficking and the reduced mobility of women.

In India the policy environment is supportive to the reproductive choices of women and men. The MTP Act is legal and it allows for induced abortions where pregnancy carries a grave injury to women's health. A negative outcome of PNDT Act was that the practice of sex determination was driven nonetheless and the availability of service proliferated correspondingly. Ultra sound machines continued to be widely available and simple to use. In such environment it is difficult to enforce a law which sought to control information that travels through information channels and can operate secretly. The controversy is as to whom will serve as the watch dog to control the practice of female feticide and its implication is difficult and considering that it is the doctor who only can carry out the abortion or mother of fetus who can be punished. This is very ambiguous as most of the women are forced by family members to go ahead with the abortion of female fetus. Thus again putting the life of thousands of women in danger.

Philosophy of Medical Termination of Pregnancy Act: Prior to enactment of this legislation, the Indian Penal Code (Act No. 45 of 1860) permitted abortion only when it was justified for the good faith purpose of saving the life of the woman. 312 of the Penal Code provided that any person performing an illegal abortion was subject to imprisonment for three years and/or payment of a fine; if the woman was "quick with child", the punishment was imprisonment for up to seven years and payment of a fine. The same penalty applied to a woman who induced her own miscarriage. The Medical Termination of Pregnancy Act of 1971 had the effect of allowing abortions to be performed under broader grounds than the Penal Code. Under the Act, a pregnancy can be terminated if its continuation would involve risk to the life or grave injury to the physical or mental health of the pregnant woman or if there is substantial risk that, if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. In determining whether continuance of the pregnancy would involve a risk of injury to the health of the pregnant woman, the Act allows account to be taken of the woman's actual or reasonably foreseeable environment. The Act also presumes that the anguish caused by a pregnancy resulting from the rape of any woman or from the failure of any contraceptive method used either by a married woman or her husband for the purpose of limiting the number of

children constitutes grave injury to the mental health of the woman.

A pregnancy may be terminated on these grounds within the first 12 weeks of pregnancy on the opinion of one registered medical practitioner. If the pregnancy has lasted more than 12 weeks, but fewer than 20 weeks, two registered medical practitioners must be of the opinion formed in good faith that the required grounds exist. An abortion can be performed only by a registered medical practitioner in a hospital established or maintained by the Government or in a facility approved by the Government. In cases in which a registered medical practitioner is of the opinion formed in good faith that the termination of the pregnancy is immediately available to save the life of the pregnant woman, an abortion can be performed anywhere at any time during pregnancy without the approval of an additional registered medical practitioner. Consent of the woman or written consent of the guardian of a woman under the age of 18 or a mentally retarded woman is required before performance of an abortion.

The Medical Termination of Pregnancy Act of 1971 was enacted by the Government of India with the intention of reducing the incidence of illegal abortion and consequent maternal mortality and morbidity. However, according to Government data, only about 1 million abortions were performed annually under this Act. Implementation of the Act has been slow and geographically uneven; abortion services are often inaccessible and women are reluctant to utilize those services because of the lack of anonymity and confidentiality. Therefore, the number of illegal or unregistered abortions performed by medical or non-medical practitioners is still very high. According to various estimates, the number of abortions performed outside approved facilities varies between 2 million and 6 million per annum. It has been observed that the women who make use of hospital facilities for the medical termination of pregnancy are mostly educated, from an urban middle-income family, married and between 20 and 30 years of age. In contrast, the women admitted to public hospitals with complications from illegal septic abortions are largely illiterates from poorer segments of the population. These observations are consistent with other findings indicating that the level of awareness of the legality of the procedure is fairly low, and the existing facilities for the legal medical termination of pregnancy are either not available or are not utilized by many high-risk women who seek illegal abortions.

The Act Does not allow the termination of pregnancy beyond 20 weeks of pregnancy. The right to abortion should not be taken away from the woman; even though her grounds for wanting an abortion may not be only medical in nature. In the Niketa Mehta case the Indian Courts have tried to take the pro-life view.

