

**TERMINATION-OF-PREGNANCY RIGHTS AND FOETAL INTERESTS IN
CONTINUED EXISTENCE IN SOUTH AFRICA: THE *CHOICE ON TERMINATION
OF PREGNANCY ACT 92 OF 1996***

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SUMMARY

The aim of this article is to demonstrate that, although South Africa has permissive termination-of-pregnancy legislation, to the extent that women can terminate first- and second-trimester pregnancies on demand and for socio-economic reasons, foetal interests are in fact taken into account. The system of female reproductive rights progressively shelters foetal interests, albeit to a limited extent. South Africa is in the process of successfully balancing the conflicting notions of female reproductive rights and foetal interests. The article discusses the "right to terminate a pregnancy" with reference to the *Constitution*, the *Choice on Termination of Pregnancy Act 92 of 1996* and relevant case law.

On the topic of foetal interests, the article looks at the *Choice on Termination of Pregnancy Act* as legislative recognition of foetal interests since a woman's right to terminate her pregnancy is progressively limited as the pregnancy advances beyond the second trimester. The value of dignity justifies the recognition of foetal interests. Further, accepting that the *Choice on Termination of Pregnancy Act* limitedly protects foetal interests based on the value of dignity, the article questions why South Africa permits elective second trimester termination of pregnancies? Research indicates a need for second trimester terminations and the article discusses the position of a number of women seeking second trimester terminations.

The article draws to an end by looking at the case of *S v Mshumpa* as an example of the balancing process that is needed when dealing with female reproductive rights and foetal interests. This article demonstrates the constitutional setting of women's termination-of-pregnancy rights on the one hand, and foetal interests on the other.

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Further, it illustrates that these conflicting positions, rather than being deepened, are in fact balanced by legislation and relevant case law.

KEYWORDS: Choice on Termination of Pregnancy Act; female autonomy; foetal interests; value of dignity; second-trimester termination of pregnancy