Abortion and the Law in India

K. D. GAUR*

Induced abortion is legally defined as an untimely delivery voluntarily procured with intent to destroy the foetus. It may be procured at any time before the natural birth of the child. However, in medical terminology abortion means untimely delivery of a child before it is viable. A child is considered as viable from the twenty eighth week of pregnancy.

The Indian Penal Code 1860 (hereinafter referred to as the Code) which is the basic criminal law of the country, keeping in view the religious moral social and ethical background

* Visiting Professor, Faculty of Law, University of Malaya, Kuala-lumpur and Former Head, Department of Law, Utkal University, Bhubaneswar - 751004, Orissa.

1. Glanville Williams, The Law of Abortions: Current Law Problems, Vol. 5 (1952), pp. 128, 138. (In ancient, and particularly classical culture, any interruption of pregnancy was viewed with all seriousness and was an offence punishable under the law. For instance, the Roman Catholic Church regards foetus as having a soul upon conception, and is treated at par with born human beings).

of the Indian community, made induced abortion a criminal offence, under Sections 312 to 316 of the Code. Section 312 reads:

Causing miscarriage — Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation — A woman who causes herself to miscarry, is within the meaning of this section.

It is important to note that the framers of the Code have carefully avoided use of the word ‘abortion’ in Section 312, which relates to an unlawful termination of pregnancy. This was perhaps done with a view to avoiding injury to sentiments of the tradition bound Indian community. The section speaks of ‘miscarriage’ only, which term has no where been defined in the Code. However, miscarriage, in its popular sense, is synonym with abortion, and means expulsion of the immature foetus at any time before it reaches full growth. Miscarriage technically is a prostitute, and would be reborn again as such in the next life. See Shambhu Nath Pandaya, Suaruta Samhita (1952); J. Jolly, Indian Medicines (1951); P. Ray and N. N. Gupta, Charaka Samhita (1965) D. C. Pande, ‘Some Inhibiting Factors in the Implementation of the Medical Termination of Pregnancy Act 1971 — Study of Acceptability” 16 J.I.I. 660 (1974). Kautilya's Arthashastra provides for the imposition of a fine of 1,000 panas for the miscarriage by physical assault, and a fine of 500 panas for miscarriage by administering drugs, and 250 panas. for miscarriage by rigorous labour.

3. Indian Penal Code 1860, Ss. 312 to 316.
refers to spontaneous abortion, whereas voluntarily causing miscarriage, which constitutes an offence under the Code, stands for criminal abortion.

Section 312 makes voluntarily causing miscarriage an offence in two situations, namely, when a woman is with child and quick with child. As per judicial interpretation, a woman is considered to be in the former situation as soon as gestation begins, and is in the latter situation when the motion is felt by the mother. In other words, quickening is a perception by the mother that movement of the foetus has started. It obviously refers to an advanced stage of pregnancy. Taking into account the nature and gravity of the offence in the latter case, the section has prescribed punishment in the form of imprisonment of either description which may extend to seven years and fine, whereas in the former punishment may go up to three years of imprisonment or fine or with both depending upon the nature of the offence in question.

The explanation clause appended to Section 312 makes it clear that the offender could be a woman herself or any other person. As early as 1886 a woman was charged for causing herself to miscarry, though she had been pregnant for only one month, and there was nothing which could be called as a ‘foetus’ or ‘child’. The lower court acquitted the woman taking a lenient view of the matter. But the High Court held the acquittal bad in law emphasising that it was the absolute duty of a prospective mother to protect her infant from the very moment of conception. A person who aids and facilitates a miscarriage is liable for the abetment of the offence of miscarriage under Section 312, read with Section 109 of the Code, even though the abortion did not take place.\footnote{Indian Penal Code 1860, S. 108, explanation 2.} A person is also liable for attempt to commit a criminal abortion under Section 312 read with Section 511,\footnote{Id., S. 511, provides punishment for attempt to commit offences punishable with imprisonment for life or other imprisonment.} even if he fails in his endeavour. For instance, in \textit{Queen Empress v. Arunia Bewa},\footnote{(1873) 19 W.R. (Cr.) 230.} where the term of pregnancy
was almost complete, and an attempted abortion resulted in the birth of the child a conviction under Section 312 was set aside and one under Section 511 for attempt to bring about miscarriage was maintained.

