

Offence Relating To Miscarriage

Bhupender Kumar

Research Scholar, Kurukshetra University Kurukshetra

Abstract: Offences of this category are having some provisions under IPC as well as under special laws, e.g., The Medical Termination of Pregnancy Act, 1971; and The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

Keywords: Miscarriage, Offence

1. Introduction

The combined study of all the provisions relating to the offence of miscarriage are as follows:

Offences relating to miscarriage under IPC :

Voluntarily causing miscarriage : Whoever voluntarily causes a woman with child to miscarry, or a woman who causes herself to miscarry; except such miscarriage has been done in good faith for the purpose of saving the life of the woman, shall be punished with imprisonment up to three years, or with fine, or with both. But, if the woman be quick with child, shall be punished with imprisonment up to seven years and shall also be liable to fine.¹

Causing miscarriage without woman's consent : Whoever, commits the offence of miscarriage without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life or with imprisonment up to ten years, and fine.²

Death caused by act done with intent to cause miscarriage: Whoever, with intent to cause the miscarriage of woman with child, does any act which causes the death of such woman, shall be punished with imprisonment up to ten years and fine. But, if the act is done without the consent of the woman, it shall be punished either with imprisonment for life or with imprisonment up to ten years, and fine. It is not essential to this offence that the offender should know that the act is likely to cause death.³

Act done with intent to prevent child being born alive or to cause it to die after birth : 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 be punished with imprisonment up to ten years, or with fine, or with both. But, if, such act be caused in good faith for the purpose of saving the life of the mother, then it is not an offence.⁴

2. The Medical Termination of Pregnancy Act, 1971:

An enactment was enacted about three and half decades back in the form of the Medical Termination of Pregnancy Act,

1971, w.e.f. 10th August, 1971. The object of the Act was to provide, for the termination of certain pregnancies by registered medical practitioners (RMP) and for matters connected therewith or incidental thereto. The important provisions of the Act are as follows: *Pregnancies may be terminated by registered medical practitioners :* A RMP, shall not be guilty of any offence under IPC or under any other law for the time being in force, if he terminates any pregnancy in accordance with the provisions of the Act, 1971. According to Section 3 of the Act, a pregnancy may be terminated by a RMP- Where the length of the pregnancy is less than 12 weeks and medical practitioner is of opinion in good faith; or where the length of the pregnancy is more than 12 weeks but less than 20 weeks, two RMP's are of the opinion in good faith, that –

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

But, no pregnancy of a woman, who has not attained the age of 18 years, or a lunatic of any age, shall be terminated without the consent in writing of her guardian. In other cases, pregnancy shall not be terminated without the consent of the pregnant woman. Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman. In determining whether the continuance of a pregnancy would involve such risk of injury to the health, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.⁵

¹ Section 312 of IPC, 1860.

² Section 313 of IPC, 1860

³ Section 314 of IPC, 1860

⁴ Section 315 of IPC, 1860

⁵ Section 3 of the Medical Termination of Pregnancy Act, 1971

Place of termination of pregnancy : Termination of pregnancy shall be made only at a hospital established or maintained or approved by Government for this purpose.⁶

Exceptions : The place for termination, the length of the pregnancy; and the opinion of not less than two registered medical practitioners, is not necessary in a case, where he is in good faith opinioned that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.⁷ Any termination of a pregnancy by a person, who is not a registered medical practitioner shall be an offence punishable under IPC. Protection of action taken in good faith: No suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything, which is in good faith done or intended to be done under this Act.⁸

Termination of pregnancy and consent of husband: Undoubtedly, it is correct that woman bears all the pains, pangs and problems (though are pleasurable) of pregnancy, labour and rearing up of the child, so would it be desirable to concede her autonomy in the matter, but on the other hand, it is also correct that, desire of pregnancy and fatherhood is a strong natural desire of every man and this can be fulfilled only through the wife, so would it be fair to give him authority to control the wife's pregnancy. The answer is not simple, The woman's right to freedom and autonomy cannot be sacrificed at the altar of husband's natural desire for child and vice versa. Apart from the issues of woman's right over her body and right to make the choice, and the man's desire to have progeny; there is the issue of familial or marital harmony as also the interest of the child if an unwanted pregnancy is thrust upon the woman. The MTP Act, give a wide degree of autonomy to the woman, subject however, to certain conditions like the circumstances under which the pregnancy may be terminated, the length and the duration of the pregnancy, the proper authorities who can perform the operation, and so on. The woman does not require anybody's consent to terminate her pregnancy, if, she fulfils the requisite conditions laid down in the MTP Act. These provisions can be sources of matrimonial disharmony at times, if, husband sought court to intervene, not to terminate the pregnancy. So, the termination of pregnancy at the instance of wife without consent of the husband has caused matrimonial rifts.

In 1983, same question was raised before Hon'ble Punjab and Haryana High Court which held, that, where wife got herself aborted twice against the wishes of her husband and his family, who were desirous to have a child. The husband filed a petition for divorce against the wife on the ground of cruelty caused to him, by the wife's act of abortion. The court conceded the husband's petition and held that the wife's

conduct indeed amounted to mental cruelty on husband.⁹ Similar issues were raised before Delhi High Court and it also held that aborting foetus in the very first pregnancy by deliberate act without the consent of the husband led to the decree of divorce.¹⁰ Thus, it can be said that even though the MTP Act does not provide for husband's consent in the matter, in practical life the wife is not as free as it appears to be; if she goes ahead with abortion, she does it at her own peril, inviting displeasure and wrath of her husband and family. The issue needs to be viewed from the perspective of both the parties; it is not a question of whose right it is, but of what is in the interest of the parties, the child and family harmony. A harmonious balancing and blending of woman's autonomy and man's sentiments is the real solution of this issue.

3. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of sex Selection) Act, 1994.

Object and reasons : An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto.¹¹

Main provisions of the Act: This Act prohibits any advertisements relating to pre-conception and pre-natal determination of sex and prescribes punishment for its contravention. The person who contravenes the provisions of this Act is punishable with imprisonment and fine. Central Supervisory Board was constituted, to supervise the activities under this Act, and function provided by this Act. By the amendment, 2002, State Supervisory Board and Union Territory Supervisory Boards also were constituted for assisting the Central Supervisory Board. All genetic counseling centre, genetic laboratories and genetic clinics should be registered according to the manner prescribed by this Act.

Amended by Act of 2002 : This amendment Act has come into operation w.e.f. 14th February, 2003. And some amended important provisions are as follows ;

- I. Changed the title and object of the Act.
- II. Pre Birth determination of sex with purpose of female foeticide (abortion of foetus) is an offence.
- III. Nobody can compel a pregnant woman to undergo such tests.

⁶ Section 4 of the Medical Termination of Pregnancy Act, 1971

⁷ Section 5 of the Medical Termination of Pregnancy Act, 1971

⁸ Section 8 of the Medical Termination of Pregnancy Act, 1971

⁹ Satya v. Shri Ram, AIR 1983 P&H 252.

¹⁰ Sushil Kumar Verma v. Usha , AIR 1987 Del 86.

¹¹ Substituted by Amendment Act, 2002.

- IV. Nobody is allowed to advertise to do pre-birth sex determination or abortion for purpose of female foeticide.
- V. It is mandatory for all places, persons and bodies by whatsoever name called, doing genetic counseling pre-natal diagnostic procedures tests having ultrasound machine, echo or scanner capable of detecting sex of foetus, to get registered with the appropriate authority.
- VI. Increased the punishment of fine from Rs. 50,000 to Rs. 1,00,000.

Offences and penalties under PC & PNDT Act: The offences under this Act, and punishment thereof may be summarized in the following manner-

Advertisement relating to pre-conception and pre-natal determinate of sex: No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of the foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selectin before conception available at such centre, laboratory, clinic or at any other place. Punishment : Contravention of such publication or advertisement shall be punishable with imprisonment up to three years and with fine up to Rs. 10,000.¹²

Contravention of any of the provisions of this Act or rules: Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment up to 3 years and with fine up to Rs. 10,000; and on any subsequent conviction, with imprisonment up to five years and with fine up to Rs. 50,000.¹³

Necessary action by SMC, for suspension of registration : The name of the registered medical practitioner shall be reported by the appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.¹⁴

Person seeking the aid, is also punishable : Any person who seeks the aid of any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sinologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purpose other than allowed by Section 4(2). The woman, who was compelled to under such diagnostic techniques, shall not be punished for the above punishment. Punishment: He shall be punishable with imprisonment up to 3 years and with fine up to Rs. 50,000, for the first offence and for any subsequent offence with imprisonment up to five years and with fine up to Rs. 1,00,000.¹⁵

Presumption in the case of conduct of pre-natal diagnostic techniques: The court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in Section 4 (2), and such person shall be liable for abetment of offence under Section 23(3) and shall be punishable for the offence specified under that section.¹⁶

Penalty for contravention of residue provisions of the Act, not specific: Whoever, contravenes any of the provisions of this Act or any rules made there under, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment up to 3 months, or with fine up to Rs. 1000, or with both and in the case of continuing contravention with an additional fine up to Rs. 5000 for everyday during which such contravention continues after conviction for the first such contravention.¹⁷ When this offence is committed by company, the person responsible is also liable for the punishment as he has committed the offence. Residue offences under the Act are as – (a) Non-registration (under Section 3), (b) Conduct of PNDT (under Section 4), (c) Communication of Sex of Foetus (Under Section 5), (D) Determination of Sex (under Section 6), (e) Advertisement (under Section 2), (f) Non-maintenance of records (under Section 29), etc.

Procedure for prosecution : A complaint can be registered with appropriate Authority, the Chief Medical Officer at district level and the Director, Health Services at State Level or any other notified authority in whose jurisdiction the offence has been committed. If within 15 days of filing the complaint the appropriate Authority does not act, the complainant can file a complaint directly to a Court of Law. This complaint can be filed in the Court of Metropolitan Magistrate or Judicial Magistrate of First Class, in the district. On the receipt of complaint CMO or any other notified authority will make an independent inquiry, conduct an investigation in the matter and make a formal complaint in the Court. Appropriate authority can carry out searches and

¹² Section 22 of PC & PNDT Act, 1994

¹³ Section 23 (1) of PC & PNDT Act, 1994

¹⁴ Section 23 (2) of PC & PNDT Act, 1994

¹⁵ Section 23 (3)& (4) of PC & PNDT Act, 1994

¹⁶ Section 24 of PC & PNDT Act, 1994

¹⁷ Section 25 of PC & PNDT Act, 1994

seizures under Section 30(2) if he believes or has reasons to believe that an offence under the Act is being committed. Every offence under this Act shall be cognizable, non-bailable and non-compoundable.¹⁸

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¹⁸ Section 27 of PC & PNDT Act, 1994