Niketa Mehta was in her 26th week of pregnancy. Her doctor had sought termination, of pregnancy as the fetus was diagnosed with a complete heart block. The petitioner in this case challenged the MTP Act to the extent to include eventualities for termination of pregnancy as ultra vires. Section 50 of the act nowhere speaks of any right of a pregnant woman to terminate the pregnancy on the ground that delivery of the child may result in some abnormalities in or to the child to be born. It strictly restricts the cases where life of pregnant woman would be in danger in case the pregnancy is not terminated. Section 3(2) (b) (ii) is concerned with right to terminate the pregnancy where there is a substantial risk in allowing the child to take birth as it would suffer from such physical or mental abnormalities as to be seriously handicapped. However, such right is restricted to the maximum period of 20 weeks of pregnancy and not beyond it. The Court in a case held that “under the guise of reading down a provision of law, the Courts are not empowered to legislate upon a statute,” as that is the legislature’s power. Further in *Union of India and Anr. Vs. Deoki Nandan Aggarwal*, it was held that it is not the duty of the Court either to enlarge the scope of the legislation or the intentions of the legislature when the language of the provision is plain and unambiguous.

A recent case of Supreme Court highlighted their stand. A mentally challenged girl was raped at Ashreya, a welfare institution of government, by a guard of the institution, after which she became pregnant. The Punjab Haryana High Court decided to direct the termination of the same even though the expert body’s finding were in favor of continuation of pregnancy. The Supreme Court completely differed from the view of the High Court and directed that the pregnancy must not be terminated despite of the fact that the victim was mentally retarded, because the MTP Act mentions that even mentally retarded persons have right to decide whether they want to terminate their pregnancy or not. They also stated that the victim’s reproductive choice should be respected in spite of other factor such as the lack of understanding of the sexual act as well as apprehensions about her capacity to carry the pregnancy to its full term and the assumption of maternal responsibilities thereafter. The Supreme Court applied the “Best Interest Test” and “Substituted Judgment test.”

The Best interest test required the Court to ascertain the course of action which would serve the best interests of the person in question. In the present setting this means that the Court must undertake a careful inquiry of the medical opinion on the feasibility of the pregnancy as well as social circumstances faced by the victim. The application of the Substituted judgment test requires the Court to step into the shoes of the person who is considered to be mentally incapable and attempt to make the decision which the

said person would have made, if she was competent to do so. In the present case the victim has been described as a person suffering from “mild mental retardation.” The findings of the expert body indicate that her mental age is close to that of a nine year old child. The Court in this case only took the result of Best Interest Test into consideration and hence came to the finding that terminating the pregnancy is to the best interest of the girl.

The circumstances are need to be looked separately in each case, and then consequently analyzed with respect to relevant provisions of law. It might be argued that as female feticide is rampant in India, there should not be an Act that legalizes abortion, but as answer to that, the Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) act, 1994 is present which criminalizes the sex determination of the fetus. The Act has made the registration of ultra sound and other sex diagnostic techniques compulsory and the prenatal sex determination has been made a punishable offence. The Act has made female feticide an offence punishable with imprisonment and fine. The Act has been enforced in those parts of the country where the instances of female feticide are more than anywhere else in the country as a result; the male female ration has been positively affected. Hence it was in the best interest of a mentally retarded woman to undergo an abortion.

The Government of India has repeatedly emphasized that the medical termination of pregnancy should not be viewed as a method of family planning for the individual or as a method of reducing the national birth rate. However, most women who have obtained an abortion tend to have at least two living children and to be non-users of contraception. Indeed, one study estimated that up to 80 per cent of abortion patients were not using any contraceptive method. The Government and voluntary family planning organizations have therefore been attempting to promote acceptance of post-abortion contraception. In addition to the other effective contraceptive methods that are recommended, sterilization and insertion of an intra-uterine device have become increasingly popular.

The strong preference for sons under patriarchal traditions and the availability of inexpensive prenatal diagnostic techniques have resulted in an increased use of prenatal gender tests in India, even among the rural poor. Some private clinics provide such tests and then offer an induced abortion if the parents are dissatisfied with the sex of the fetus. Although no reliable figures exist on the incidence of this practice, highly distorted sex ratios in regions where such practices are believed to be common suggest that a significant number of female fetuses are aborted annually.

