

**FORCED ABORTION: AGAINST WOMEN'S RIGHTS**

*“Being a woman I have a right over my body and my fetus”*

-Pallavi Tiwari & Amita Chaudhary<sup>1</sup>

**ABSTRACT**

*A decision of January 2018 attracted some light on the abortion laws in India. According to the Medical Termination of Pregnancy Act, 1971 the time limit for having an abortion is 20 weeks but in this case, the Supreme Court allowed a woman to have an abortion even when she reached a period of 24 weeks of pregnancy. Although, there are many other issues related to abortion laws in India and one of them being forced abortion. The laws relating to this are Sections 316 and 313 of the Indian Penal Code, in which the former talks about the crime of causing culpable homicide of an unborn child and the later mentions the crime of causing non-consensual abortion of a woman. An incident of forced abortion came in Madhya Pradesh when a girl complained of rape and forced abortion. This is not the first case of forced abortion as in 2017, another case came up where a minor girl was raped and had undergone forced abortion for almost four times and the last one took a toll on her. Right to reproduction is among the various laws women have been fighting for endlessly in India. The MTP Act in its Section 3 gives the right to end her pregnancy right to a woman only in case of unwarranted pregnancies and no one can force her to do same. In a 2017 Judgment of the Supreme Court, the appropriate reason to punish a forced abortion of a woman was given. This case clearly mentioned that it is the right of a woman over her body and being the mother over her fetus also. Thus, a woman without the need of anyone's consent can keep her fetus alive or terminate her pregnancy. Taking away this right violates her Right to Personal Liberty under Article 21 of the Constitution as keeping her pregnancy or not is her liberty. This article focuses on the various incidents of forced abortions in India and the legal aspects related to them.*

**I. INTRODUCTION**

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According to a statistical data concluded by the Abortion Assessment Project in India,<sup>2</sup> 13 per cent of the maternal deaths occur due to forced unsafe abortions. When India is progressing towards freedom in thought, speech and expression and the Medical Termination of Pregnancy Bill introducing various factors regarding pregnancy of women, one aspect is always overlooked. This aspect is the concept of Forced Abortions which is still prevalent in a lot of areas in India. The major question here is that in the era of the concept of pro-choice of abortion, why a woman cannot decide about her child. This clearly throws light upon the fact that whether a woman possesses a right over her body in this so-called “Independent India”. The idea is simply that as a woman or any individual of the nation I have a right to choose what to or what not to do with my body. Forced abortion is generally conducted in rape cases or marital cases where many such incidents have come up in India recently.

Considering these above-mentioned issues the author discusses the intersection of forced abortion and violation of fundamental rights and human rights of women. Further, the article shall discuss how a woman suffers physically and psychologically after a forced abortion. The articles also throw a light upon various penal laws pertaining to forced abortion in India and the numerous incidents which have come up recently.

## **II. LAWS RELATING TO FORCED ABORTION IN INDIA**

### **II.1. Indian Penal Code, 1860**

Under the *Indian Penal Code, Chapter XVI* which relates to offences the affecting human body is related to miscarriage and forced abortion. *Sections 312 to 316* are connected to the concept of forced abortion or miscarriage and shall be discussed below which will later aid to analyze the case laws mentioned in the next part of the Article.

*Sections 312<sup>3</sup> and 313<sup>4</sup> of the Indian Penal Code* talks about miscarriage instead of the word abortion which means the killing of a fetus and read akin to abortion. Under Section 312 if the miscarriage or abortion is caused by someone to a woman and when it is not done under bona fide circumstances then the person is punished with a term extending to three years or some

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<sup>2</sup> Ravi Duggal & Vimala Ramachandran, *The Abortion Assessment Project- India: Key Findings and Recommendations*, 12(24) Supplement: Abortion Law, Policy and Practice in Transition 122,129 [Nov., 2004].

<sup>3</sup> Indian Penal Code § 312 (1860).

