

Women going to courts under 20 weeks gestation with MTP request, finds Pratigya Campaign Study

~A legal analysis of Supreme Court and High Court Judgements in India to assess the judiciary's role in access to safe abortion conducted by Pratigya Campaign ~

New Delhi, September 28, 2019: Pratigya Campaign for Gender Equality and Safe Abortion has launched a report assessing the judiciary's role in access to safe abortion in India. The research was carried out to analyse Supreme Court and High Court judgements on Medical Termination of Pregnancy (MTP) requests from June 2016 to April 2019 in order to determine the patterns and the inconsistencies in how the judiciary enforces the abortion law in India. The study finds that over the last three years, 194 writ petitions have been filed at the Supreme Court and High Courts, seeking permission to terminate their pregnancies. Out of the 194 petitions, 21 cases went to Supreme Court, while 173 were filed at various High Courts.

All cases petitioned at the Supreme Court were above 20 weeks of gestation, five of which were rape cases and 15 involved cases of foetal abnormalities. The Supreme Court denied five cases and permitted 15 MTP requests. Among the five cases denied by the court, three involved foetal abnormalities, where each case had a foetus between 26-28 weeks gestation. The Supreme Court followed the opinion of the medical boards, set up to examine the woman, to decide the judgement in these cases.

Out of the 173 cases before the High Courts in India, MTPs were permitted in 139 cases and denied in 29 cases; the remaining were withdrawn. Among all High Courts, the Bombay High Court witnessed the largest share of petitions with 88 women appealing before the court. The study finds that 40 women who petitioned the High Courts were below 20 weeks of gestation. This is an alarming development, as it marks a departure from the provisions of the MTP Act which allows medical termination of pregnancies up to 20 weeks gestation. A notable number of cases under 20 weeks were a result of rape. Even though all of these cases were allowed by the court, the fact that they reached court is a cause for worry and points towards the difficulties women face while accessing abortion.

The findings reveal that 73 petitioners knocked on High Courts' door to seek permission for MTP, citing potential foetal abnormalities. Out of these, the courts allowed 63 requests and turned down 10. Out of the 73 petitions, 62 involved fetuses with gestation beyond 20 weeks. Most of these abnormalities are detectable only after 20 weeks gestation, leaving women no choice but to reach out to the court for permission to abort. Further, the report notes that judiciary tends to rely on court-appointed medical boards to make a judgement. These boards often examine the women from scratch, ignoring the opinion of the doctors consulted women beforehand, thereby neglecting the role of the woman and her medical provider in decision-making.

Speaking at the launch of the report, Mr. V.S Chandrashekar, **Pratigya Campaign Advisory Group Member and Chief Executive Officer, Foundation for Reproductive Health Services India** said, "The study clearly shows that women with pregnancies even below 20 weeks gestation are going to the court to seek permission for MTP. These cases clearly defy the provisions of the MTP Act and represent major problems in the access to abortion. These women have to further face a long and tiring process, where they are

subject to examination before the medical boards, despite having consulted their own providers. The entire process adds to the trauma for women and girls and is a violation of their rights. "

Commenting on the legal aspect in India and the study findings, **Anubha Rastogi, Pratigya Campaign Advisory Group Member and Independent Lawyer**, said, " Till the time the amendments are passed by the Parliament, the Judiciary should lay down comprehensive guidelines that keep the woman and her wellbeing at the centre of any decision-making on permission for MTP. Attention should be paid to the woman's wellbeing and her circumstances, which include her financial capacity to raise a child, the mental trauma of having to carry an unintended pregnancy to term, and capacity to raise a child with special needs."

Pratigya Campaign proposes the following key recommendations:

- The Ministry of Health and Family Welfare (MoHFW) should issue a public statement, which clarifies that a pregnant woman is not required to approach the court for permission while seeking MTP, if the foetus is under 20 weeks of gestation.
- The MTP Amendment Bill, 2014 should be tabled and passed in the parliament with all amendments proposed. The report also proposes to add a provision to allow abortion in all rape cases, regardless of gestation due to the associated mental and physical trauma.
- The Supreme Court should lay down comprehensive jurisprudence that clarifies the act to ensure justice delivery is consistent across states and permit all cases under 20 weeks.

Link of the detailed study: <https://bit.ly/2nVXiRI>

About Pratigya Campaign for Gender Equality & Safe Abortion: Pratigya Campaign for Gender Equality and Safe Abortion is a network of individuals and organisations working towards protecting and advancing women's rights and their access to safe abortion care in India. The campaign advocates with governments, organisations and media at the national and state levels on issues of women's empowerment and women's access to healthcare services. Foundation for Reproductive Health Services India hosts the secretariat and a dedicated eight-member Campaign Advisory Group guides and offers strategic direction to the coalition and its advocacy efforts. The Campaign focuses on four thematic areas: a) Extending support to the providers to ensure they continue to provide abortion services b) Ensuring continued availability of Medical Abortion drugs in the markets and support to women using MA out of facility c) Understanding and engaging with the legal landscape, particularly the jurisprudence in abortion related cases d) Building strong alliances with organisations and individuals to sharpen the collective voice of the Campaign. Visit: www.pratigyacampaign.org for more information.

Pratigya Campaign's Secretariat would be able to connect you with people across the study states for further information. For any more information, please contact:

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