

OFFENCES RELATED TO MISCARRIAGE

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ABSTRACT

The article basically talks about the miscarriage which is related to women in India and lays special emphasis on Sections 313 and Sections of IPC which are related to punishments for miscarriage. This project basically talks about the detailed study of miscarriage in India, punishments which are related to it and also talks about whether they are non-bail able or not. In India, there is dearth of statistical data on still birth, miscarriage and induce abortion. In addition to this, data on miscarriage on first, second and third trimester among unskilled daily wage women workers is lacking in India. Women even in their early age (20 to 30 years) suffers from physical, emotional and social trauma that are associated with still birth, miscarriage or induce abortion. Miscarriage among workers can be due to multiple factors such as nutrition, environmental factors, occupational factors, individual health status, socio-economic and demographic factors as well as various clinical parameters are associated. Women involved in manual labor with low socio economic status bear triple burden such as domestic, economic and work related responsibility which make them more vulnerable. Women with low socio economic status live in poverty with lack of basic amenities, low wage and lack of social security In addition to this, there is poor housing, unhygienic living conditions etc. and hence they are the main culprits which results in the miscarriage among women in India. In this article we will be discussing about different sections in IPC related to miscarriage and laws which are made and will also discuss the case laws related to it and finally end with the conclusion.

KEYWORDS- Miscarriage, Sections Related To Miscarriage, Laws Related To Miscarriage, Famous Case Laws Related To Miscarriage.

INTRODUCTION- When is ‘causing a miscarriage of a pregnant woman’ crime?

It is a crime when all the following facts occur:-

1. Miscarriage is voluntarily (willingly) caused and not as a result of any accident or mishap

For instance, administering medicine to a pregnant woman, thereby causing her miscarriage

1. The miscarriage was not caused in good faith (e. there was no thought of saving the life of the pregnant woman while causing the miscarriage)
2. The pregnant woman did not consent to the miscarriage¹

For instance, when a pregnant woman visits a doctor for regular check-up, the doctor inserts a needle inside the abdomen of the lady (as a part of some test) leading to a septic and then a miscarriage. In this case, the woman never visited the doctor for causing of miscarriage but for the test. Yet, miscarriage is what she ultimately suffered. In this case, the woman can consider filing a complaint against the doctor under Section 313 of IPC.

Issue of Consent

There is another possibility. The pregnant woman herself may give consent to the causing of miscarriage. For example, a pregnant woman, to get rid of the unborn girl child, may give consent to her miscarriage. In that case, the woman would also be punished under Section 312, together with the doctor causing such miscarriage. At times, a woman may give the consent to the miscarriage out of necessity. In such cases, the woman is generally not punished. For instance, if a pregnant woman is attacked/ assaulted by few persons, thereby resulting in such grave injury that the woman, against her desire, gives consent for miscarriage, then the woman is not likely to be punished. These types of cases are covered by Section 313 of the IPC.

To conclude, two types of situations are likely to arise whenever miscarriage has been caused to a pregnant woman: (a) the woman consented to the causing of miscarriage and (b) the woman did not consent to the same. The first situation would be governed by Section 312 of the IPC and the latter by Section 313.

In addition to the above, there is another possibility. A pregnant woman may herself consents to the causing of miscarriage because the pregnancy is posing severe risk to her mental and physical health. However, such miscarriage would be a crime under the IPC (Section 312)

¹*Aruna Ramchandra Shanbaug v UOI (2011) 4 SCC 454: AIR 2011 SC 1290*
Berin P Varghese v State of Kerala, 2008 CrLJ 1759
Subs. by Act 26 of 1955, section 117 and Sc, for "transportation for life" (w.e.f 1 January 1956)
Dr Mangla Dogra v AK Malhotra, AIR 2012 CC 1401:2012(3) Ker LT (SN) 124 (P&H)
Ademma, (1886) 9 Mad 369
Meeru Bhatia Prasad vs State, 2002 LJ 1674 (Del)
Akhil Kumar v State of MP CrLJ 2029 (MP). Mohammed Sharif v State of Orissa, 1996 CrLJ 2826 (Ori) termination under medical advice, death not caused, the accused not liable
Sub. by Act 26 Of 1955, section 117 and Sch., for transportation for life (w.e.f 1 January 1956)
Moideen Sab v State of Karnataka, 1993 CrLJ 1430 (Kant)
State of Maharashtra v Rajendra Ramkisan Jaiswal, 2010 CrLJ 3603 (Bom)
Jacob George v State of Kerala, 1994, CrLJ 3851:(1994) 3 SCC 430