<sup>4</sup> Indian Penal Code § 313 (1860).

amount of fine. In some cases, the punishment can be both fine and prison term. The other part of the Section says if the “woman is quick with the child” which means if the woman is about to give birth or is in the last part of pregnancy. In such circumstances, if the woman is put through a miscarriage or abortion then the punishment can be extended to a prison term of more than seven years and also fine.

The next section 313 completely talks about forced abortion i.e. when the miscarriage takes place without the woman’s consent. Thus, under Section 313 if the miscarriage is done without asking the woman for her permission by either hitting her or giving her some medicines the offender shall be punished with a prison term for throughout the life of the accused or for a period of ten years. This shall be attached with a fine and the prison term shall be decided according to the circumstances of the case in hand. The offences under Sections 312 and 313 are non-cognizable and non-compoundable which means that arrest in such cases can be made without a warrant and the punishment under these is not compoundable. Section 312 can be tried by a Magistrate of First Class and offences under Section 313 can be tried by Court of Sessions.

Another Section in this series is *Section 314*<sup>5</sup> which provides a situation where with the intent to cause an abortion of woman a person also kills the woman. In such a case punishment is for a term of ten years and shall also be liable for a fine and if the consent of the woman is not involved in abortion or it is a “Forced Abortion” the punishment is for a lifetime. Under this offence, it is not important whether the offender would know that the act shall result in death. Thus, the intention is enough under this Section which is also non-compoundable but here arrest cannot be made without a warrant.

*Section 315*<sup>6</sup> is attracted when a person does something to make sure that a child is not born or if it is born it dies immediately after birth and it is important here that the death of the child occurs. This act should not be done in good faith and it is punished with ten years imprisonment or fine or both. This punishment cannot be reduced but no arrest can be made here without a warrant. The last section of this chapter relating to forced abortion is *Section 316*<sup>7</sup> which involves a case where a woman is grievously hurt but she does not die but when the woman carrying the child is

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<sup>5</sup> Indian Penal Code § 314 (1860).

<sup>6</sup> Indian Penal Code § 315 (1860).

<sup>7</sup> Indian Penal Code § 316 (1860).

in the last stage of pregnancy and the unborn child dies in the hurt, the person shall be culpable under this section of the offence of “Culpable Homicide”. If both the woman and the quick child die then also this Section is attracted. The only condition here is that the child should be a quick unborn child. The term “*quick with child*” is important to discuss here as it is an important criterion to decide the offence under some sections of abortion. In the case of *Imtiaz Ismail Sheikh v. State of Gujarat*<sup>8</sup>, it was observed that a woman becomes quick with an unborn child after a period of five months of pregnancy or when the heart beats can be recorded of the fetus or brain mapping could be done.<sup>9</sup> A strange sensation is felt by a woman in her fourth or fifth month of pregnancy and this is the time she is deemed to be having a quick unborn child.<sup>10</sup>

## **II.2. Medical Termination of Pregnancy Act, 1971**

Another important statute in India that deals with the right to abort or keep the child is the *Medical Termination of Pregnancy Act, 1971* (further as “MTP, Act”) under which *Section 3*<sup>11</sup> says that no termination of pregnancy can be done without the consent of the woman. *Shri Bhagwan Katariya and ors. v. State of M.P*<sup>12</sup> is a case where the accused was charged under Section 3 of MTP Act, 1971. In this case the woman as soon as she conceived her pregnancy, her in-laws took her for abortion without her consent and got the abortion done. By referring to Section 3 the Court ruled that a pregnancy can only be terminated when the woman has consented for the same. Otherwise, it would affect the woman mentally and physically as she has lost her child. This has been discussed by the author in the psychological effect of forced abortion later in the article. *Section 4*<sup>13</sup> of the Act also mentions that no person other than a medical worker can terminate a pregnancy and he does so the punishment under the MTP Act read with the Indian Penal Code but it should not be less than two years.

