



DOCTOR AND CRIMINAL ABORTION: MEDICOLOGICAL ASPECTS

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Abstract

Abortion means termination of a pregnancy before the terms of pregnancy. In any pregnant woman if an abortion is done with the criminal intention with or without the free consent of that pregnant woman, then it is called as **Criminal Abortion** and is punishable under the Indian Penal Code, 1860. Generally criminal abortions are usually done in second or third month of pregnancy. In order to stop all this illegal and unethical manners of termination for pregnancy, Central Government made the termination of pregnancy by legal and ethical manners by implementing the law called "The Medical Termination of Pregnancy Act, 1971".

Key Words: Abortion, Miscarriage, Criminal, Imprisonment, Gestation, Foetus, Pregnancy.

1. Introduction

Abortion means termination of a pregnancy before the terms of pregnancy. Abortion is defined as expulsion of products of conception at any stage before confinement. Thus, abortion is defined as the spontaneous or induced termination of pregnancy at any stage before delivery. Normal pregnancy constitutes 36 weeks to 40 weeks of gestation/pregnancy.

In the past the pregnancies were terminated in the earlier day by illegal and unethical ways by fake doctors, dais or any illiterate woman by same unethical means like herbal roots to be inserted into the women's vagina or by giving the pregnant woman some herbal or ayurvedic powder, churna or tablets and efforts were made to cause an abortion. Many times some sharp instruments were inserted through vagina into the uterus to kill the foetus by sharpen instruments which causes the uterine tear or uterine injury which further leads to severe uterine bleeding, leading to the death of pregnant woman.

Thus, in order to stop all this illegal and unethical manners of termination for pregnancy, Central Government made the termination of pregnancy by legal and ethical manners. For this purpose Central Government enacted a law in the Parliament called The Medical Termination of Pregnancy Act, 1971 which is applicable to the entire India except Jammu and Kashmir.

In any pregnant woman if an abortion is done with the criminal intention with or without the free consent of that pregnant woman, then it is called as **Criminal Abortion** and is punishable under the Indian Penal Code, 1860.

Generally criminal abortions are usually done in second or third month of pregnancy as by this time women herself is sure of her pregnancy and her relatives or others do not know about it.

At this juncture, it is relevant to note that every miscarriage or abortion does not amount to criminal abortion as it is a well settled rule of nature that there may be natural miscarriage/abortion during early stages of pregnancy of a woman. It has been mentioned by Modi's in his Medical Jurisprudence and Toxicology 23rd Edition that natural miscarriage occurs generally in women who are weak, irritable and unhealthy and when the embryo or foetal membranes are diseased. A person is said to have committed criminal abortion if it is found that there is laceration in the vagina and on the cervix, or marks of violence on the abdomen of a healthy woman, or wounds on the foetus or membranes, otherwise free from disease. The question whether the marks of injuries on the vagina in the cervix were due to criminal interference, or due to traumatism by the passage of the foetus during spontaneous miscarriage, can be determined by noting their site, extent and appearance, and the physical development of the foetus.

2. Literature Review

Criminal Abortion and Law

Any Criminal Abortion committed or attempted on a pregnant women or presumed to be pregnant is punishable offence under Sections 312 to 316 and 511 of the Indian Penal Code, 1860.

The punishment is more severe if pregnancy is beyond 20 weeks of gestation or pregnancy is beyond the stage of quickening.

Section 312	Criminal abortion with consent of the pregnant women – punishment upto 3 years imprisonment/fine/both. If quick with child (less than 20 weeks pregnancy) 7 years imprisonment and fine.
Section 313	Criminal abortion without consent of the pregnant lady – punishment upto 10 years imprisonment or life imprisonment and fine.



Section 314	If during criminal abortion the pregnant women dies with consent or without consent – punishment up to 10 years imprisonment and fine.
Section 315	During criminal abortion, if the child dies – punishment up to 10 years imprisonment or fine or both.
Section 316	Death of a child in a pregnant women i.e. less than 20 weeks of gestation during criminal abortion then punishment up to 10 years imprisonment and fine.
Section 511	Attempted criminal abortion – punishment up to 3 years and 7 years if pregnancy is beyond quickening (after 20 weeks of pregnancy).