Abortion Permitted on Therapeutic Grounds

Section 312 permits abortion only on therapeutic (medical) grounds in order to protect the life of the mother. That is to say, the unborn child, must not be destroyed except for the purpose of preserving the yet more precious life of the mother. The provision by implication recognises the foetus' right of life.8 The threat to life, however, need not be imminent or certain. If the act is done in good faith,9 the person is entitled to the protection of law. But good faith is deceptive and ambiguous enough to protect most therapeutic abortions so long as they are conducted ostensibly to preserve the mother's life. In fact, what constitutes good faith is not a question of law, but of fact to be decided in each and every case according to the facts and circumstances.

In *Rex v. Bourne*,10 a girl under fifteen, was criminally assaulted in the most revolting circumstances because of pregnancy.

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8. Bonda, "The Impact of Constitutional Law on the Protection of Unborn Human Life. Some Comparative Remarks", 6 *Human Rights* 223 at pp. 234, 235 (1977). In 1974 the Austrian Constitutional Court was confronted with the question whether article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedom, which provides that everyone's right to life, shall be protected by law is applicable to unborn life. The court refused to include unborn life, in its definition of the term everyone as pleaded by the Austrian Government, because some member states did not recognise a right to life for beings yet unborn, and held that the term everyone is limited to born human beings. It was illogical to include protection of unborn life in the convention, since the convention provides in certain specified cases for the deprivation of life.

9. Section 52, I.P.C. defines good faith as, "nothing is said to be done or believed in good faith which is done or believed without the due care and attention".

An eminent obstetrics surgeon and gynaecologist, who terminated the pregnancy was charged under Section 58 of the Offences Against the Person Act 1861,\(^{11}\) for causing abortion against the law. Justice Macnaghten observed that if the operation was done bona fide to save the life of the mother, the defendant was entitled to an acquittal, that the bona fide object of avoiding the practically certain physical or mental breakdown of the mother would afford an excuse, that if a doctor in good faith thought it necessary for the purpose of preserving the life of the mother, not only was he entitled to perform the operation, but it was his duty to do so, and that the burden of proving that the procurement of abortion was not lawful was upon the Crown. The court directed the jury that if the Crown had satisfied them beyond reasonable doubt that the defendant did not do the act in good faith for the purpose of preserving the life of the girl, he was guilty, but that if it had failed to do so, he was entitled to a verdict of acquittal.

The jury gave a verdict of acquittal since the Crown failed to comply with the obligation of proving that the operation was not procured for the purpose of preserving the life of the woman.

**Inadequacy of Law to Protect Illegal Abortions**

A careful perusal of the legal provisions would reveal that the law of abortion in India, till passing of the Medical Termination of Pregnancy Act 1971, was very strict. It had been honoured more in breach than in observance.\(^{12}\) It was estimated that before its enactment, as many as five million induced abortions were carried out in India every year, of which more

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11. Section 58 makes an attempt to procure abortion by administering drugs or using instruments to procure abortion and Section 59 for procuring drugs, etc., to cause abortion publishable with imprisonment for life and up to five years respectively. Indian law of abortion has been modelled on Sections 58 and 59 of the Offences against the persons Act 1861, with certain modifications.

than three million were illegal, but perhaps not even one per cent prosecutions and successful convictions had been taken.

It is said that approximately one seventh of women who become pregnant in India every year resort to back street abortions at the hands of inexperienced and unqualified persons, such as quacks, and paramedical personnel, like nurses, midwives, in strict secrecy to avoid the horror of law, through a variety of crude and unhygienic methods for paltry sums of money ranging from rupees 5 to 300, with all the risks of morbidity and mortality. At times greedy doctors exploit helpless victims of pregnancy by extorting a huge amount of money for procuring abortions. The rigidity of the legal provisions in seeking abortions was also responsible to a great extent for a number of crimes, such as suicide by pregnant mothers, infanticides abandonment of and cruelty to children. A study conducted by some eminent scholars revealed that 3.5 to 4 per cent of total deaths of women are due to complications arising out of abortions.

