

## RIGHT TO HEALTH AND MISCARRIAGE

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### ABSTRACT

This article talks about reproductive rights of women and how they are challenged in India due to lack of standards. Firstly, it talks about how women's reproductive rights are basic human rights and the various laws that upheld it. Termination of pregnancy in India is allowed since 1971 when a committee was set up to determine whether such laws should be granted in India or not. Then, it was decided in this committee that yes, a comprehensive range of laws should be implemented on women's reproductive health and protect this marginalized part of our community. But the subsequent laws developed have failed to protect the very thing they were meant to cover for in the first place. Hence, these laws need to be amended and executed properly. There have been various judgments on the subject of women's health. While some judgments were criticized for their backward and narrow-mindedness, there have been many positive judgments too, which look in the direction of progress when it comes to women's health and to improve the quality of our healthcare system. There have been many incidents in the past where women's health of poor backgrounds has been compromised due to inadequate standards and forced sterilization which had unfortunately caused the death of several women from different states in our country. A judgment was passed to ensure good benchmarks of quality checks, but it has not been implemented properly yet and we have a long way to go.

### KEYWORD

Miscarriage, women, healthcare, supreme court, human rights.

### INTRODUCTION

Becoming a mother might be one of the best moments of a woman's life, but some women are not able to experience this magical moment because of complications like miscarriages. These miscarriage incidents cause much mental trauma to the women suffering them. Miscarriages usually happen due to reasons beyond our control, but they

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can be prevented by taking proper care of our health. The right to health is an internationally recognised human right by United Nations.<sup>2</sup> The state parties to this of which India is also a party, had agreed to strive for highest standards of mental & physical health, specially of women and children. But reproductive health rights began to get recognised only from 1993 and this particularly important part of a woman's right began to be taken seriously. Then, to protect women's pregnancies, special attention had started being given to proper medical care, planning of family members, taking care during delivery to ensure a successful pregnancy. Even vaccines were given for common communicable diseases like the seasonal flu, malaria, dengue etc. Women's right to make reproductive decisions is a part of personal liberty under Art 21 of the Constitution of India.<sup>3</sup> Abortions and miscarriages go hand in hand as one is intentional termination of pregnancy while the other is unintentional.

Medical Termination of Pregnancy Act, 1971 (MTP) in India is framed for the medical termination of pregnancy.<sup>4</sup> It was modelled on the bases of Abortion Act, 1967 of the United Kingdom.<sup>5</sup> It is aimed to protect doctors against prosecution if they do terminate the pregnancy. The dialogue for women's reproductive laws in India started in 1960s. A committee called Shantilal Shah was created to discuss whether this kind of laws were needed in India or not. Before the passing of this Act, abortion was illegal.<sup>6</sup> It was a crime to 'cause miscarriage' and it was punished by a prison term of 3 years and / or a fine as per the circumstances of the case. Hence, the appointed committee studied all these aspects of pregnancy termination and examined the right of health of women. A review was done on its medical, religious and cultural aspect. Afterwards, this committee on studying all its possibilities, recommended to legalise abortion and to also develop an all-encompassing law on medical termination of pregnancy. However, the IPC law on criminalising miscarriages continues and it has not been declared void.

There are not a lot of choices for women in the present law. The MTP Act which was drafted on the recommendation of the committee to protect women, in fact, ironically has failed to protect the vulnerable pregnant women. It has instead protected the doctors who

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<sup>2</sup> Art 25, Universal Declaration of Human Rights 1948

<sup>3</sup> Art 21 of Constitution of India, 1950

<sup>4</sup> Medical termination of pregnancy Act, 1971

<sup>5</sup> Abortion Act, 1967

<sup>6</sup> Sec 312 of IPC, 1980.

are operating the terminations. While, it is not wrong to protect the doctors so that false cases are not filed against them, but some shelter needs to be given to the women too as it was first intended to be. Proper care is not given to the women under the MTP Act can be proved by the sections in the MTP Act because all these sections start with stating that the IPC sections will be exempted with regards to this Act. Consequently, the penal sections are not in sync with the Act. There is also the serious lack of choice given to women in terminating their own pregnancies because the privilege of taking that decision is given to the doctor.<sup>7</sup> Also, married women are given the preference by the doctors to abort their foetuses as the mostly narrow-minded doctors in India refuse to do this procedure for single women and they even don't give birth control pills to single women. This is grossly conservative and prevents the unmarried girls to get the same amount of care as their married counterparts.