because it is not caused for the purpose of saving the life of the pregnant woman. In fact, for this sort of miscarriage, both the pregnant woman and the doctor can be punished. In this situation, the pregnant woman can consider filing an application under the Medical Termination of Pregnancy Act, 1971 (MTP Act, 1971). Under this Act, a pregnancy can be terminated when it poses severe risk on the physical and mental health of the pregnant woman.

Punishment for the crime

If the miscarriage was caused with the consent of the pregnant woman then,

1. Imprisonment which may extend to three years or with fine or both
2. Imprisonment which may extend to seven years and fine if the woman is in advanced stage of pregnancy (this stage under the IPC is referred to as “woman being quick with child”)

Miscarriage caused without the consent of the pregnant woman, then

1. Imprisonment for life
2. Imprisonment which may extend to ten years and fine

Who will be punished for the crime? If the miscarriage was caused with the consent of the pregnant woman, then

1. The person causing the miscarriage and
2. The pregnant woman

Miscarriage caused without the consent of the pregnant woman

Only the person causing the miscarriage

Case decided which one of the above punishments would be applicable in a particular case

The punishment imposed would depend upon the stage of pregnancy. If the pregnancy was in initial stage, then the lesser punishment is imposed (maximum three years with fine). On the other hand, higher punishment is imposed if the woman was in advanced stage of pregnancy (up to 7 years and fine).

The punishment in case of Section 313 would depend upon the facts and circumstances of each case.

Elements should be disclosed by the Complainant while making a complaint under section 313

1. The accused was aware of the fact that the woman was pregnant
2. His/her actions resulted in the miscarriage of the pregnant woman. The said actions were committed voluntarily by the accused

3. She did not act in good faith
4. She did not act in the said manner to save the life of the pregnant woman
5. The pregnant woman did not consent to the causing of miscarriage
6. That the woman miscarried in consequence of it

Accused defense charged under Section 313²

1. He/she was unaware about the fact that the woman was pregnant
2. The act which resulted in the commission of the crime was not done voluntarily
3. The act which resulted in the commission of the crime was done in good faith
4. The act was done to save the life of woman with child
5. The pregnant woman also consented to the miscarriage. This argument may not completely absolve the accused from the liability. However, it can result in the imposition of lesser punishment upon him because of the application of Section 312 of IPC.

Medically as well there is a difference between the two terms. The term ‘abortion’ is used only when an ovum is expelled within the first three months of pregnancy. On the other hand, ‘miscarriage’ is used when a fetus is expelled from the fourth to the seventh month of gestation, before it is viable.

Bailable Offence

The complaint has been filed under Section 312 of the IPC. However, if the complaint was filed under Section 313 of the IPC, then the accused would not get the bail (the same being non-bailable offence).

Compoundable Offence

Neither the offence under Section 312 nor the one under Section 313 is a compoundable offence

Court which would try this offence

In case of Section 312, the offence would be triable by a Magistrate of First Class. On the other hand, the Court of Sessions would try the offence committed under Section 313

Cognizability of Offence

If the miscarriage was caused without the consent of the woman then the same is a cognizable offence. However, if the miscarriage was caused with the consent of the woman, then it is a non-cognizable offence.

² What is pregnancy loss/ miscarriage?'' www.nichd.nih.gov/, July 2013

Kanti Sen v State of WB, 2010 CrLJ 162(Cal)

Tulsi Devi v State of UP, CrLJ 940(All)

What if the pregnant woman agreed to the miscarriage because of the pressure of in-laws? In such a situation, can she be still held responsible for commission of a crime?

In such a situation, the pregnant woman would not be held responsible for commission of a crime. The case would be covered by Section 313 of the IPC. It is very necessary that from the very beginning the pregnant woman takes the stance that the miscarriage was used against her desire.