One of the difficulties, rather factors, that has resulted in lack of prosecutions and successful convictions of abortion offences, has been the obtaining of adequate evidence to prove

15. Section 317 I.P.C. makes exposure and abandonment of a child under 12 years, by parent or persons having a care of it punishable with imprisonment of either description which may extend to seven years, or, with fine, or with both. Section 318, I.P.C. prescribes punishment for concealment of birth by secret disposal of dead body with imprisonment of either description for a term which may extend to two years, or with fine or with both. The Infant Life (Preservation) Act 1929, punishes child destruction under the English legal system.  
the fact of pregnancy and its termination in a court of law. It is only a medical examination soon after the termination of pregnancy that can reveal the fact of pregnancy and its termination. As per the Criminal Procedure Code of 1898 which was in vogue till 1973, an accused could not be compelled to submit to a medical examination. And a woman who happened to be an accused would never submit to it. However, under the Code of 1973, the prosecuting agency can compel a woman suspected of an offence to undergo medical examination.

Another important factor responsible for lack of adequate and proper appreciation of the law enforcement authorities in such cases is the non-cognisable nature of offences relating to illegal abortions. A police officer can neither arrest an accused without a warrant, nor investigate the alleged offence of miscarriage without the order of an authorised magistrate. Such a complicated procedure involves a lot of exercise on the part of the police which generally they would avoid due to obvious reasons.

Humanitarian considerations also do weigh in favour of lenient enforcement of the law because by and large the clientele of abortionists are generally pregnant unmarried girls, or widows caught in a difficult situation. Any prosecution would

17. This has in fact limited the prosecutions on the ground of miscarriage.
18. Sections 53, 54 Cr. P.C. 1973 provided that the police officer as well as the arrested person himself can get the medical examination conducted, if so required.
19. As per Section 4 (i) (f) and column III of schedule II of Cr. P.C. 1898, offences prescribed under Sections 312, 316, I.P.C. were non cognisable and bailable. Schedule I of Cr. P.C. 1973 corresponding to schedule II of the old code has retained the provisions as regards the offence of causing miscarriage under Section 312, except that causing death of a quick unborn child by an act amounting to culpable homicide under Section 316 I.P.C. has been made cognisable and non-bailable.
20. The Criminal Procedure Code 1973, Section 155 deals with provisions relating to information as to non-cognisable cases and investigation of such cases.
mean more harassment, torture and agony to the unfortunate woman rather than give her relief.

Since the police according to law are under no obligation to investigate a non cognisable offence, they would prefer not to investigate such cases and invite work for themselves. Again the illegal abortions generally do take place in strict secrecy in connivance with the interested parties and the doctors, who would never divulge such information. At times it is practically impossible for the police even to know of such offences. The law was merely a dead horse.

**Indifferent Attitude to Liberalisation in the Law of Abortion**

It may be noted that though the provisions relating to abortions contained in Sections 312 to 316 of the Code had been in existence in the statute book for more than a century but were hardly implemented, and though there had been enlightened public men, doctors, social workers and social scientists who advocated reforms now and then, the changed attitude towards a liberalised law of abortion really came about only during the sixties when the idea was mooted by the Central Planning Board of the Government of India in 1964 as a family planning measure. The apathy on the part of the social reformers and government was perhaps because of the fear of revolt by fanatics and conservative religious leaders against any move for liberalisation of abortion laws. Religion, in a traditional bound, and conservative society, in fact, plays a dominant role and commands a major influence upon the social development and value orientation of the populace.

There was an unprecedented uneasiness in the Ministry of Health and Family Welfare over the large number of abortions taking place in the country. It has been estimated that for every 73 live births, there were 25 abortions — 15 induced and 10

21. A number of social legislation have been passed to eradicate social evils prevailing in society from time to time. See Bandhua Mukti Morcha v. Union of India, A.I.R. 1984 S.C. 802; People's Union for Democratic Rights v. Union of India, A.I.R. 1984 S.C. 1473.
spontaneous.\textsuperscript{22} The Government of India was much concerned about the unprecedented rise in population. The present birth rate in India is approximately 39 per thousand per year. Since 1947 when we got independence, the death rate has come down considerably from 27 to 14 per thousand, due to improved conditions of medical and health facilities, rise in the standard of living and better economic conditions. As a result the average expectation of life, which was 32 years in 1947, has gone up to 60 years in 1985.

India is the second largest country in population next to China. According to the 1981 Census, the population of India has crossed 680 million, which was 580 million in 1971, and approximately 250 million in 1931 (of undivided India).\textsuperscript{23} With the present growth rate of population, it is expected that it will cross the watermark of 1,000 million by the end of this century. With the result, whatever progress India has made in economic, scientific, technological, social and political fields during the last four decades has been partly diluted and whittled down. In fact, the population increase alone has absorbed more than 50 per cent of the economic growth, leaving the levels of living in almost the same position as before.\textsuperscript{24}

\textbf{Steps to Liberalise Abortion Laws.}

The Government of India, in 1964 constituted a committee under the chairmanship of Shanti Lal Shah to study the question of liberalisation of the then existing law of abortion, and to suggest measures for reform in the strict provisions of the Codes which makes all abortions or miscarriage punishable under Section 312, unless undertaken to save the life of the woman.