Indications for Medical Examinations in Criminal Abortion

A case of criminal abortion is brought to the Medical officer or Doctor under the following circumstances:

- a. Abortion due to homicidal trauma.
- b. Due to criminal abortion, woman/she demands more compensation.
- c. Lady is being blackmailed for being pregnant and causing (criminal) abortion.
- d. Abortion resulting in heavy or excessive bleeding (haemostage).
- e. Lady tries to conceal criminal abortion and therefore pregnancy.
- f. During criminal abortion if lady dies.

Precautions during Medical Examinations

In a case of criminal abortion following precautions should be taken:

1. Record preliminary data and vital Data of the women.
2. Obtain written informed consent of a women if she is major or obtain a free informed consent from her parents or guardians or relatives if she is minor i.e. below age of 18 years.
3. Take detail history of -
 - State of pregnancy
 - Method of criminal abortion
 - Time of criminal abortion
 - Complications of Criminal abortions
 - Any treatment received during the course of abortion
 - Any history of drug allergy.
4. Examination of a women - general and physical examination in details.
5. Inform to police about the case of criminal abortion.
6. Doctor has to maintain the professional secrecy of the woman.
7. If doctor is going to patient's residence then he should inform the same to his colleague doctor.
8. In all cases –
 - Consult a colleague doctor.
 - If patient is serious – then inform police.
 - If patient is likely to die – then arrange for dying declaration.
 - If the patient dies then do not issue a death certificate but inform police and send the body for post mortem examination.

Medical Examination in Criminal Abortion

1) Examination of mother

A) If Living

- a. General condition and level of consciousness.
- b. Signs of pregnancy.
- c. Systematic Examination.
- d. Evidence of genital injury.
- e. Evidence of abdominal injury.
- f. Evidence of genital bleeding.
- g. Foreign bodies in genitals.
- h. Evidence of poisoning.

B) If Dead - In addition to examination as in living,

- a. Size of uterus
- b. Weight of uterus



- c. Injuries to uterus
- d. Conditions of foetus
- e. Examination of Ovaries.

2) Examination of foetus

- a. Age
- b. Whether viable
- c. Cause of death

Laboratory Analysis

Materials collected should be sent to Forensic Science Laboratory for further forensic analysis to know the exact cause of death.

1. Examination reports of the attending physician or doctor.
2. Soiled clothes (of the patient).
3. Instrument used for criminal abortion.
4. Any foreign body found in the genitals
5. For chemical analysis
 - a. Routine viscera
 - b. Additional viscera i.e. uterus, bladder and rectum.

3. Research Methodology

3.1 Objectives of the Study

1. To study the medicolegal aspects of criminal abortion in India.
2. To study the role of doctor and healthcare personnel in criminal abortion.

3.2. Type of Research

This is an applied research or action research. Applied research aims at finding a solution or certain conclusion for an immediate problem facing a society. The researcher will discover a solution for some pressing practical problem.

3.3. Hypothesis

In criminal abortion case/s, there is a definite involvement of doctor/s and or healthcare personnel.

3.4. Sources of Data Collection

a) It is a **Desk research or Secondary research** which involves the summary, collation and/or synthesis of existing research where data is collected from the orders or judgments in medico legal cases of criminal abortion by various Session Courts, various State High Courts and the Supreme Court of India.

b) Secondary Data

The researcher has collected the secondary data from

1. Information gathered from medico legal cases related to criminal abortion decided by the competent courts of law in India and medicolegal & forensic books, medical magazines, newspapers, Published data from various research journals, law journals & internet.
2. Availability of previous statistical data of medico legal cases related to criminal abortion.
3. Data collected, will be analyzed and produced scientifically.

3.5. Limitations of the Study

The study is restricted only to five case studies or case laws decided by the Indian courts related to criminal abortion. Thus, it covers only those medicolegal cases related to criminal abortion.

4. Research Data / Materials

Five medico legal cases related to the criminal abortion are studied in detail for the purpose of research. All the data collected for the research purpose is mainly the secondary data obtained from the judicial decisions or judgments from the various medico legal cases of criminal abortion tried in court of law mainly various session courts, High Courts and Supreme Court of India.