## **III. INSTANCES OF FORCED ABORTION IN INDIA**

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<sup>8</sup> *Imtiaz Ismail Shaikh v. State Of Gujarat* (Guj. H.C. May 1, 2008), <https://indiankanoon.org/doc/708692/>.

<sup>9</sup> *Quick Child Law and Legal Definition*, U.S. Legal, <https://definitions.uslegal.com/q/quick-child/>.

<sup>10</sup> *Suresh Chander v. State*, 1994 Cri.L.J. 1708.

<sup>11</sup> *Medical Termination of Pregnancy Act § 3* (1971).

<sup>12</sup> *Shri Bhagwan Katariya and Ors. v. State of M.P.*, 4 M.P.H.T. 20 (2001).

<sup>13</sup> *Medical Termination of Pregnancy Act § 4* (1971).

The cases of forced abortion in India are uncountable but the article attempts to summarize the reasons due to which forced abortions can take place in India. The reasons can be many like rape, void marriage, a female fetus and others. By looking at the cases below the reasons shall be clear so that a solution can be demanded against the immoral and illegal act of killing a fetus forcefully.

### **III.1. Case of a failed marriage and forced abortion**

In a case of Punjab and Haryana High Court, the petitioner-wife complained of being mistreated by the Husband and also beaten at various instances. The Husband was given anticipatory bail earlier and the case of the petitioner here was to ask the Court to quash the bail. As the law clearly states that if during an anticipatory bail an accused misbehaves again the bail can be set aside. When the victim complained of beating and forced abortion the Court decided to cancel the bail of the accused.<sup>14</sup>

Generally, Section 313 is joined with Section 498A of IPC<sup>15</sup> which talks about cruelty against women in a marriage and the punishment is given along with the offence of miscarriage in Section 313. This Section is mostly associated with the concerned Section for forced abortion because when a woman is coerced for an abortion in a marriage she is always subjected to cruelty or assault by her husband and other in-laws.

Recently a case came up against the famous actor *Mithun Chakraborty*, his son and wife of intimidating a girl for an abortion. The actor's son is alleged to make false promises to the girl for marriage and thereby given drugs by him. In the intoxicated situation, she was also raped by the actor's son and afterwards provided a medicine to proceed with an abortion. Due to the recent awareness of the concept of rape and forced abortion the Police immediately filed an FIR considering all the shreds of evidence.<sup>16</sup>

### **III.2. Case of Female Feticide or Sex-Selective Abortion**

Sex-Selective Abortion is a concept which is quite prevalent in India as still in many areas a girl child is not preferred. Though tests to determine the sex of the fetus is a criminal offence still

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<sup>14</sup> *Meenakshi Sharma v. State of Punjab and Ors.*, MANU/PH/0594/2017.

<sup>15</sup> Indian Penal Code § 498A (1860).

<sup>16</sup> *Actor Mithun Chakraborty's Son, Wife Named in Rape, Cheating Case*, News18 (July 2, 2018, 7:20 PM), <https://www.news18.com/news/india/actor-mithun-chakrabortys-son-wife-named-in-rape-cheating-case-1798619.html>.

people approach some hospitals for the same. When the family members get to know that there is a female child in the womb they try to forcefully terminate the pregnancy. This is a recent case of Himachal Pradesh where a woman was forced to undergo an abortion after a Sex Determination Test was conducted on her. She submitted a report to the police stating that her mother-in-law and her Husband after knowing that she was pregnant with a girl child hit her badly due to which she lost her child. The Court, in this case, found the mother-in-law and the Husband guilty for asking for pre-determination of sex of a fetus and also killing it.<sup>17</sup>

### **III.3. Cases of Rape and Assault related to Forced Abortion**

There was a recent case where a woman approached the Police Station with a bag carrying a fetus and thereby complained of rape and forced abortion. This is a case of Amroha whereby after hearing the girl a complaint was filed against the accused.<sup>18</sup>

