



**WHAT IS ABORTION?**

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“There is no freedom, no equality, no full human dignity and personhood possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual conscience and conscious choice for the women concerned.”<sup>1</sup>

**INTRODUCTION**

Abortion has been a topic of controversies since times immemorial & continues to be a disputed issue even today. Abortion has many aspects as it involves many characteristics such as religion, ethics, medicine & law. It is a social issue that provides liberation to women & gives them power to make their own decisions.

The term ‘abortion’ means a premature termination of pregnancy, or termination of an unborn life during its gestation period, or expulsion of the product of conception from the uterus of a pregnant woman.”<sup>2</sup>

Abortion is one of the most controversial issue as it concerns the taking of a human life. If we look at the arguments for & against abortion, we will only find legal & religious arguments. When it comes to those who favour abortion, they point to the argument that abortion represents a woman’s “right to choose” and whether they want to continue the pregnancy or terminate it. Whereas, anti

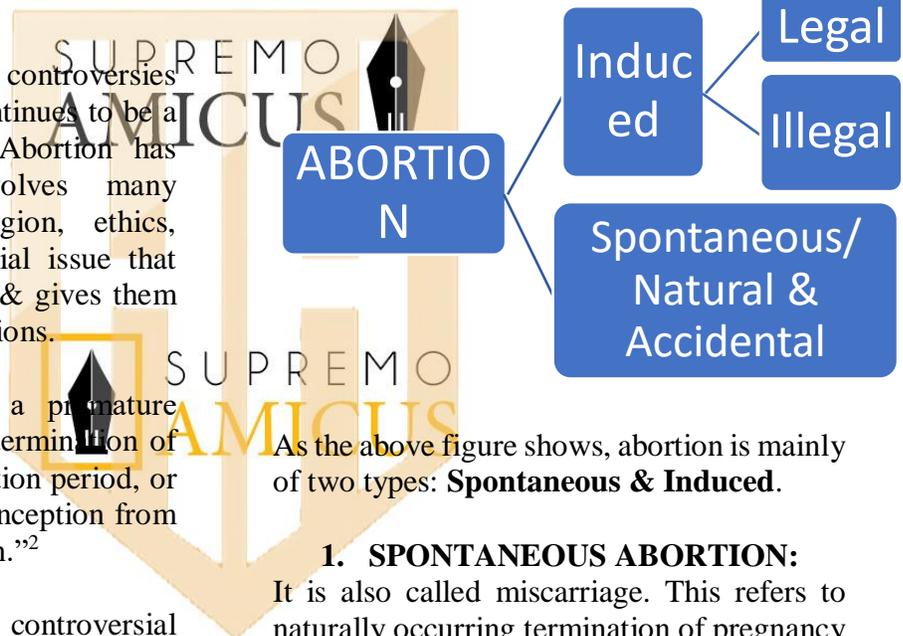
abortionists, generally make a religious argument.

The fundamental features of abortion are:

1. It is the deliberate destruction of human life in any stage after conception & before birth.
2. It is different from infanticide & non-conception.
3. It can be either spontaneous or induced.

**TYPES OF ABORTION**

Abortion is of various types, broadly classified in two:



As the above figure shows, abortion is mainly of two types: **Spontaneous & Induced.**

**1. SPONTANEOUS ABORTION:**

It is also called miscarriage. This refers to naturally occurring termination of pregnancy without any intervention. This type of abortion sometimes may occur even before a woman realises that she is pregnant.

About 10% of all pregnancies end in spontaneous abortion & much more that that percentage counts for induced abortion.<sup>3</sup>

- **NATURAL ABORTION:** It is the miscarriage that occurs due to natural

<sup>1</sup> Betty Friedan, Abortion: A Woman’s Civil Right,

<sup>2</sup> “Ethics theory & practice”.

<sup>3</sup> Principles of Forensic Medicine.



reasons like ill-health, diseases, shock, fear, etc.

It mostly occurs during the 2<sup>nd</sup> & 3<sup>rd</sup> month of pregnancy.<sup>4</sup>

This type of abortion is beyond anybody's control & can occur at any time & due to any reason. It has nothing to do with any voluntary action.

- **ACCIDENTAL ABORTION:** It is the miscarriage that occurs due to a trauma or a non-intended accident like falling down the stairs, drug toxicity or it can also be caused by sexual intercourse. It is not done by the decision of the person but it depends upon the circumstance.