After making a careful study of the \textit{pros} and \textit{cons} of the entire issue and taking a pragmatic approach of the socio-legal

\textsuperscript{22} Gandhian Institute of Rural Health and Planning in the State of Tamil Nadu estimated that out of every 100 conceptions, 25 were abortions, 15 induced and 10 spontaneous.
\textsuperscript{23} According to latest reports on 1991 census it has already crossed 844 million.
problems involved in cases of unwanted pregnancies, the committee recommended to the government liberalisation of the outdated and outlived law of miscarriage contained in Section 312 of the Code. It observed that whatever may be the moral and ethical feelings that are proposed by society as a whole on the question of induced abortion, it is an incontrovertiable fact that a number of mothers are prepared to risk their lives by undergoing an illegal abortion rather than carrying that particular child to term.

The committee submitted a comprehensive report suggesting various situations justifying termination of pregnancy under law. It was of the view that this should be allowed not for saving the life of the pregnant woman, but also to avoid grave injury to her physical or mental health.

The government of India accepted the recommendations of the committee and brought forth in 1970 in Parliament the Medical Termination of Pregnancy Bill setting forth various situations under which pregnancy might be lawfully terminated. The Bill was eventually passed in August 1971 as the Medical Termination of Pregnancy Act 1971 (M.T.P.A.), which came into operation on 1 April 1972 after the government framed rules for its implementation as required under Section 7 of the Act.

It is important to note that though the idea of liberalising the strict law of abortion came from the family planners, the government, while introducing the bill in Parliament, cautiously denied its having any connection with family planning so as to avoid opposition from conservatives, religious fanatics, mullas and Pandits. As per the official statements, the Act had been envisaged with the following three objectives.

(i) Health measures, when there is danger to the life or risk to physical or mental health of the woman.

Humanitarian grounds, such as when pregnancy is caused as a result of a sex crime or intercourse with a lunatic woman etc.

Eugenic grounds, when there is a substantial risk that the child, if born, would suffer from deformities and disease.

Though the bill could be passed in Parliament without any strong opposition, since the then Congress Party in power enjoyed a two-third majority in both Houses of Parliament, yet out of eleven different political parties and groups in Parliament only four i.e. (i) Government officials (ii) All India Women's Conference, (iii) Congress Party, and (iv) Communist Party of India, had a positive attitude towards the Act. On the other hand, four groups, viz, (a) Muslim sections, (b) Jan Sangh, (c) Communist Party-Marxist (C.P.M.) and (d) Kerala Congress had a negative attitude and opposed the bill. National Federation of Indian Women and Swatantra Party did not take any stand. The medical profession was divided, 75 per cent supporting the bill and 25 per cent opposing it.

Medical Termination of Pregnancy Act.

The Medical Termination of Pregnancy Act 1971, consists of only eight sections and is a landmark in the history of social legislation in India. It will go a long way towards encouraging women to play a role outside home, in achieving the goal of economic independence and in emancipating them from the age old economic exploitation by men folk. Autonomy and independence of a woman is directly as well as closely related to her ability to decide for herself whether she wishes to bear and rear the child or not. The inability to decide freely and responsibly on the spacing of children has, in turn, deprived many women of the advantages of health, education and employment and their roles in family, public and cultural lives on equal footing with men. This right and opportunity to fully participate is an element

of human dignity and respect recognised in a number of international human rights agreements and covenants.\(^{27}\)

The object of the Act, besides the elimination of the high incidence of illegal abortions, is perhaps to confer on the woman the right to privacy,\(^{28}\) which includes the right to space and limit pregnancies, and the right to decide about her own body.\(^{29}\) Another important feature of the Act is to encourage a reduction in the rate of population growth by permitting termination of an unwanted pregnancy of a married woman on the ground that a contraceptive device failed.\(^{30}\)

**Grounds for Termination of Pregnancy:**

Section 3 of the Act, which is the operative part, lays down the conditions under which a pregnancy may be terminated by registered medical practitioners.\(^{31}\)