To counteract this practice, the Government of India enacted country-wide legislation in 1994 that regulates prenatal testing. The stated purpose of the legislation is to prohibit the use of prenatal diagnostic techniques for the determination of the sex of a foetus, resulting in “female foeticide,” which is described as “discriminatory against the female sex” and “affecting the dignity and status of women.” To this end, the law restricts the performance of prenatal diagnostic techniques to cases involving serious diseases and abnormalities and prohibits entirely the use of such techniques to determine the sex of a foetus and the advertising of such use. Facilities performing such techniques must be registered, and persons conducting the testing in these facilities are prohibited from revealing the sex of a foetus in any manner. The law also prohibits family members of a pregnant woman from seeking or encouraging her to undergo prenatal testing to determine the sex of the foetus. Penalties for contravening the provisions of the law include imprisonment and fines and, in the case of a registered medical practitioner, loss of registration, which can be permanent in the case of repeat offences.

Despite the liberalization of the abortion law, unsafe abortions have contributed to the high rates of maternal mortality in India. It is estimated that unsafe abortions account for 20 per cent of maternal deaths in India. In contrast, it has been reported that maternal deaths associated with induced abortions performed in hospital facilities for medical termination of pregnancy are negligible. In order to reduce illegal abortions and maternal mortality and morbidity, the Government has made an effort to encourage greater use of contraception and to further publicize the abortion law, as well as to improve the availability of facilities for medical termination of pregnancy.

Position of Indian Legal System on abortion: The authors of the Code strongly apprehend that the law on abortion could be used for the vilest purposes and a charge of abortion is indefinite stain on the honor of the family. By virtue of preceding sections, abortion was forbidden except when performed in good faith for saving the life of the mother and in most instances, life was construed narrowly negating the mental stability and surrounding environment of the woman. The patriarchal setup and the ever subjugating attitude is evident as termination by choice of woman is categorized as an offence. The provisions are archaic, antiquated under the grit of this law, the number of illegal abortions increased leading to a rise in the associated morbidity and mortality rates, feticide rates, sex selective termination and subsequent flourishing of quacks and abortion centers. It would not be inappropriate to suggest that the stringent law that crucified the right to make a decision on part of a woman, who brings and nurtures the child, resulted in

the gross abuse and serious breach of the law and the scientific advancement.

In India abortion is illegal as per the provisions of IPC. Section 312 to section 318 deals with the need full in following manner:-

- Section 312- the offence of causing miscarriage.
- Section 313- causing miscarriage without women’s consent.
- Section 314 - death caused by an act done with the intent to cause miscarriage.
- Section 315 - acts done with intent to prevent child being born alive or to cause it to die after birth.
- Section 316- causing death of quick unborn child by an act amounting to culpable homicide.

Thus instead of it, the Parliament enacted the Medical Termination of Pregnancy Act, 1975 with the objective of reducing the incidence of illegal abortions. However, after 35 years of ground breaking legislation, majority of woman seeking abortion still turn to uncertified providers for abortion service because of barriers to obtain and this has made a safe motherhood a top priority issue in the country. The recent decision of Bombay High Court, justified on the absence of sufficient grounds to make certain exception permitting MTP for a 25 week fetus indicate that the Act does not address the diverse situation properly and does not fit into the spirit of times. Section 3 of the Act envisages when the termination may be done by a registered medical practitioner permitting abortion on health, humanitarian grounds. Section 4 restricts the place where abortion may take place. Section 5 carves out an exception to Section 3. Section 8 confers a shield and protects the action taken in good faith by the medical practitioner. The provision of Act and the rules and regulations framed under it seemingly liberalize the law conferring an illusory right upon the woman to decide whether to conceive or not and certainly violates a plethora of right on pretext of competing and compelling state interest in the potential life. The act aimed at retaining the degenerating health conditions of a pregnant woman, to reduce the number of illegal abortions and to contain the population explosion. The enforcement of the Act has defiantly failed the objective if its enactment and the rate of abortion per se are on the rise.