Punishment of In-laws

They can be punished for this act but not necessarily under Sections 312 and 313 of the IPC

Section 312 of IPC- Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation- A woman who causes herself to miscarry, is within the meaning of this section

COMMENT- This section deals with the causing of miscarriage with the causing of miscarriage with the consent of the woman, while the next section deals with the causing of miscarriage without such consent.

The Medical Termination of Pregnancy Act, 1971(34 of 1971) provides for the termination of pregnancy by registered medical practitioners where its continuance would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Where the pregnancy is alleged to have been caused by rape or as a result of failure of a contraceptive used by a married woman or her husband, it would be presumed to constitute a grave injury to the mental health of the pregnant woman. The termination of a pregnancy by a person who is not a registered medical practitioner will be an offence under the IPC, 1860, which to that extent is modified. It is high time that this section too was suitably amended in terms of Medical Termination of Pregnancy Act, 1971 (34 of 1971) to include the various other grounds on account of which pregnancy can now be terminated by registered medical practitioner. The Medical Termination of Pregnancy Act, 1971 does not empower the husband, far less his relations, to prevent the concerned woman from causing abortion if her case is covered under section 3 of that Act. Under 312 of the IPC, 1860 causing miscarriage is a penal offence. Relevant civil law has since been embodied in the Act legalizing termination of pregnancy under certain circumstances. Since law is liberal for

effecting such termination, the Act does not lay down any provision on husband's consent in any situation.

- **'With child'** means pregnant, and it is not necessary to show that "quickening", that is perception by the mother of the movements of the foetus, has taken place or that the ³embryo has assumed a foetal form, the stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial. Where a woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called foetus or child, it was held that the acquittal was bad in law.

A woman quick with a child simply means a particular stage of pregnancy at which quickening takes place. It is a perception of the woman of the movement of foetus. Section 312 can even apply to a pregnant woman herself who causes her own miscarriage. Good faith by itself is not enough. It has to be good faith for the purpose of saving the life of the mother or the child and not otherwise. This observation of the High Court of Delhi occurs in a case in which the doctor was found to be negligent and careless in injecting needles twice for performing abdominocentesis. The result was that the patient had to undergo forced abortion because septic developed. There was content only for one insertion and that was not at all applicable to second insertion.

- **'Miscarriage'** is the premature expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed.

Section 312.1 Death in attempt to terminate pregnancy- A woman had pregnancy of 24 weeks out of illicit relations and a doctor administered an injection for termination of the pregnancy but the woman died the next day without miscarriage. It was held that the act of the doctor amounted to 'voluntarily causing miscarriage' within the meaning of section 312 read with section 511, as the doctor was presumed to know the possible effects of the medicine. Deceased, an unmarried girl was pregnant from accused; she died while causing miscarriage due to perforation of uterus following abortion. It is a clear case that accused was instrumental in causing the woman to miscarry and obviously it was not done in good faith for purpose of saving life of deceased. Miscarriage was with a view to wipe out evidence of deceased being pregnant. Accused liable to be convicted under sections 312, 315, 316 and 201 of IPC, 1860

3 'Quick with Child'- Quickening is the name applied to peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy.

Section 313 whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished

³Raja v State

Smt. Sumita Mukherjee v The State of Madhya Pradesh on 7 August, 2014

Md. Sharif v State of Orissa on 28 February, 1996

with [imprisonment , or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT- Under this section the act should have been done without the consent of the woman. Under it the person procuring the abortion is alone punished; under section 312 such person as well as the woman who causes herself to miscarry are both punished. Where the accused woman kicked a pregnant woman in her abdomen resulting in miscarriage, her conviction under section 313 was sustained.

Section 313.1 CASES- Section 313 would be attracted only if it is established that the pregnancy is terminated without the consent of the prosecutrix.

Section 314 Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

And if the act is done without the consent of the woman, shall be punished either with [imprisonment for life] or with the punishment above-mentioned.

Explanation- It is not essential to this offence that the offender should know that the act is likely to cause death.

COMMENT- This section provides for the case where death occurs in causing miscarriage. The act of the accused must have been done with intent to cause the miscarriage of a woman with child.