This is also a very slow-moving procedure of the MTP Act, that if the pregnant woman is between 12 & 20 weeks, then she needs the approval of not one, but two doctors. This makes her totally dependent on outside forces who don't even have to deal with the consequences of that particular pregnancy. Besides that, there is another added obstacle that the pregnant woman has to face. She has to prove that her baby is damaging her physical or mental health and wellbeing or that her child would be born mentally or physically handicapped. Then only she's granted the pregnancy termination approval. This gives doctors the opinion to see fit if she needs the abortion instead of granting the woman's wish to abort. The woman is not able to choose for her own body and somebody else is given the responsibility to grant decisions for her body, decisions which will only affect her body and mind.

### **STEADY PROGRESS**

But there have been developments towards liberalisation on this topic because recently, the Rajasthan High court held that a minor rape victim's right to abort her child is far greater than the foetus' right to be born. There have also been many landmark cases which have ruled in favour of choice of a woman. In an iconic case of *Suchita Srivastava v. Chandigarh Administration*<sup>8</sup>, an orphan woman was given her right to health by giving

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<sup>7</sup> Sec. 3 of MTP Act, 1971

<sup>8</sup> *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SSC 1

her the choice to terminate her pregnancy. She was a mentally challenged woman with the mind of a nine year old. She was living in an institution and didn't have any family to support her. Unfortunately, she was raped there and her pregnancy was only discovered after nine weeks of it. This particular criminal case went on to have many appeals and by then, the unfortunate woman was nineteen weeks pregnant and the law in India only allowed abortion till twenty weeks.<sup>9</sup> The medical board also found out that the woman wanted to continue her pregnancy. Thus, in this way, the judgment was mindful of the woman's consent even though the justice of which was quite delayed.

In another case of *Devika Biswas v. Union of India*<sup>10</sup>, the right of health of poor women in India on the topic of sterilisation was questioned. It was filed that it was a classist move to by social elites because they believed in an illusion of dangerous population rise restricting these rich of their uncontrolled resource access. It was a five year long fight to protest against the sterilisation of masses of women between the ages of young girls at 15 to weak older ladies at 49 who had already reached menopause long back. The poor health care of the women led to many deaths and it was gruesome for the women below the poverty line. But here, the judgment was pronounced in such a way that it stopped citizens from challenging population control policies. Thereafter, many variables of this enactment were applied in other states of India. Population control bills might certainly help in improving a woman's health, but there should be proper safety, care and standards. Unfortunately, there is a history of forced sterilisations in our country. In 1994 in Haryana, couples with more than two kids were not allowed to contest elections.<sup>11</sup>

In *Javed v. State of Haryana*<sup>12</sup>, the Supreme court said that the population bill cannot be challenged. Thus, later in *Ramakant Rai Vs Union of India*<sup>13</sup>, evidence was given of the suffering of women in the sterilisation camps and report was given about the unreported deaths. Here, the judgment was beneficial to the women because it specified quality and standards to be set in the facility and to follow the appropriate protocols. But it has still failed to improve the conditions in reality because even when the judgment was pending, there were still deaths going on in the facility provided for sterilisation. In the *Devika*

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<sup>9</sup> Sec 3 of the Medical Termination of Pregnancy Act 1971.

<sup>10</sup> *Devika Biswas v. Union of India* (2016) 10 SSC 726

<sup>11</sup> Haryana Panchayat Raj Act 1994

<sup>12</sup> *Javed v. State of Haryana* AIR 2003 SC 3057

<sup>13</sup> *Ramakant Rai v. Union of India* W.P ( C) No 209 of 2003

Biswas case mentioned above, the judgment stated that these camps should be ended within three years, but there has been no proper response and implementation of this judgment. This is a harsh fact that the poor Indian women have gone through and the middle and upper class must come together with the vulnerable women and fight for their quality care, because after all, it is by the poor labour's hard work that our nation was built. Primary healthcare needs to be strengthened & it is the need of the hour to do so in all areas, including but not limited to infrastructure and mechanisms so that at least basic and necessary treatment is given to all people, especially those below the poverty line who cannot have access to the bare minimum.

Care should be given in the local language for the backward communities to understand and properly care for their health. More awareness programs to be conducted across villages, especially during the pandemic time, so that people become educated about their rights and how good health is their fundamental right to live. There should be proper and trained counsellors who give adequate time on each woman, so that the focus on her health is there. There should be family planning indemnity schemes that provide compensation in case of complications or death of the woman. These are just some of the ways in which the current situation can improve and we have a long way forward.