Another case came up in June 2018 in Mumbai where a girl complained of being raped for three years and also forced to abort her pregnancy three times. The accused here promised the girl to marry her and in exchange of that extorted a lot of money from her. The section for voluntarily causing hurt under Section 323 of IPC has been charged upon the accused in this case.<sup>19</sup>

In February 2018, a pregnant woman was thrashed by CPM Activists in Kerala as she was forced to abort her four-month-old fetus. The killing of the child took place by hitting the woman hard on her stomach several times as there was a dispute pending between them.<sup>20</sup>

Another Section read in consonance with Section 313 is Section 323<sup>21</sup> which gives punishment for voluntarily causing hurt to anyone and the punishment here is of a prison term for a year and a fine also. This is attached here because to cause a forced abortion, of course, the woman is hurt to a great extent and here the husband or the rapist or the members of the husband's family hurt

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<sup>17</sup> *R.D. Sharma v. V.K. Chaudhary* (H.P.H.C. March 12, 2018), <https://indiankanoon.org/doc/150388553/>.

<sup>18</sup> *Woman approaches Uttar Pradesh Police with foetus in bag, alleges rape and forced abortion*, FirstPost (Jul. 23, 2018, 07:44:51 AM), <https://www.firstpost.com/india/woman-approaches-uttar-pradesh-police-with-foetus-in-bag-alleges-rape-and-forced-abortion-4796091.html>.

<sup>19</sup> *I held, 3 booked for rape, forced abortion of young woman*, The Free Press Journal: Since 1928 (Jul.15 2018, 12:16 AM), <http://www.freepressjournal.in/mumbai/1-held-3-booked-for-rape-forced-abortion-of-young-woman/1316465>.

<sup>20</sup> *Pregnant Woman In Kerala Forced To Undergo Abortion After Being Allegedly Attacked By CPM Activists*, The Logical Indian Crew (Feb. 16, 2018, 12:09 PM), <https://www.ndtv.com/kerala-news/pregnant-kerala-woman-kicked-in-stomach-lost-baby-7-cpmsupporters-arrested-1812973>.

<sup>21</sup> Indian Penal Code, § 323 (1860).

her voluntarily on her delicate private parts either to kill her and the child both or to only kill the child.

With regards to the section of miscarriage under Section 313 and Section 323 of voluntarily causing of hurt is another case, *Manoj Kumar Bhakat v. State Of Jharkhand*.<sup>22</sup> Here the woman was forced to take a job in Bangalore by her husband and when she refused to take it she was beaten badly by her husband. Due to this assault, she lost her child and this case was made up of the previously mentioned Sections.

#### **IV. HUMAN RIGHTS AND FUNDAMENTAL RIGHTS RELATED TO FORCED ABORTION**

The right to abort or to not abort your child is with you as a woman and it is part of your fundamental rights. Considering the child in the womb after a certain period according to the MTP Act, it also has a Right to Life under Article 21 and any kind of forced abortion is against such a right. This Right to Life is passed upon the child when it starts its heart beating which could be caught on a machine or its brain mapping could be done. A woman also possesses certain reproductive rights under the Indian Constitution and they have been given the recognition of rights without which a woman could not survive and are akin to Right to Life under Article 21.<sup>23</sup> There have been many judgments which have laid down that every woman possesses right on her womb and it also comes under Right to Equality provided in Article 14. Thus every woman has the right to make a decision as to whether conceive a child or not or whether to abort it or not, and no one can coerce her to do the same.<sup>24</sup> Considering Article 21 which talks about living a life with personal liberty and in a dignified manner no woman can be forced to make decisions about her own reproductive parts. If any of these Fundamental Rights are violated, a woman can approach the Supreme Court under Article 32 and to the High Court under Article 226 of the Constitution. Thus India because of its Penal Laws and Constitutional obligations tries to support the women and make sure that their fundamental rights are not violated. If a woman cannot survive her pregnancy because someone has interfered in it, it is a

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<sup>22</sup> *Manoj Kumar Bhakat v. State Of Jharkhand*, 2 A.I.R. Jhar. R. 8 (2012).