Conclusion: Bare perusal of the provisions reveal that the decision is taken by the medical practitioner and not the woman, whose body and mind undergoes massive changes during the gestation period. The opinion of the registered medical practitioner is of paramount significance but the negligence gets easily condoned due to the blanket protection extended by the Act. Cases abound where justice has been sacrificed on the altar of good faith and this defeats the object of reducing maternal mortality and promoting public health. The issue at hand delves into the need of

balance with the right to life of the fetus and right to privacy of the prospective mother.

There are varieties of situations that the Act does not address:

- The Act is silent whether an unmarried woman and a married woman who has undergone sterilization operation can undergo termination in case of contraception failure which is permitted for a married woman.
- A widely prevalent situation not addressed by the Act is where termination is denied and the pregnancy occurs outside the wedlock.
- The Act does not elaborate to what is the scope and ambit of “reasonable and foreseeable environment” leaving a grey area that can be used to the woman’s peril.
- The Niketa Case also brings to the forefront the loopholes in the legislation, imposing a life time burden upon the parents and denying the child a healthy life.

Compelling the state interest associates with itself a set of rival interests and prioritization has to be done keeping in mind the concepts of justice and equality to negate arbitrariness. To impose reasonable restrictions on the right to abortion consideration has to be given

to necessity and proportionality. The drafters of MTP Act intended to restrict the prized right without any reasonable grounds for modern abortion techniques are no longer threat to woman’s health and the provision have ultimately created a legal blockade for free exercise of right causing immense enrichment on woman’s psychological integrity. The provisions need to satisfy the tests of reasonableness and proportionality.

The only credible ground for restricting the right is the protectable interest in the right to life of a fetus which drags in the queries like when does life begin and is fetus a person, which is difficult for Courts to answer. Even though the fetus enjoys rights while in mothers’ womb, the hesitation stretches to inquire when the state gets a compelling interest in the potential life, compelling enough to compete the claim of reproductive autonomy.

From population perspective giving woman power to control the population is wise for the dynamic theory of development suggests that the best would be achieved if everybody does what is best for them and for society.

References:

1. Dr. Vasa Prabhakar, Women Empowerment and Eradication of Discrimination; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 18-21
2. AhamadSiddique, “Criminology: Problems and Perspectives, 6th edn. 2009, Eastern Book Company, Lucknow.
3. LeelaVisaria, Ramachndran, “Abortion in India Economic and Political Weekly” volume 39 Issue No. 46.
4. Aparna G. Adhikari, Genevive Angela David, Prevention of Violence Against Women- A Pilot Program Implemented In Two Mandals of Hyderabad; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 61-66
5. Dr. K.C. Jena, “Heirship of Women under Indian Personal Laws. A comparative study”, Ph.D. Thesis (1998)
6. Roe vs. Wade, 410 U.S. 113.
7. Ibid.
8. Bhanupratap Singh, Empowerment of Women Vis-A-Vis Legal Sanctions in India; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 1-3
9. Bhawaribai vs. New India Assurance Co. Ltd., 2006 ACJ 2085.
10. D.Ratnamani, K.F.Hemalatha Vijaya Raja Kumar, M.V.K.Srivani, History of Woman Education and Importance of Woman; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 15-17
11. (1997) 11 SCC 460.
12. Pamela Philipose, “Women versus Girls,” Indian Express, April 5 2006.
13. Dr S Jeyarani, Women’s Equality And Gender Justice In India; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 2 (2015), Pg 130-132
14. AIR 2001 SC 2007.
15. Dr. Nikhil D. Dattar vs. Union of India, (2008) 110 BOMLR 3293.
16. AIR 1992 SC 96.
17. Suchita Srivastava vs. Chandigarh Administration, (2009) 9 SCC1.
18. S V L Anuradha, Living With Dignity Through Skills and Training; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 67-71
19. Dr.Usha Sharma vs State, MANU/DE/9843/2006.
20. Heidi Bart Johnston, “Abortion Practice in India: A review of Literature” at www.cehat.org/app1/work1.pdf.

Apoorva Dixit/ Research Scholar/ Jagran Lakecity University/ Bhopal/ M.P. /
Simran Singh/ Research Scholar/ Jagran Lakecity University/ Bhopal/ M.P. /