## 2. INDUCED ABORTION:

An induced abortion is the purposeful termination of a pregnancy before the embryo or foetus is capable of sustaining independent life.<sup>5</sup>

An induced abortion can also be called an elective abortion where the woman carrying the unborn can elect or make a decision to terminate the pregnancy by medical procedures.

It is basically of two types: (a) **Legal Induced Abortion** & (b) **Illegal/ Criminal Induced Abortion**.

- **LEGAL INDUCED ABORTION:** Any induced abortion performed in accordance with the provisions of Law of a concerned country is called legal induced abortion. There are many countries where abortion is not yet legalised. Whereas, in India, abortion was legalised under "Medical Termination of Pregnancy Act of 1971" which was enforced

in the year 1972. Legally induced abortion is not punishable by law.

The above-mentioned act allows abortion until 12 weeks of pregnancy, if the medical practitioner is of the opinion that childbirth would cause a risk of life or grave injury to the woman or the child.

- **ILLEGAL INDUCED ABORTION:** Any induced abortion performed in violation of the provisions of the Law of a concerned country is known as illegal or criminal induced abortion. There are many countries which do not recognise abortion & some which recognise it but only till a certain extent. In India, The Indian Penal Code also governs Indian abortion laws. Sections 312 to 316 of the IPC<sup>6</sup> lay down situations where any act of abortion is done and state as to when abortion is illegal & punishable under the law. The law also states that causing a miscarriage of a pregnant woman is a crime under the Code and if any person voluntarily causes a miscarriage, will face punishment imprisoning up to 3 years & fine.<sup>7</sup> Whereas, any act that causes death of an unborn child would be guilty of culpable homicide and shall be punished with imprisonment of either description for a term which may extend to ten years, & shall also be liable to fine.<sup>8</sup>

## METHODS OF ABORTION

There are various methods adopted to terminate the pregnancy. These methods vary upon the stages of pregnancy, choice of the woman, & the appliances available in the clinic. The following are some of the methods used to cause abortion:

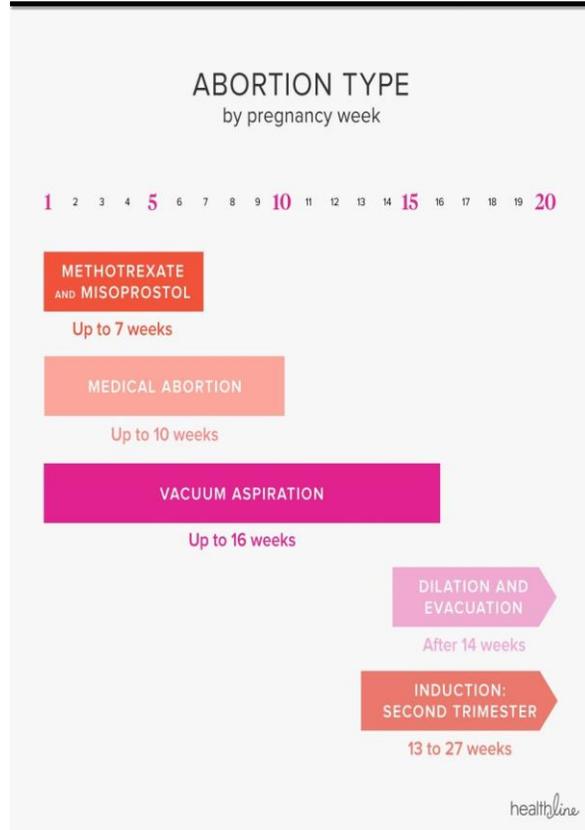
<sup>4</sup> <https://en.wikipedia.org/wiki/Miscarriage> (last visited on 09.02.2020, 2:33pm).

<sup>5</sup> Text Book Of Obstetrics: Including Perinatology & Contraception.

<sup>6</sup> Indian Penal code, 1860.

<sup>7</sup> Section 312, Indian Penal Code, 1860.

<sup>8</sup> Section 316, Indian Penal Code, 1860.