Recent Case Laws on Criminal Abortion

4.1. State of Delhi Vs. Kamlesh Ojhaⁱ on 18 December, 2014 in the Delhi District Court in the court of Shri. Vidya Prakash: Addl.Sessions Judge 04(North): Rohini Courts: Delhi.

That on 03.06.08, complainant Ms. Suman Ojha gave statement wherein she alleged that her second husband Mr. Kamlesh Ojha i.e accused used to consume liquor and used to abuse her and also used to give beatings to her. On 10.05.08 at about 9.00 P.M, the accused gave beatings with fist and kick blows under the influence of liquor to her as a result of which she had to be aborted as she was having pregnancy of two months. She remained under constant pain throughout the night and went to Satyam Hospital where she was told by concerned doctor on 15.05.08 that there had been miscarriage. There is considerable delay in registration of FIR in this case which has not been explained by the prosecution witnesses during trial. The alleged incident took place on 10.05.2008, as per the case of prosecution whereas the FIR in question is shown to have been registered only on 03.06.2008 i.e. after the gap of 23 days of the date of incident. And the Court is of the view that prosecution has failed to establish the charge in respect of offence U/s 313 IPC against the accused beyond shadow of doubt. Consequently, accused Kamlesh Ojha was acquitted of the charges levelled against him by giving him benefit of doubt by the Delhi Session Court.

It was the duty of an attending doctor to inform the police or prosecution immediately after the abortion or miscarriage and FIR should have been lodged against the accused.

4.2. M. Kala Vs. The Inspector of Policeⁱⁱ on 24th March, 2015 in the High Court of Judicature at Madras. WP. No. 8570 of 2015 and M.P. No. 1 of 2015.

The petitioner would state that on 27.02.2015, her daughter Mohanapriya complained of severe stomach pain and she took her to Government Stanley Hospital, Chennai and she was admitted for treatment till 03.03.2015. Subsequently, she was discharged and referred to RSRM hospital for further treatment. The petitioner would state that only on 03.03.2015, the Doctors in the Government Stanley Hospital told the petitioner that her daughter is pregnant and she has to be taken to RSRM hospital for medical termination of pregnancy and treatment. The petitioner is said to have given her consent for medical termination of pregnancy on the same date. But, it is stated that till date, the same has not been done and therefore, the petitioner has approached this Court by way of this writ petition.

5. The learned counsel for the petitioner submit by stating that when the Doctors have come to know that her daughter was pregnant, they should have immediately informed the police. Further, it is submitted that because of the delay in informing the police, the FIR was not registered and only after the NGO interfered with the matter, the FIR was registered on 10.03.2015 in Crime No.4 of 2015 for offences under Section 354, 376 IPC and Section 4, 6, 10 of Protection of Children from Sexual Offences Act, 2012 (POSCO Act). With the above facts, the learned counsel for the petitioner would state that non-intimation of the crime to the police has resulted in the delay in registering the FIR and it amounts to criminal dereliction of duty.

The other allegation that the petitioner was not informed about the pregnancy of her daughter when she was admitted in the Government Stanley Medical College Hospital on 27.02.2015 is an issue to be agitated by the petitioner later after the investigation proceeds. In this case Court held that, in the light of the above facts, the 1st respondent police is directed to expedite the investigation process and file a final report at the earliest, by strictly adhering to the principles laid down under the Code of Criminal Procedure and The Writ Petition is to be disposed of accordingly. Thus, there is a deficiency in the service of the doctor in this case of abortion that doctor neither informed the victim nor the prosecution.

4.3. Dr. H.K. Singh vs. Dr. Aruna Jainⁱⁱⁱ on 5th March, 2016 in The Delhi District Court of Sanjay Garg-I: Special judge-IV, (PC ACT) CBI: Delhi. C.R. No: 30/15.

Complainant Dr. Aruna Jain is the appropriate authority under The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short PC & PNDT Act, 1994) and under The Medical Termination of Pregnancy Act, 1971 (in short MTP Act, 1971).