<sup>23</sup> *Reproductive Rights in Indian Courts*, Centre for Reproductive Rights, <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Reproductive-Rights-In-Indian-Courts.pdf>.

<sup>24</sup> *Devika Biswas v. Union of India*, 10 S.C.C. 726 (2016).

violation of Article 21 of the Constitution where she has the right to live whichever way she wants and thus “Maternal Healthcare” is of prime importance.<sup>25</sup>

Further, the Indian Judiciary recently put forward its view on Right to Privacy under Article 21 of the Constitution as a fundamental right in the *Justice Puttaswamy Judgment*.<sup>26</sup> In this judgment right to privacy means that a person has full right over his or her body and thus a woman also possesses right over the decisions regarding her reproduction and fetus, as a part of her privacy. This was already in the international picture due to the “*United Nations International Conference on Population and Development (UNPIN 1994)*”.<sup>27</sup> Another judgment is the *Suchita Shrivastav judgment*<sup>28</sup> which declared that a woman carries that right to continue with her pregnancy till her wish and no one can force her to end the same. Reproductive Rights are part of her bodily integrity as the case summarized it. Thus the rights conferred to a woman regarding her pregnancy are Right to Life with personal liberty, Right to Reproduce, Right to bodily integrity and Right to Privacy. Apart from these, there are many human rights including the health rights of women to be considered here.<sup>29</sup>

Coming to the international perspective for protection of reproductive rights of women the “*Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*”<sup>30</sup> is an important body. India is a signatory to this and also to the “*Convention on the Rights of the Child (CRC)*”<sup>31</sup>, thus giving importance to reproductive rights of women as basic Human Rights. The UN bodies have recommended India to make policies to increase the Maternal Benefits so that the rate of maternity death decreases. Thus, these Human Rights imply the intersection of Right to Health of pregnant women to Right to Life with Personal Liberty.

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<sup>25</sup> *Sandesh Bansal v. Union of India*, W.P. (C) 9061/2008.

<sup>26</sup> *Justice K. S. Puttaswamy v. Union of India*, 10 S.C.C. 1 (2017).

<sup>27</sup> *Report of the International Conference on Population and Development*, United Nations: New York, 1995, [http://www.un.org/en/development/desa/population/events/pdf/expert/27/SupportingDocuments/A\\_CONF.171\\_13\\_Rev.1.pdf](http://www.un.org/en/development/desa/population/events/pdf/expert/27/SupportingDocuments/A_CONF.171_13_Rev.1.pdf).

<sup>28</sup> *Suchita Shrivastava v. Chandigarh Administration*, 9 S.C.C. 1 (2009).

<sup>29</sup> Arijeet Ghosh & Nikita Khaitan, *A Womb of One's Own: Privacy and Reproductive Rights*, Economic and Political Weekly: Engage, Vol. 52 Issue 42-43 (Oct.28, 2017) [https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights?0=ip\\_login\\_no\\_cache%3D20a37973e19118c34df52c4927d7f8d0](https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights?0=ip_login_no_cache%3D20a37973e19118c34df52c4927d7f8d0).

<sup>30</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

<sup>31</sup> *Convention on the Rights of the Child*, [https://www.unicef.org/crc/files/Rights\\_overview.pdf](https://www.unicef.org/crc/files/Rights_overview.pdf).

**V. PSYCHOLOGICAL AND PHYSIOLOGICAL IMPACT OF FORCED ABORTION ON WOMEN**

Forced abortion is a stressful life event which comes with psychological and physiological repercussion. Emotional and psychological effects post abortion is more common than physiological effects.

Abortion can psychologically affect each woman differently. Potential side effects include anger, guilt, regret, low self-esteem, issues in relationship, suicidal tendencies, anxiety, depression, and eating disorders.