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- METHOTREXATE & MISOPROSTOL:** The two drugs Methotrexate & Misoprostol initially were developed for cancer & ulcer treatment respectively but these are now being used in combination for abortion. It is worth noting that methotrexate is a highly toxic drug with side-effects & complications such as nausea, pain, diarrhoea, bone marrow depression, anaemia, liver damage & lung disease occurring even at low doses. Methotrexate is a chemotherapy drug with the potential for serious toxicity,

which can result in the death of the mother as well as the foetus.<sup>10</sup>

These two drugs “act on a women’s reproductive system: methotrexate kills the rapidly growing cells of the trophoblast, the tissue which develops onto the placenta, & misoprostol causes uterine contractions to expel the foetus.”<sup>11</sup>

This regimen also involves multiple clinic or hospital visits. After receiving an injection of methotrexate, the woman returns 3 to 7 days later to receive the misoprostol vaginally. She returns home where cramping & bleeding begin. The foetus is usually aborted within 24 hours.

**MEDICAL ABORTION:** A medical abortion is performed through taking two medications in pill-form: (a) mifepristone (Mifeprex) & (b) misoprostol (Cytotec). These two drugs work together to end a pregnancy. Mifepristone blocks the hormone progesterone, which the embryo needs to implant in the uterus & grow. The other medicine, misoprostol makes the uterus contract to push out the pregnancy tissue, is asked to be taken home & be consumed in a few hours or up to 4 days after the first pill. The pills can either be consumed orally or by placing the them into the vagina.<sup>12</sup>

- VACUUM ASPIRATION:** Vacuum aspiration or suction can be used to terminate pregnancy surgically. Vacuum aspiration is an outpatient procedure that generally involves a clinic visit of several hours. The procedure itself typically takes less than 15 minutes. It can be done in two ways: manually or by machine. “Suction is created

<sup>9</sup> <https://www.healthline.com/health/types-of-abortion#medical-abortion> (last visited on 09.02.2020, 5:49pm).

<sup>10</sup> Synopsis of PH.D. thesis of Sunil Kumar Das <https://shodhganga.inflibnet.ac.in/bitstream/10603/12>

2977/7/07\_chapter%202.pdf (last visited on 09.02.2020, 6:00pm).

<sup>11</sup> Female Infanticide & Child Marriage.

<sup>12</sup> Ibid.



with either an electric pump (electric vacuum aspiration or EVA) or a manual pump (manual vacuum aspiration or MVA). Both methods use the same level of suction, & so can be considered equivalent in terms of effectiveness & safety. Vacuum or Suction Aspiration uses aspiration to remove uterine contents through the cervix. It may be used as a method of induced abortion, a therapeutic procedure used after miscarriage. The rate of infection is lower than any other surgical abortion procedure at 0.5%.<sup>13</sup>

- **DILATION & SUCTION CURETTAGE:** Dilation & suction curettage are also called D & C, suction dilation, vacuum curettage, & suction curettage. D & C with suction is a procedure in which contents from the inside of the uterus are evacuated in a very brutal manner. "Dilation" refers to the opening of the cervix so that a loop shaped sharp knife called curette is easily inserted. "Curettage" refers to the aspiration or removal of tissue within the uterus with an instrument called a curette. This procedure is commonly performed as a treatment for miscarriage, retained placenta after vaginal delivery, or as a method of first-trimester elective abortion.<sup>14</sup>

This method is used between 7 & 12 weeks. In this method, the neck of the womb is dilated to permit the insertion of a loop-shaped sharp knife, called a curette, to cut and scrape off the foetus.

- **INDUCTION ABORTION:** Induction abortion involves medications that cause the uterus to contract & expel the pregnancy. After a certain point in pregnancy D&C

procedure can no longer be performed & the only option is an induction abortion. Medications to induce abortion can be given in a number of ways. Most commonly, misoprostol tablets are inserted into the vagina every few hours. Oxytocin (Pitocin) may be given through an IV line. For later abortions, an injection into the abdomen may be given to ensure fatal demise. This procedure can take several hours or more than a day to complete.<sup>15</sup>

- **LATE TERM ABORTION:** A late termination of pregnancy often refers to an induced ending of pregnancy after the 20th week of gestation. The exact point when a pregnancy becomes late-term, however, is not clearly defined. Some sources define an abortion after 16 weeks as "late". In the US, the point at which an abortion becomes late-term is often related to the "viability" (ability to survive outside the uterus) of the foetus. Sometimes late-term abortions are referred to as post-viability abortions, though this is not a medical term.<sup>16</sup>

### REASONS FOR ABORTION

There are various reasons why a woman tends to look for abortion. Some of the reasons are given below:

- To save the life of the woman carrying the unborn child;
- Because of the age of the woman carrying the unborn child;
- To preserve the physical health or well-being of the woman carrying the unborn child;
- To avoid or alleviate economic hardship;
- To avoid social stigma of illegitimacy;

<sup>13</sup> [https://en.wikipedia.org/wiki/Vacuum\\_aspiration](https://en.wikipedia.org/wiki/Vacuum_aspiration) (last visited on 09.02.2020, 5:52pm).