Accused H.K. Singh is the Proprietor and Medical Director of Nanak Hospital, Main Road Burari, Sant Nagar, Delhi and the said Nanak Hospital is registered under PC & PNDT Act w.e.f. 01.08.2002 to 31.07.2007 for ultrasonography by registration no. 1142 under the State appropriate authority for PNDT Act and said Nanak Hospital is not registered under MTP Act, and the said Nanak Hospital was irregular in sending reports under PC & PNDT Act, 1994.

At the time of visit of appropriate authority along with team one patient namely Neelam w/o Shri. Surinder was aborted in the operation theater and the statements of the patient and her husband were recorded after the abortion and in their statements



they stated that they got abortion done as they did not have sufficient income and product of conception was sealed in jar and the sample of the jar was forwarded to Hindu Rao Hospital for histo-pathological examination on 31.07.2006. On scrutiny of the record by the competent authority it was found that record were incomplete and consent forms were signed for abortion were incomplete and hospital was not able to produce the OT register and record. And also found that hospital was doing number of MTPs and D&C procedures without registration under MTP Act.

It has been stated that entry of this patient has been made in the admission register, however, no entry was found in the Labour / OT / MTP / D&C register. Thus, Doctors were guilty of Criminal abortion.

4.4. Aastanaben Sattarbhai Jumabhai Vs. State of Gujarat^{iv} on 24th February, 2016 in the High Court of Gujarat at Ahmadabad, Special Criminal Application (Direction) No. 1084 Of 2016.

Petitioner herein is the complainant who lodged FIR on 28th January 2016, being CRI15/2016 with Gondal Police Station, Rajkot for the offence punishable under Sections 376, 344, 144 & 506(2) IPC alleging that the accused Umedbhai Prakash bhai Makwana, on giving false promises to the petitioner victim, developed physical relation which made her pregnant. On 25th November, 2015 also, when she realized that she need to get pregnancy terminated, by ensuring her to get it terminated; she was taken away from her home and was confined for about two months. This delay has resulted into pregnancy having become of 18 weeks. It is urged by the petitioner that medical termination of pregnancy is permitted where the length of pregnancy exceeds twelve weeks, but does not exceed twenty weeks; subject to the opinion from the registered medical practitioners that continuance of pregnancy would involve risk to the life of the pregnant woman or of grave injury to her physical or mental health, or where there is substantial risk that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

As the pregnancy was 19 weeks and 3 days on 22nd Feb, 2016, court allowed for medical termination of pregnancy.

4.5. Dr. Saraswati Sudam Munde Vs. The State of Maharashtra^v on 11th September, 2013 in the High Court at Bombay Appellate Side, Bench at Aurangabad. Criminal Application No. 3350 of 2013.

This is one of the famous cases in State of Maharashtra on MTP Act, 1971 and PNDDT Act, 1994 and PC-PNDDT Act, 2003

Dr. Smt. Saraswati Mundhe, who is Obstetrician and Gynecologist, in R.C.C. No. 163/ 2012, which is filed by Appropriate Authority for offences punishable under sections 3-A, 4(5), 5, 6, 8 and 19 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

On 17.5.2012 one Smt. Vijaymala Patekar, a married woman, was brought to this hospital by her husband. She was having four daughters and she was again pregnant. This couple wanted to determine sex of the foetus. After clinical examination of this lady, Dr. Mundhe referred this lady to Padmawati Hospital of Dr. Kolhe for sex determination. Dr. Kolhe is also made an accused in C.R.No. 42/2012. Dr. Kolhe was using one sonography machine and in the present case, he determined the sex of foetus of Vijaymala. It was female foetus and it's age was around 18 to 20 weeks.

When Smt. Vijaymala was brought back to Mundhe Hospital after sex determination, medicines were given and operation was performed for abortion on 18.5.2011. The foetus was destroyed by burning it in the field of Dr. Shri. Mundhe by his employees. Smt. Vijaymala died due to this operation on 18.5.2011 itself. Dr. Shri. Mundhe informed to Parli City Police that Vijaymala had come to the hospital as she had bleeding (PV) and she died in his hospital. Dr. Mundhe, the owner of the hospital informed to police that the pieces of foetus were thrown by him in drainage system. After receipt of this report, one Police Inspector of Parli Police Station gave report to the police station and on the basis of this report, the crime was initially registered for offences punishable under section 304-A and 201 of I.P.C. vide C.R. No. 42/2012. The offences punishable under the provisions of MTP Act and PCPNDT Act were also mentioned in the report.