It's no myth that women are forced to abort against their will by their parents or partners using threat, emotional manipulation and violence. Some determined pro-abortion individuals make sure the destruction of life, and of choice, happen.

The idea of abortion being always "pro-choice" is negated by the reality of forced and coerced abortion. Probability of having a negative emotional or psychological side effect is much higher in women who have been forced or coerced to get an abortion.

The coercion that results in death of the child is traumatic enough while here we see another evil involved which is forcing a woman into something she does not want. In such way, coercion does not aim to change woman's choice but to make her act in contrary to her preference.

Psychological disorders such as psychosis or mental trauma can avert the patient from participating constructively and diligently in the society.

It is very important to consider the denouement of sexual violence as it affects a person's mental health and social integration which is essential for undergoing the daily challenges of life, to express or feel range of emotions or to sustain positive interaction with others.<sup>32</sup>

Coercion is not merely an act of violence or threats of violence to influence a woman to abort.

To coerce means "to compel by force, intimidation, or authority, especially without regard for individual desire or volition" or "to dominate or control, especially by exploiting fear, anxiety,

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<sup>32</sup> Evelyne Josse, *Social Consequences*, (March, 2010), <https://www.icrc.org/eng/assets/files/other/irrc-877-josse.pdf>.

etc.”<sup>33</sup> Any such selfish act that compels or forces a woman into abortion is morally unacceptable.

Physiological effects post abortion is not as severe as psychological traumas. Women undergoing induced abortion suffer from immediate complications.<sup>34</sup>

Post abortion complications often lead to long-term reproductive damage of grave nature, while immediate post abortion complications are usually treatable.

Some prominent side effects that are seen within 4 weeks of abortion are excessive bleeding, abdominal pain and cramping due to improper dose of anesthesia, infection in the uterus sometimes due to incompletely sterilized equipments, scarring of the uterus due to use of instruments which may lead to inability to embed a fertilized egg in further pregnancies, damage to cervix which in future may result in miscarriage and premature babies, nausea, and vomiting.

## **VI. SUGGESTIONS AND CONCLUSION**

Considering all the aspects discussed in this article, the author has certain suggestions and conclusions. As we have discussed the Penal and Constitutional Laws in India regarding Miscarriage but there is no particular provision regarding Forced Abortion in India and every crime has to be inferred from sections of Miscarriage or our miscarriage. The recent case where a rape victim came to the Police Station with her fetus in a bag should have opened the eyes of the authorities that Forced Abortion after Rape, in Marriage or after Assault is a very common thing. The Medical Termination of Pregnancy Act, 1971 has been going through a lot of developments recently regarding the abortion time period of 21 weeks and various Bills are being recommended in this aspect of the Act. The issue here is that there should be suggestions regarding the punishment in cases of forced abortion in the MTP Act, 1971 and it is high time Bills should be submitted in this regard also. After discussing the judgments in the previous leg of the article the author wanted to highlight the gravity of the situation and in what field action is required immediately. The Constitutional Provisions especially the recent Right to Privacy under Article 21 gives some power to women to decide that they want to keep their child and no one

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<sup>33</sup>Colin Lecroy, *Hidden Abuse of Women: Coerced Abortions*, (August 31, 2017, 8:00 AM), <https://www.nationalreview.com/2017/08/forced-abortion-coerced-women-pregnancy-economic-pressure-pro-life-help/>.

<sup>34</sup> *The After Effects of Abortion*, <https://www.abortionfacts.com/reardon/the-after-effects-of-abortion>.

else can take such decisions on their behalf as it is her private matter. The last part of the article clearly shows how the women suffer when abortion takes place forcefully and this is not just limited to physical ailments but psychological issues also. According to statistical data, India is a country where maternal deaths are caused due to unsafe and illegal abortions to a great extent and thus an action is required here. We have done with interpreting other laws to give punishment to these inhuman criminals who take away a child from the mother. Although this goes a long way but of course if not tried then only regret is left in our hands.