<sup>14</sup> <https://emedicine.medscape.com/article/1848296-overview> (last visited on 09.02.2020, 6:30pm).

<sup>15</sup> <https://www.ourbodiesourselves.org/book-excerpts/health-article/induction-abortion/> (last visited on 09.02.2020, 6:40pm).

<sup>16</sup>

[https://en.wikipedia.org/wiki/Late\\_termination\\_of\\_pregnancy](https://en.wikipedia.org/wiki/Late_termination_of_pregnancy) (last visited on 09.02.2020, 6:47pm).



- To avoid future attitude tinged with bitterness toward the child taking birth as a result of rape or incest;
- At the fear of transmitting fatal disease or deformity from the severely ill or deformed(i) parents;
- At the fear of anticipated beatings or incestuous attacks of the child from brutal & violent parent; (ii)
- To prevent future deformity of the child resulting from chromosomal anomalies;
- To meet the need of the professional career of the woman carrying the unborn child, etc.

### MEDICAL TERMINATION OF PREGNANCY ACT, 1971<sup>17</sup>

Before this act came into existence, abortion (i) was only granted in cases where the mother's life was at risk. But after the enactment of the (ii) abovementioned act, limited circumstances were set to allow abortion. The Act only consists 8 sections and was enacted with the objective of allowing abortions by registered practitioners, in limited circumstances. However, the cabinet has approved the new Medical Termination of Pregnancy (Amendment) Bill, 2020, which has increased the upper gestation limit for abortion from the existing 20 weeks to 24 weeks. But in order to get a foetus aborted which is between 20 and 24 weeks, medical opinion would be required from two medical experts.

**The Act gives various rights to women. (Privacy, Reproductive rights, etc)**

1. **Section 3(2)(a)** of the Act<sup>18</sup> states the time period during which a mother can get abortion. It states that the length of the pregnancy should not exceed twelve weeks.

In cases where the length exceeds twelve weeks but does not exceed twenty weeks, then the opinion of two registered medical practitioner is taken, in good faith, that:

The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.

2. **Section 4** of the Act<sup>19</sup> talks about the place where pregnancy may be terminated. It states that termination can only be done in two places:

(i) A hospital established or maintained by Government, or

(ii) A place for the time being approved for the purpose of this Act by Government.

3. **Section 5** of the Act<sup>20</sup> talks about circumstances where the aforesaid sections, i.e., Section 3 & section 4 shall not apply. The Act states that the provisions of section 4, and provisions of Section 3(2) talking about the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of an opinion that determination of such pregnancy is immediately necessary to save the life of the pregnant woman.

In various cases the constitutionality of Section 3 of the MTP Act, 1971, talking about the length of pregnancy, has also been challenged. In the case of **Mrs. X and Mrs.**

<sup>17</sup> <https://mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-1971> (last visited on 09.02.2020, 7:06pm).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.



**Y v. Union of India**<sup>21</sup> the Constitutional validity of section 3 (2) (b) of the Medical Termination of Pregnancy Act 1971 is challenged. The Act bans medical termination of a pregnancy post 20 weeks, and does not take into consideration circumstances where termination is required post 20 weeks, including cases where there are severe foetal abnormalities. The criminalisation of abortions after the 20th week of pregnancy violates a woman's fundamental rights to life, liberty, health, choice and to be free from discrimination and inhuman treatment.

