

Indian High Courts witness surge in abortion cases, pregnant persons continue to suffer

243 abortion cases were filed over the period of just 1.3 years in various High Courts, while only 175 cases were filed in 3 years

India, September 22, 2020: High Courts in India are currently witnessing a substantial increase in abortion cases, finds Pratigya Campaign's new legal report. 'Assessing the Judiciary's Role in Access to Safe Abortion- II' report has analysed cases seeking permission of termination of pregnancy from the High Courts in India from May 2019 to August 2020. There were total 243 cases filed across 14 high courts and one appeal before the Supreme Court. In 84% of the cases, permissions were given to terminate the pregnancy.

74% of the total cases, were filed post the 20-week gestation period, 23% of the total cases were filed within the 20-week gestation period and should not have gone to the courts at all. Out of 74% cases (filed after 20 weeks cut off) 29% cases were related to rape/sexual abuse, 42% related to foetal anomalies; and out of 23% cases (filed even before 20 weeks) 18% cases were related to sexual abuse/rape and 6% of foetal anomaly.

Commenting on the legal aspect in India and the study findings, **Anubha Rastogi, Pratigya Campaign Advisory Group Member and author of the report** said, "The increasing number of cases only indicate to the fact that access to safe and legal abortion services in this country still leaves a lot to be desired. It is imperative that any change in law takes note of these increasing trends and moves towards a rights based, inclusive and accessible legislation on abortion. Any new law/amendment cannot be based on third party authorisation like the medical boards and has to be respectful of a decision that involves the registered service provider and the pregnant person."

Speaking at the launch of the report, **VS Chandrashekar, Campaign Advisory Group member, Pratigya Campaign** said, "The fact that even women/girls with gestation below 20 weeks have had to go to courts is distressing. The MTP Act allows termination of a pregnancy upto 20 weeks. A large number of the below 20 weeks cases are of survivors of sexual abuse and this only increases their trauma."

During the lockdown, access to abortion became even more difficult although there was some respite once the Ministry of Health and Family Welfare declared access to abortion as an essential service. During the lockdown 112 cases were heard at various high courts; and 62 were from Bombay High Court.

The report emphasises on how crucial it is for the law to adapt in accordance to the changing times. The MTP Amendment Bill 2020, is awaiting a nod from the Rajya Sabha and a few changes have been recommended by civil society organisations, which if accepted would make the Act progressive and rights based. It is imperative that access to abortion becomes a legal right for women at least in the first trimester. It is also necessary that the opinion of the doctor, that the pregnant person is consulting, should be considered as primary and the only one required. The setting up of medical boards which has been done by the Courts while dealing with cases of this nature has only created further obstacles for pregnant persons in accessing safe and legal abortion.



“Even if the MTP Amendment Bill 2020 is passed in the current form, the number of cases approaching the courts is not likely to reduce. Therefore, to avoid this, the proposed amendment to ‘increase the gestation limit from 20-24 weeks’ should be extended to all pregnant persons who need to terminate a pregnancy, instead of being restricted to only to certain categories of women as defined in the MTP Rules. Similarly, the ‘no upper gestational limit proposed for fetal anomalies’ should be extended to survivors of sexual abuse/rape. Forcing a person to carry a pregnancy out of rape to term is a violation of her right to life and dignity,” Chandrashekar added.

Adding to this, Rastogi said, “Currently abortion is a conditional right and is available only based on the opinion of the doctor. 66 countries around the world including Canada, Nepal, Netherlands, Sweden, South Africa and Vietnam allow abortion at will of the pregnant person for up to 12 or more weeks of gestation. Therefore, I strongly believe that first trimester abortions should be allowed as per request/decision of the pregnant person and it should become a legal right. I would also like to add that medical boards should not be constituted and the decision to terminate a pregnancy should be solely between a pregnant person and the provider. The number of specialist doctors to constitute such boards is limited in many districts and smaller towns. Constituting Medical boards at all levels would be an operational nightmare. Medical boards will further add to delays and complicate access to abortion, apart from putting unnecessary burden on an already weak health system”.

Note to Editors: Cases have been accessed on the basis of search words like 'abortion' and 'medical termination of pregnancy' on websites like Indiankanoon, SCOnline and Manupatra and legal news sites like Live Law and Bar & Bench and the High Court websites. Attempts were also made to confirm and verify this information from lawyers, practising before various High Courts, to ensure that any cases that were left out in this process are accessed. Needless to say, each High Court has its own manner of sharing orders and judgments and each website is unique and therefore, despite the best efforts of the team, cases may have been left out.

About Pratigya Campaign for Gender Equality and Safe Abortion

Pratigya is a network of 110+ individuals and organisations working towards protecting and advancing women’s rights and their access to safe abortion care in India, working with governments, organisations and media at the national and state levels. The advocacy coalition is guided by an expert panel-the Campaign Advisory Group. Foundation for Reproductive Health Services India hosts the coalition secretariat and works closely with different stakeholders to reduce barriers to safe abortion.

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