A careful perusal of this section reveals that it has modified the strict provisions of the law of abortion as contained under Section 312 of the Code by permitting abortion in a number of situations. The section *inter alia*, envisages that the termina-
tion of a pregnancy by a registered medical practitioner is not an offence, if the pregnancy involves:

(i) a risk to life of a pregnant woman, or
(ii) a risk of grave injury to her physical or mental health, or
(iii) if the pregnancy is caused by rape, or
(iv) there exists a substantial risk that, if the child were born, it would suffer from some physical or mental abnormalities so as to be seriously handicapped, or
(v) failure of any device or method used by the married couple for the purpose of limiting the number of children, or
(vi) risk to the health of the pregnant woman by reason of her actual or reasonably foreseeable environment.

Section 4 prescribes that the termination of pregnancy must take place according to the provisions of the Act and, that it must be performed in (i) a hospital established or maintained by the government, or (ii) a place for the time being approved for the purpose of the Act by the government.

But in case of an emergency where the termination of pregnancy is, according to medical opinion, immediately necessary to save the life of the pregnant woman the literal compliance of the provisions of Sub-section (2) of Section 3 and Section 4 would not apply. Section 6 of the Act empowers the Central

32. M.T.P. Act 1971, s. 2 (d) reads, registered medical practitioners means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act 1956, whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.

33. The programme is implemented through 428 rural and 1,766 urban family welfare centres and 57,638 sub-centres. Besides 5,780 other institutions also render service. See Report of Ministry of Information and Broadcasting, Government of India (1983), p. 124.

Government to make rules to carry out the provisions of the Act for its implementation, and Section 8 gives legal protection to doctors with regard to action taken in good faith for the purposes of termination of pregnancy. Section 7(3) of the Act makes wilful contravention of any regulations made by the government in respect of implementation of the Act punishable with fine which may extend to one thousand rupees.

**Family Planning Board:**

A family planning board is constituted in every state consisting of the director of health services as its chairman along with five experienced medical doctors, a gynaecologist, and an anaesthetist and a surgeon as members. The board is empowered to enrol and register doctors, who might be willing to perform the operations terminating pregnancies.

Rule 4 prescribes the necessary qualifications for enrolment as a registered doctor under the Act. For instance, rule 4 (1) (a) requires a medical practitioner with post graduate qualification and six months practice in gynaecology and obstetrics for the purpose of registration, and rule 4 (1) prescribes a minimum experience of five years practice in this field in the case of a medical practitioner who was registered in a state medical register immediately before the commencement of the Act.

Rule 5 (1) requires medical practitioners intending to qualify themselves to terminate a pregnancy to apply to the board for registration and for the issue of certificate to that effect. Rule 5 (2) prohibits the termination of pregnancy by a registered medical practitioner even though he might possess all the necessary qualifications unless he has been duly registered and

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35. The Central Government in exercise of the powers conferred under Section 6, has enacted the Medical Termination of Pregnancy Rules 1972 which came into operation on 1 April, 1972.

36. M.T.P. Act 1971, s. 8 reads "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."
A certificate to that effect has been issued as referred to in rule 5 (1).

A medical practitioner, who does not possess the necessary qualifications and is not registered as per the requirement of the Act, would expose himself to the risk of prosecution for having committed an offence of causing miscarriage under Section 312 of the Code, if he terminates a pregnancy. Such a person cannot claim immunity from prosecution as provided under Section 3 (1) of the Act.

Rule 9 (2) provides that when a certificate issued under rule 5 (1) is cancelled or suspended, the registered medical practitioner, to whom the certificate was issued, shall be presumed to be without the experience or the training required by Section 2 (d) and that the practitioner shall in consequence be not entitled to terminate a pregnancy in accordance with Section 3 of the Act and so would be exposed to criminal prosecution.

Rule 3 requires a registered medical doctor’s approval and certificate on prescribed forms before an abortion operation is performed. Form G specifies in paragraph (i) to (v) the grounds for termination of a pregnancy. In case of an emergency operation for termination of pregnancy, rule 13(3) requires the attending doctor to certify that an emergency operation was performed, because it was immediately necessary to save the life of the woman.

Hurdles in Implementation of the Act:

Section 3 of the Act, as explained earlier, has taken a pragmatic view of the entire problem of unwanted pregnancies and legalised abortions in a number of situations. But there are many difficulties in its implementation on various counts.