In the case of **Dr. Nikhil Datar v. Union of India & Ors.**<sup>22</sup>, where in her 20th week of pregnancy, Niketa Mehta's sonography showed her foetus as normal however in the 22nd week, her gynaecologist found that her foetus had a congenital complete heart block which would lead to a poor quality of life and could also be fatal. She then reached the Bombay High Court, seeking for permission to medically terminate her pregnancy but was denied. She was then forced to continue with her pregnancy, ultimately miscarrying one week after the decision of Bombay High Court.<sup>23</sup>

The US Supreme Court in **Roe v. Wade**<sup>24</sup>, held that the right to terminate pregnancy is a basic human right. Today, in most of the countries, abortions are permitted for reasons that fall into three categories namely:

- i. To preserve the life, physical or mental well being of the mother or the child
- ii. To prevent the completion of pregnancy that is a result of rape
- iii. To prevent the birth of a child with severe deformity or genetic abnormality

In **Paton v. United Kingdom**<sup>25</sup>, it was held that the rights of an unborn child cannot prevail over the rights of the pregnant woman. Right to life of the foetus would mean that the abortion is forbidden, even at the expense of seriously affecting the health of the pregnant woman.

In **Planned Parenthood of Central Missouri v. Danforth**<sup>26</sup>, this case struck down the Missouri law on abortion which said that a married woman has to obtain consent from her husband to get an abortion.

### TIMELINE OF MAJOR EVENTS

1. **Spring 2011** - Guttmacher Policy Review found that unsafe abortion is the third leading cause of maternal death in India.
2. **7 October 2012** - The Hindu published Rare Birth Defect Poses a Challenge to Doctors, reporting that doctors agree that in certain cases of foetal abnormality such as Anencephaly, a medical termination of pregnancy is the only safe option for the mother.<sup>27</sup>
3. **20 November 2012** - The Times of India published One Woman Dies of Abortion

<sup>21</sup> <https://indiankanoon.org/doc/73782861/> (last visited on 09.02.2020, 7:11pm).

<sup>22</sup> [SLP(C) 5334 of 2009]

<sup>23</sup>

[https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Datar\\_v\\_India.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Datar_v_India.pdf) last visited on 09.02.2020, 7:30pm).

<sup>24</sup> 410 U.S. 113 (1973)

<sup>25</sup> (1980) 3 ECHR 408 (European Convention on Human Rights)

<sup>26</sup> [https://medium.com/@editors\\_91459/these-are-the-most-significant-supreme-court-cases-about-abortion-to-date-4b1910e48a2](https://medium.com/@editors_91459/these-are-the-most-significant-supreme-court-cases-about-abortion-to-date-4b1910e48a2) (last visited on 09.02.2020, 9:15pm).

<sup>27</sup>

<https://www.thehindu.com/news/cities/Hyderabad/Rare-birth-defect-poses-a-challenge-to-doctors/article12548829.ece> (last visited on 09.02.2020, 9:30pm).



every 2 Hours, reporting that unsafe abortions constitute 8% (4,600 deaths) of India's Maternal Mortality Rate.<sup>28</sup>

4. **1 February 2013** - The UN Human Rights Council published the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment identifying denial of medical termination of pregnancy as a violation of the right to be free from torture and other cruel inhuman or degrading treatment.
5. **3 February 2013** - The National Commission for Women drafted proposed amendments to the MTP Act to protect women's lives where there is a substantial risk of physical or mental foetal abnormality.

medical personnel, putting their lives in extreme danger. However, according to the new Medical Termination of Pregnancy (Amendment) Bill, 2020, the extending of the upper limit of the abortion from 20 weeks to 24 weeks is a great step taken by the Government. If there is any substantial risk of physical or mental foetal abnormality, the woman should have a choice to get the foetus aborted according to her will.

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### CONCLUSION

The current MTP Act thus constitutes a violation of women's fundamental rights to life, liberty, health, dignity, choice, and to be free from inhuman and degrading treatment under Article 21 of the Constitution. It also violates the right to equality under Article 14 of the Constitution and violates rights under various treaties including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), International Convention of Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR).

Forcing women to continue dangerous pregnancies violates their right to life by compromising their safety and welfare. It also compromises their right to mental and physical health. Further the MTP Act's criminalisation of abortions after the 20th week also encourages desperate women to seek out unsafe abortions from untrained

<sup>28</sup> [https://timesofindia.indiatimes.com/india/One-woman-dies-of-abortion-every-2-](https://timesofindia.indiatimes.com/india/One-woman-dies-of-abortion-every-2-hours/articleshow/17286528.cms)

[hours/articleshow/17286528.cms](https://timesofindia.indiatimes.com/india/One-woman-dies-of-abortion-every-2-hours/articleshow/17286528.cms) (last visited on 09.02.2020, 9:46pm).