Thus, both Dr. Munde and Dr.(Mrs) Saraswati Munde was involved in the sex determination of the foetus and were responsible for the criminal abortion which lead to the death of a pregnant woman who was a mother of four daughters.

5. Data Analysis

Research Scholar's practical knowledge of Medicine, Law and Management Studies has helped a lot in writing this research paper as the research scholar is a post graduate in Medicine, Law and Management Studies. This is the only reason, this research topic has been selected by the research scholar for writing the research paper as he can give a justice to this research topic.



This is a qualitative research where the research scholar has studied about five case studies or case laws of criminal abortion in India. All the secondary data and necessary information for the research is provided by indiankanoon.org. The judgments or orders given by different courts in different case laws or case studies have been analyzed keeping in the mind, the main objectives of the study.

Thus, this desk research is based on secondary data available till date from the various courts in India i.e. Session Courts, various High Courts and Supreme Court of India.

Data is analyzed by studying the various judgments given by the Hon'ble Judges of the different courts of law in five case laws/case studies related to criminal abortion existing till date in India. For analyzing the case studies, the Research Scholar has used "Within Case Analysis and Between Case Analysis or Across Case Analysis."

6. Findings and Discussion

Research Scholar has viewed and studied in details, five case studies already decided by various courts of laws in India including session court, High courts and The Supreme Court on criminal abortion.

It has been found that in all the cases that,

- a. Doctor/s are involved in the Pre-determination of sex of the child, even though there is PNDT Act,1994 and PC-PNDT Act,2003 in India to prevent the predetermination of the sex of the foetus. They don't have a fear about these acts.
- b. Doctor/s are involved in the criminal act of criminal abortion which many times lead to a death of a pregnant woman.
- c. Legal evidences collected by the prosecution should be proved in the court of law during the court trials.
- d. Autopsy or Postmortem Report is considered to be the strong evidence before the court of law especially in the criminal abortion.
- e. Society believes on the judiciary to get the justice in the medicolegal cases like criminal abortion.

7. Conclusion

Research Scholar has viewed, studied and analyzed five case studies/case laws on criminal abortion and arrived on the following conclusions:

In cases of criminal abortion, it is very important to collect all the evidences related to the offence under the Medical Termination of Pregnancy Act, 1971 and PC-PNDT Act,2003 to be proved in court of law by doing the proper panchanama's with the appropriate witness/s by the prosecution. The Autopsy reports or Post mortem reports also plays a crucial role in medicolegal cases of criminal abortion. Generally cases of criminal abortion come into highlight only when there is a death of a pregnant woman. Otherwise the victim lady never opens her mouth to lodge a complaint to the prosecution. All the evidences collected by the prosecution should be placed before the court of law to convict the accused as our Indian legal system is based on the Indian Evidence Act. You can not punish an offender without appropriate evidence/s against him. Thus, a hypothesis "In criminal abortion case/s, there is a definite involvement of doctor/s and or healthcare personnel." is thereby proved.

References

1. Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, 6th Edition, CBS Publishers & Distributors Pvt. Ltd.
2. J.B. Mukherjee's Forensic Medicine and Toxicology, 4th Edition, Academic Publishers.
3. S.K. Singhal's Forensic Medicine & Jurisprudence (2014), 4th edition, The National Book Depot.
4. Textbook on Medicolegal Issues Related to Various Issues by Satish Tiwari, Mahesh Baldwa & others, Jaypee Brothers Medical Publishers (P) Ltd.

ⁱ <https://indiankanoon.org/doc/35921670/>

ⁱⁱ <https://indiankanoon.org/doc/143785500/>

ⁱⁱⁱ <https://indiankanoon.org/doc/87386555/>

^{iv} <https://indiankanoon.org/doc/103468351/>

^v <http://indiankanoon.org/doc/16029242/>