



### WIDOW'S RIGHT TO TERMINATE HER PREGNANCY

AN ISSUE that has of late, become a subject of debate and judicial adjudication is as to a woman's/wife's right to abort the foetus she is carrying. Can a pregnant wife have her pregnancy terminated without, or even against, the consent of her husband? Who has the absolute right to decide on it? Can a husband/his parents restrain the wife from terminating the pregnancy? A few months ago, a husband had filed a petition in a Lucknow court seeking injunction against the wife who wanted to terminate her pregnancy. The husband lost at the trial level and filed an appeal. The issue, however, remains unresolved — the pregnancy got terminated — volitionally or accidentally. It would be pertinent to point out that courts in India do not favourably view a wife's decision/act of terminating her pregnancy without the consent of her husband even though the Medical Termination of Pregnancy Act, 1971, (MTPA) does not require such consent. In *Satya v. Siri Ram*<sup>1</sup> a wife got her pregnancy terminated twice against the wishes of her husband and his family. All efforts to dissuade her failed. The court held that the wife's conduct amounted to mental cruelty to the husband. Likewise in *Sushil Kumar Verma v. Usha*<sup>2</sup> the wife's terminating her pregnancy without her husband's consent was held to amount to cruelty. It is but fair and logical that in marriage the court should give due regard to the sentiments and interests of both the husband and the wife in such matter. However, when the woman is a widow can she have an absolute right to take the decision to terminate her pregnancy? As pointed out earlier, the MTPA does not enjoin upon the woman, to obtain anybody's consent. If she fulfils the conditions for a legal medical termination, she is within her right to have the foetus aborted.

Recently, a city court in Delhi has summoned a widow of a Delhi policeman, alongwith her parents and brother, for having aborted her husband's only heir to be.<sup>3</sup> According to the mother of the deceased policeman who is the complainant, the unborn foetus would have been the only heir of the deceased son, and the daughter-in-law (the widow) had got the pregnancy terminated so that she could remarry. Summons

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1. AIR 1983 P&H 252.  
2. AIR 1987 Del 86.  
3. Reported in *Hindustan Times*, June 27, 2005.



has been issued as the court “is satisfied that there is sufficient material on record to proceed against the respondents for the offence under sections 312/201, Indian Penal Code”. It would be pertinent to point out that section 312 of the Penal Code, *viz.*, causing miscarriage, is no good law in view of the special law, *viz.*, the Medical Termination of Pregnancy Act, which legalizes abortion under certain conditions and circumstances. However, a single crucial issue that needs to be reflected upon is whether the woman can be held guilty if she has terminated the pregnancy even though within the parameters and conditions laid down by the MTPA? Under this Act a pregnancy may be terminated by a registered medical practitioner within a specified time — 12 weeks or upto 20 weeks if the continuance of the pregnancy involves risk to the life of the pregnant woman or of grave injury to her physical or mental health.<sup>4</sup> Pregnancies caused by rape or as a result of failure of family planning device fall within the category of unwanted pregnancies which may cause anguish or grave injury to the mental health of the pregnant woman.<sup>5</sup> The Act further elucidates that in determining whether the continuance of a pregnancy would involve such risk or injury to the mental health of the woman, account may be taken of the pregnant woman’s actual or reasonably foreseeable environment.<sup>6</sup> It is submitted that a widow’s actual or reasonably foreseeable conditions are not difficult to visualize in our society.

In the instant case, the complainant has alleged that the widow had undergone abortion because she wanted to remarry. What is wrong about this? In a society where a woman’s safety and happiness in the matrimonial home is not assured even while the husband is alive her fate is far worse as a widow so what is wrong if after husband’s death she wants to remarry? Where remarriage for even an unencumbered widow is not an easy proposition, it would become all the more difficult if there is a child. Even from the perspective of the child, life without a father or with a step father may not be smooth and comfortable. There are cases of widows with children marrying again or children losing fathers but that is a different situation. When there is no child in existence yet, the widow should be within her rights to relieve herself and the unborn child of the probabilities of insurmountable problems that invariably surface. The anguish of a pregnant widow is actual and reasonably foreseeable if she gives birth to the child. The fact of losing an heir is not as cruel as the hard realities of the life that a widow with an unwanted pregnancy might have to face. There are a large number of women, though who might decide in favour of continuing with the

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4. Section 3(2)(i) of the Act.

5. Explanations I & II to section 3 of the Act.

6. Section 3(3) of the Act.



pregnancy so that they have someone of their own to live for but this is a personal choice/decision. This, however, is not to plead for an unbridled right to abortion but for a need to maintain balance between the rights and interests of the family, the child to be born and the autonomy and practical situations of the woman. The interests of the woman should not be sacrificed at the altar of sentiments and emotions of those around her.

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