



Ayana Legal

THE BUZZ

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Monthly Newsletter By Team Ayana Legal

Landmark Judgements

Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1

“There is no doubt that a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating...However, in the case of pregnant women there is also a “compelling State interest” in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.”

ABORTION LAWS IN INDIA

With the recent over-ruling of Roe v. Wade, the Supreme Court of the United States of America has held that there is no constitutional right to abortion. In light of this decision, this edition of ‘The Buzz’ takes a look at laws regarding abortion in India.

Indian Penal Code, 1860

Section 312 to Section 316 of the Indian Penal Code deals with offences resulting in causing of miscarriage and of injuries to unborn children.

Section 312 states that whoever voluntarily causes a woman with child to miscarry where such miscarriage was not done in good faith for the purpose of saving the life of the woman shall be punished. The punishment varies according to whether the woman was quick with child or not. Quick with child refers to the stage of pregnancy where movements of the child can be felt. The explanation to this section also makes liable a woman who causes herself to miscarry.

Section 313 prescribes punishment to whoever causes miscarriage without the consent of the woman. Section 314 prescribes punishment to whoever with an intention to cause miscarriage does any act that results in the death of the woman, the punishment varying if the act was done without the consent of the woman.

Section 315 states that whoever does any act with the intention of preventing a child from being born alive or causing it to die after its birth, and does so successfully, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished.

505 -506, 5th Floor, Brigade Towers, 135, Brigade Road, Bangalore - 560025

Email - contact@ayanalegal.com

Tel - +918029548996.

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Indulekha Sreejith v. Union of India, 2021 SCC OnLine Ker 3359

"In all cases where a court is called upon to adjudicate the question whether permission shall be granted to a pregnant woman for terminating her pregnancy on a plea of infringement of her fundamental right to life guaranteed under Article 21 of the Constitution, the court is making a balance between the rights of the mother and the rights of the unborn. No doubt, while doing so, if there is any threat to the life of the mother, the scales shall certainly tilt in favour of the mother, for if the life of the mother cannot be saved, the life of the unborn cannot be protected."

Thank You

We at Ayana Legal thank you for your continued support and subscription to our newsletter and capsules. We look forward to being back with the next edition soon.

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The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act, 1971 (MTPA) acts as an exception to the provisions of the IPC. It states under Section 3 that "Notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act."

As per the Act a pregnancy may be terminated by a registered medical practitioner, -

- (a) where the length of the pregnancy does not exceed twenty weeks, or
- (b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act

In the second instance at least two registered medical practitioners must in good faith be of the opinion 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 any serious physical or mental abnormality."

As per the explanation to Section 3 (2) grave injury to mental health includes:

- where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy
- where any pregnancy is alleged by the pregnant woman to have been caused by rape

Clause 2B to Section 3 clarifies that the provisions relating to the length of the pregnancy "shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by any of the substantial foetal abnormalities diagnosed by a Medical Board."