Section 314.1 CASES- The son-law of a pregnant woman left her at the house of the accused doctor.. Her dead body was recovered from the place where it was buried in the accused's house. It was in a decomposed state. The accused made extra-judicial confessions to three different persons to the effect that the death took place during abortion. Circumstantial evidence also proved this fact beyond reasonable doubt. Her conviction under the section was confirmed as also the five-year RI sentence, but fine was set aside. A homeopath operated upon a pregnant woman to cause abortion but she died a few hours after operation because her uterus got perforated. His conviction under section 314 was upheld. A nurse attempted to cause miscarriage of a pregnant girl but was unsuccessful. On the third day another person, the accused, an attendant, made an attempt and succeeded but the condition of the girl became serious after five days. She was hospitalized and died of septicaemia which had developed from ruptures and tears in the internal parts of vagina. There was no evidence to show that ruptures and tears had occurred at the hands of the accused. It was held that his conviction under 314 was not proper.

A person, named, C, was alleged to have had illicit relations with the deceased woman. He took her to a doctor for the purpose of aborting her pregnancy. The doctor caused her death in that process. The doctor was not qualified for the purpose, nor was his clinic approved by the

Government under the Medical Termination of Pregnancy Act, 1971 and was not having the basic facilities for abortion. There was a concurrent finding that the act was done by the doctor in furtherance of the common intention with C. It was held that the conviction under this section 34 was proper.⁴

[Section 314.2] Section 313 and Section 314- Ingredients for both these offences are contraindicative and cannot go together. When conviction is recorded under section 304-A, it pre-supposes a negligent act, which would rule out any intentional act; whereas the conviction for offences under sections 313 and 314 can be founded only on intentional act of the accused and not negligence. Presence of mens rea would be sine qua non in such a situation. The trial Court, therefore, apparently erred in recording conviction of the appellants for offences punishable under sections 304-A and 313 and 314 of IPC, 1860.

Section 315- Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment or other description for a term which may extend to ten years, or with fine or with both.

COMMENT- Any act done with the intention here mentioned which results in the destruction of the child's life, whether before or after its birth, is made punishable. So far as offence punishable under section 315 of the IPC, 1860 is concerned, the offence is committed by a person who before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, if such act prevent that child from being born alive, or causes it to die after its birth, if such act be not caused in good faith for the purpose of saving the life of the mother. Cognizance taken of the offence under section 315 of IPC, 1860 and the charge framed therein against the petitioner are also not maintainable in view of the fact that no documentary evidence could be collected in course of investigation in support of the allegation that the pregnancy of the prosecutrix was terminated at the instance of the petitioner.

She was even not medically examined by the Doctor or the Board of Doctors and there is no medical report in support of the allegation that her pregnancy was ever terminated at any earlier point of time. As the alleged offence under section 315 of the IPC, 1860 relates to termination of pregnancy, such offence may be supported through the medical opinion of the registered practitioner and for want of such prima facie material charge cannot be framed in such section, accordingly the cognizance cannot be taken for the offence under section 315 of the IPC, 1860.

⁴<http://www.thehindu.com/opinion/lead/A-tricky-debate-on-abortion/article14547721.eceA>.
<http://www.legalserviceindia.com/articles/adoption.htm>
<http://www.indiankanoon.com>

Intention is one of the major ingredients of sections 315. Wording of section 315 of the IPC, 1860 itself shows that whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother be punished with imprisonment. In this case the patient was admitted for delivery. During course of delivery there was rupture of uterus which led to bleeding and subsequent death of the patient and the child. So, it is not case of any prosecution witness that the respondent deliberately committed offence punishable under section 315 of the IPC, 1860.

Section 316- Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION

A, knowing that he is likely to cause death of a pregnant woman does an act which, if it causes the death of a woman would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

COMMENT- This section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child whose death is caused by it, constitute the offence here punished.

Unless the act is done against the mother with an intention or with a knowledge which brings it within the purview of section 299, it cannot constitute an offence under this section merely because the death of a quick unborn child has resulted from an act against the mother. A husband striking his wife dead was held guilty of the offence under this section. The medical evidence showed that she was carrying a male child of 20 weeks. A foetus gets life after 12 weeks of conception.