According to explanation 1 to Section 3, abortion is permitted if the pregnancy is caused only by rape. Hence in case of a pregnancy caused as a result of an illegal sexual contact other than rape, abortion would be criminal and punishable under Section 312 of the code.
The amended Section 375 of the Code enumerates six circumstances under which sexual intercourse by a man with a woman would amount to rape. The gist of the offence consists in having sexual intercourse with a woman against her will or without her consent, or when consent was obtained by putting her or any person in whom she is interested into fear of death or physical harm or with her consent, when consent was procured under a misconception of fact that the man was her husband, or with her consent, when, by reason of unsoundness of mind or intoxication, etc. she is unable to understand the nature and consequences of that to which consent was given or with or without consent when she is under sixteen years of age and is incapable of giving consent in law.

According to the canons of original jurisprudence, a man is presumed to be innocent, unless his guilt is established in a court of law beyond reasonable doubt. Hence one is not guilty of rape unless he is convicted. In these circumstances, the question arises, as to whether the woman subjected to rape should postpone the procurement of abortion till the charge of rape is established in a court of law and the accused is found guilty, or get the pregnancy terminated during the pendency of the case. In the latter case, if the man charged of rape is acquitted of the offence, the woman would be liable under Section 312 of the Code for causing illegal abortion. And if the former course is adopted, no abortion could be possible, because a case would take a minimum of three to four years of time before it is finally disposed of by a court of law.

According to the newly added Section 376B, 376C

38. In such a situation the doctor procuring the abortion would also be guilty of criminal abortions under Section 312 of the Code.
39. Indian Penal Code 1860, S. 376B provides punishment for intercourse by a public servant with women in his custody.
40. Id., S. 376C deals with intercourse by the superintendent of a jail and remand home, etc.
and 376D,\textsuperscript{41} to the Code by the Criminal Law (Amendment) Act 1983, sexual intercourse by a man in authority with a woman not amounting to rape has been made punishable. But under such circumstances, if pregnancy is caused it will not amount to have been caused as a result of rape that would entitle her to get it terminated under Section 3 of the Act.

Similarly, Section 376A\textsuperscript{42} of the Code fails to take note of a special situation where the husband and wife are living separately under a decree of judicial separation by mutual consent. In such a situation marriage subsists in law, and if the husband has sexual intercourse with his wife against her will and consent, neither the husband can be convicted of the offence of rape nor the wife can go for abortion, should she become pregnant.

To obviate such a situation, the following explanation may be added to Section 3 of the Act which would entitle a woman to get her pregnancy terminated in the following circumstances.

Explanation III — Where any pregnancy is alleged by the pregnant woman to have been caused by sexual intercourse not amounting to rape, but as a result of sexual intercourse falling under Sections 376A, 376B, and 376D I.P.C. the anguish caused by such pregnancy shall be presumed to constitute grave injury to the mental health of the pregnant woman.

Another important point with respect to interpretation of the Act arises as to whether termination of pregnancy is permissible only in those cases of rape that are reported to the police, or as to whether it is allowed in all cases, whether reported or not. In India owing to the peculiar social setup more than 99 per cent of such cases go unreported because of fear

\textsuperscript{41} Id., S. 376D, makes intercourse by any member of the management staff of a hospital with a woman in that hospital punishable.

\textsuperscript{42} Id., S. 376A, makes intercourse by a man with his wife during judicial separation punishable with up to 2 years imprisonment and fine.
of social stigma. In the first situation it would be practically impossible to take advantage of the Act and get abortion procured since hardly any case of rape is reported to the police. In the second situation, if the provisions are liberally interpreted any woman can get her pregnancy terminated merely on making the statement that it was caused as a result of rape. This would leave the matter entirely within the discretion of the woman to the question of motherhood. Perhaps such a drastic step might not be desirable under the present Indian set up.