Section 316.1- Charge- The trial Court did not frame charge against accused no.3 for the offence under Section 312 of the IPC, 1860. Because the offences from sections, 312 to 318 are of similar nature, type and category, they are all relating to miscarriage. Secondly, the punishment prescribed under section 316. Because the punishment prescribed is up to 10 years if the act causes death of quick unborn child. The maximum punishment prescribed under section 312 is seven years if the woman be quick with child.

Section 317- Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child, shall be punished with

imprisonment of either description for a term which may extend to seven years, or with fine, or with both.⁵

Explanation- This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

COMMENT- This section is intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. It does not apply when children are left under the care of others. It applies where a child is exposed and no death supervenes; if, however, death follows, the conviction must be under section 304. The offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life.

Section 317.1 Ingredients- The section requires three essentials-

- (1) The person coming within its purview must be father or mother or must have the care of the child.
- (2) Such child must be under the age of 12 years.
- (3) The child must have been exposed or left in any place with the intention of wholly abandoning it.

Section 318- Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT- This section is intended to prevent infanticide. It is directed against concealment of birth of a child by secretly disposing of its body.

Section 318.1 Ingredients- This section requires-

- (1) Secret burying or otherwise disposing of the dead body of a child
- (2) It is immaterial whether such child dies before or after or during its birth
- (3) Intention to conceal the birth of such child by such secret burying or disposal

Of Hurt (Aggravated Forms)

1. By dangerous weapons
2. To extort property or to constrain to do illegal act

⁵FelaniHariani, (1871) 16 WR (Cr) 12; MussumatKhairo, (1872) PR No.33 of 1872; MussamatBhagan, (1878)PR No. 4 of 1879

Banni, (1879) 2 All 349

Bajpai, Anju, PK Bajpai, Female Criminality in India

Risk of health of pregnant woman by the reason of her actual or reasonably foreseeable environment

3. By means of poison to commit offence
4. To extort confession, or to compel restoration of property
5. To deter public servant from his duty

Section 319- Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

COMMENT- The authors of the Code say:

Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person assaults and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt; but they cannot, without extreme violence to language, be said to have committed assaults. We propose to designate all pain, disease and infirmity by the name of hurt.

The definition of hurt appears to contemplate the causing of pain, etc, by one person to another. Pulling a woman by the hair was held to be this offence.

Section 319.1- Act neither intended nor likely to cause death is hurt even though death is caused- Where there is no intention to cause death nor knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious. Where the accused with a view to chastising her daughter, eight or 10 years old, for impertinence, gave her a kick on the back and two slaps on the face, the result of which was death, it was held that she was guilty of voluntarily causing hurt. Where in course of sudden quarrel the accused hit his friend on his head with a stick weighing only 210 grams which unfortunately proved fatal, it was held that no knowledge of death could be ascribed to him. His conviction was accordingly changed to one under section 323, IPC, 1860.

Laws Related To Miscarriage in India

It is possible to get an abortion under the **Medical Termination of Pregnancy Act, 1971** if the pregnancy is under 20 weeks. However, it is subject to several conditions and the ability to get an abortion will depend on the opinion of the doctor. The law requires the doctor to assess if these conditions are fulfilled-only then is they legally allowed performing an abortion.

Conducting an abortion without fulfilling the conditions is considered a crime.

Under the law (section 3 of The Medical Termination of Pregnancy Act 1971), the doctor can perform an abortion in the following situations:

. if the pregnancy would be harmful to the life or physical or mental health. The doctor will need to consider the circumstances to figure out if the pregnancy will harm the mental health. They

also need to look at the future (as a reasonable person would) to figure out the effects of the pregnancy⁶

. if there is good chance that the child would suffer from physical or mental abnormalities which would leave him or her seriously handicapped

Conditions needed to be satisfied-

. if the pregnancy has not exceeded 12 weeks (first trimester), only one doctor needs to be satisfied that the conditions have been fulfilled

. If the pregnancy has exceeded 12 weeks and is below 20 weeks (first trimester), two doctors need to be satisfied that the conditions have been fulfilled

. The gestation period does not matter if doctor feels that an immediate abortion must be conducted to save the life

. The doctor who determines if it is necessary to perform an abortion and performs it needs to be a 'registered medical practitioner' under the law

Right to Abortion

The right to abortion has also been viewed by Courts as a fundamental right and the landmark judgment of **Roe v Wade** reiterated the same, stating that the right to abortion is fundamental liberty protected by the 14th Amendment of the Constitution. This case has been a precedent for various judgments passed by the Indian Courts, including *Suchita Srivastava vs Chandigarh Admin [ii]*, in which the Supreme Court held that reproductive rights are to be protected under the fundamental right to privacy guaranteed under the Constitution and the autonomy must subsist on the woman to decide whether to bear a child or not, and the state must not intervene in such matters.

Before analyzing the flaws in the existing laws surrounding abortion, it is important to know the current provisions available for abortion and the criminal action that could entail in case of illegal miscarriage.

Abortion Act 1967

In course of time it was realized that the strict provision of the law of abortion contained in sections 58 and 59 of the Offences against the Person Act 1861 was doing more harm than good. The attitude of medical profession was hostile and tragic cases continued to occur. Women who

⁶ *Maternal Health in Focus USA: UNICEF;2012*

Mortality Rate neonatal (per 1,000 live births) Switzerland: The World Bank Group;2016

PMNCH Fact sheet: Stillbirths. The Partnership for Maternal, Newborn and Child Health Switzerland: WHO; 2016

Stillman M, Frost JJ, Singh S, et al. Abortion in India: A Literature Review. USA: Guttmacher Institute; 2014.p 1-48
<http://www.indiankanoon.com>

had been raped, deserted by their husbands, and overburdened mothers living in poverty with large families failed to get a medical abortion. As a result most of the women would go to 'back street abortionists' wielding a knitting needle, syringe or stick leading to a great risk in their life. At times unwilling mothers used dangerous methods on themselves or committed suicide. It was also notice that although illegal abortions were taking place in thousands, as in the case of India before the passing of the Medical Termination of Pregnancy Act of 1971, yet convictions were negligible. The police would not look abortion a real crime.

As these evils were beginning to be realized, a strong opinion grew that a woman had a right to control her own fertility and that the abortion should be legalized. At the same time a powerful religious lobby basing itself upon their "sanctity of life" was opposed to any move for change in the law. As a compromise measure the Abortion Act 1967 was passed which substantially liberalized the law of abortion though it did not concede all the demands of the pro abortionists. The Act of 1967 has legalized the termination of pregnancy by a registered medical practitioner under certain specified circumstances as provided under section 1 which states-

Medical Termination of Pregnancy- (1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion, when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith

- (a) That the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated or
- (b) That there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

To bring the Act of Termination of Pregnancy within the purview of the exception clause to section 1(4) of the Act of 1967 the risk of injury feared from allowing the pregnancy to continue must be 'greater than if the pregnancy were terminated.' The Act for the first time allows the interests of the children of the family would thus be a valid ground for termination of a pregnancy.

The termination of a pregnancy on eugenic grounds is basically justified upon the ground that the child if born would be seriously handicapped and would be a burden to the welfare of the parents and the society at large. An important feature of the Act of 1967 is that it does not permit termination of a pregnancy on grounds of rape as in the case of India. However, the fact of rape could influence the decision of the doctors in invoking the health grounds.

Similarly, the failure of any device or method used by a married couple for the purpose of limiting the number of children cannot justify termination of a pregnancy as under the Indian Law. Perhaps the ground of the health of the children could be invoked to terminate unwanted pregnancy in such a situation.

Famous Cases Related To Miscarriage in India

Dr Jacob George v State of Kerala on 13 April, 1994

The Judgment of the Court was delivered by HANSARIA, J- Life is said to be the most sublime creation of God. It is this belief and conception which lies at the root of the arguments, and forceful at that, by many religious denominations that human beings cannot take away life, as they cannot give life. This idea is so intense with some religious leaders that they would even oppose any measure of birth control. Abortion or miscarriage would be opposed with greater force by these persons.