Section 3 of the Act does not provide for termination of pregnancy caused as a result of sexual offences relating to marriage discussed in the Code, such as the offences of fraudulent conduct in marriage, bigamy and adultery. A woman, therefore, finds herself in a difficult and precarious situation in cases of pregnancies taking place in such situations. It would be appropriate to legalise induced abortion in those situations as well. Accordingly, the following explanation may be added in Section 3 legalising abortion in such situations as well:

Explanation IV — Where any pregnancy is alleged by the pregnant woman to have been caused by deceiving her into believing that she is legally married to the man concerned and makes her live as wife and husband, or by adultery, or by bigamy the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

42a. Chapter 20.
43. See K. D. Gaur, supra n. 4, for a detailed discussion on the subject.
44. Indian Penal Code 1860, S. 495, punish bigamy.
45. Id., S. 497, prescribes punishment for adultery which may extend to imprisonment of either description for a term of five years, or with fine or with both. In such case the wife shall not be punishable as an abetter. In this regard, Section 497, Jammu and Kashmir State Ranbir Penal Code 1932 is more progressive. It makes an errant wife punishable along with her paramour.
Induced Abortion: A Case Study

A study was conducted in 1976 in order to ascertain the views of workers of two factories, viz. Bata Shoe Company and Escorts Ltd., towards induced abortions, and conditions under which they approve or disapprove such abortions. The study also explores the opinion of the factory workers and their wives regarding the liberalised law of abortion. The respondents were also asked whether they approve of making abortion services available in the family welfare clinics along with other contraceptive services.

Of the 232 male workers from the Escorts factory, 85 per cent agreed with the statement that abortion should be permitted when the pregnancy may be a threat to the mother's life. Likewise, almost 90 per cent male workers who responded from Bata were in favour of abortion where the pregnancy may pose a threat to the mother's health. The percentage of female workers, who agreed with the above statement was a little lower than that of male members. A little over 75 per cent female workers from both the factories favoured abortion in case of a pregnancy, which would be injurious to the mother's health.

More male than female workers agreed that abortion facilities should be made available, if both husband and wife decide to terminate an unwanted pregnancy. Over 73 per cent male and 61.5 per cent female workers, who responded from the Escorts factory and 80 per cent male and 64.8 per cent female workers from Bata agreed with the statement that couples with more children than they can support, should have the right to abortion, if they so desired.

Percentage of workers, who were in favour of abortion facilities to be made available in government clinics, were higher in Bata than in Escorts. For instance, 82.8 per cent male and 76.5 per cent female workers from Bata as compared with 75.7

46. See Surjit Kaur, Family Planning in Two Industrial Units (1976), pp. 206-209.
per cent male and 66 per cent female from Escorts were in its favour.

It is interesting to note that opinions were divided with regard to making abortion facilities available to pregnant unmarried girls. Almost 30 to 35 per cent were against this being permitted. Likewise, 20 to 30 per cent did not favour termination of a pregnancy resulting from rape, inspite of the legal provisions to that effect. Over 62 per cent males and 40 per cent females from Bata agreed with the statement.

Abortion, of late, is becoming increasingly popular. During the years since the enforcement of the Act in April 1972, till 1982-83 a total of 28,09,817 pregnancies have been terminated. During 1982-83 alone 4,09,296 pregnancies were terminated. The reasons for this were increased facilities in the rural areas, and growing awareness among the rural community that abortion is ostensibly a healthy measure.

Steps Towards Further Liberalisation of Abortion Rules.

On 10 October 1975, the Government of India, by a notification revised the rules under the Act on the recommendation of a workshop on the Implementations of the Programme of Medical Termination of Pregnancies at District Hospitals and at Block Levels, organised by the World Health Organisation in Delhi. According to the revised rules, a woman desiring to abort an unwanted pregnancy can walk into one of the hospitals or recognised institutions offering the facility and, after filling in a form, get the pregnancy terminated without her husband's consent. The hospital has to give the woman a registration number and keep the form in an envelope marked secret and

the doctor who performs the operation is not only under no obligation to consult or notify her husband, but also bound by the duty of confidentiality to his patient and need not inform her spouse against her wishes.49

The Medical Termination of Pregnancy Act along with the raising of the age of consent for marriage now 18 years for girls and 21 for boys, has done much for family planning and curbing population growth. In fact, the Act could be said to be a milestone in the modernisation of the Indian society through the instrumentality of law. It has a direct impact on population control and in achieving economic and social development. In other words, the Act has played a vital role in the emancipation of women from the age old fear of abortion being considered as a sinful and criminal act.

However, it is too early to predict the extent to which the legitimisation of abortion would help in contributing to a decrease in criminal abortion, and protect the lives and health of pregnant women every year. The effective implementation of the Act depends on a wide variety of factors, such as psychological, sociological, financial, technical and administrative. Whether the people would respond and make use of it or allow it to remain as yet another piece of dead letter will depend on an overall change in public outlook, the government's, doctors', social workers, educators, politicians and religious leaders effort.