Mahatma Gandhi, Father of the Nation, urged long back in Harijan that God alone can take life because He alone gives it. For the Jains taking away of even animal life is a sin, as, according to them, animals are as much part of God as human beings. Buddhists too preach Ahimsa.

Our Riga Veda II recites:

“Grant us a hundred autumns that we may see the manifold world.

May we attain the long lives which have been ordained as from yore.” Atharva Veda I contains the following:

“May we be enabled to see the sun for a long time.”

The aforesaid shows that life is beyond price and it is not only a legal wrong, but a moral sin as well to take away life illegally.

In the present appeals we are not concerned with taking away of life before its birth. We are concerned with destruction of fetus life. This is what is known as abortion or miscarriage. To dispel any doubt as to whether the fetus has a life, what has been stated by Taylor in his Principle and Practice; of Medical Jurisprudence may be noted where the learned author has opined at p. 332 (13th Edition) that legally both abortion and miscarriage are synonymous because the fetus being regarded as a “human life... from the moment of fertilization.” It may however, be stated that sometimes the word ‘miscarriage’ is used for “spontaneous abortion” and “abortion” for “miscarriage produced by unlawful means.”

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In the instant case, it has come on record that the prosecutrix and her mother herself went to the Nursing Home of applicant No 1 on 12.2.2011 and at that time the prosecutrix was wearing a Mangalasutra and was having Sindoor on her forehead, which is the sign of married lady in our

society and mother of the prosecutrix requested that the prosecutrix is pregnant and she is bleeding heavily, therefore, applicant found that she was having foetus of 6-7 months and administered two injections. The prosecutrix and her mother stayed in the Nursing Home at night and at about 10.30 PM, applicant Nos. 2 and 3 informed applicant No.1 that the prosecutrix is bleeding heavily, her blood pressure is very low and her pulse is also decreasing, thereafter, applicant No 1 examined the prosecutrix and in order to save her life after obtaining consent from the prosecutrix and her mother, which is available on record, caused miscarriage of the prosecutrix.

It appears that the trial Court has failed to consider the aforesaid aspect of the case wherein it has come on record that the miscarriage was caused in good faith to save the life of the prosecutrix. Thus, no case under Section 312 of the IPC is made out against the applicants. Further nothing has been found on record that the applicants were involved in causing disappearance of any evidence to screen offender, therefore, no case under Section 201 of the IPC is made out against applicants. In my opinion, the Trial Court has committed illegality in dismissing the application filed by the prosecution under Section 169 of the CrPC and further committed illegality in framing the charges under Section 312, 201 of IPC against the applicants.

Consequently, this revision is allowed. Impugned order dated 27.2.2013 passed by Fifteenth Additional Sessions Judge; Jabalpur in S.T No 567/2011 is hereby set aside. The applicants are discharged from the charges under Section 312,201 of the IPC.

CONCLUSION- After going through the detail of the project work which is related to miscarriage in India, it can be concluded that India has a worst scenario in terms of miscarriage related to women in India. Different sections in IPC have been enacted to define the basic idea of miscarriage and there are punishments and fines which are related to committing offence of miscarriage. We also concluded that project work also lays special emphasis on Section 312 and 313 of the IPC. There are different laws related to miscarriage in India. Various case laws are related to the miscarriage in India. We also discussed about the famous case laws related to miscarriage in the project work. So in the end it can all be concluded that Autonomy and Independence of a woman is directly as well as closely related to her ability to play a role outside home. The inability to decide freely and responsibly on the spacing of children has , in turn deprived many women of the advantages of health, employment, and their roles in family, public and cultural life on equal footing with men as agreed in the United Nations.

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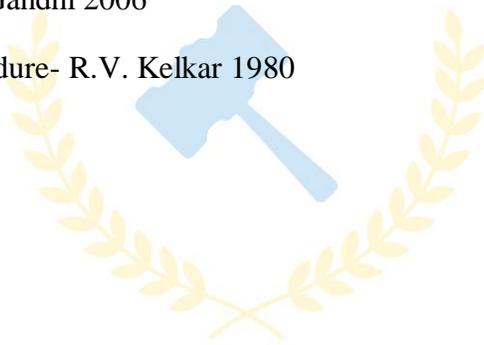
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