

## **Pratigya Statement on Reported Observations made by Honorable Supreme Court bench in the recent hearing regarding woman's plea for abortion**

We refer to the news report in the online publication The Print headlined "SC says abortion amounts to murder, rejects 20-year-old Mumbai woman's plea". The publication was reporting on the case regarding the plea from a 20 year old woman for abortion at twenty five weeks gestation. The woman Sarita (name changed) initially went to the Bombay High Court when her pregnancy was a few days over 21 weeks gestation (the gestational limit for abortion provided in the Medical Termination of Pregnancy Act 1975), since her plea was denied by the High Court, she knocked on the doors of the Supreme Court.

We are deeply distressed by the following observations, reported in the news article, to have been made by the Honorable Bench:

1. The bench told the woman's advocate, Sneha Mukherjee, that the unborn child should have been represented in court instead of the mother.
2. You should make the mother hear her child's heartbeat
3. Sarita would "regret killing the baby" if she "reconciles with the husband".

The above reported observations we believe are unwarranted and against women's rights. Equating abortion to Murder, Killing the baby, stigmatizes abortion and over 15 million women who terminate their pregnancy in line with the provisions of the MTP Act and the doctors who provide abortion services. Personification of the fetus by referring to it as "child's heartbeat", "unborn child" is incorrect and prioritizes the fetus over an adult citizen. The reported observations also perpetuate stereotypes of a woman's role as a mother, child bearer, wife is far more important than her individual rights and choices.

The MTP Act, allows termination of a pregnancy for a number of reasons including contraceptive failure and rape. The Act gives women the sole right to consent and recent judgments of the Supreme Court and various High Courts have interpreted the provisions to mean that a woman has the right to decide on continuation or termination of a pregnancy.

In this particular case, the woman was reportedly married when she was 14 years old and when she began cohabitation, claims to have been abused, denied right to continue education and further her career, denied access to contraception and seems to have been forced to have a pregnancy against her wishes. She discovered that she was pregnant when she was already 17

weeks up and was able to access any care only after she reached her maternal home. By then she had crossed the 20 week mark. She is reported to be an epileptic patient and was advised against taking oral contraceptive pills hence was dependent on her abusive husband taking protection, which he did not. We believe both the Honorable High Court of Bombay and the Supreme Court, should have considered the extenuating circumstances of Sarita and interpreted the law keeping her interest in mind. In a number of cases where the gestation was over 20 weeks, the Honorable Supreme Court and High Courts, have approved termination keeping the interest of the women at the center and relying on the reproductive autonomy of the woman. The Supreme Court had held a woman's right to make reproductive choices as a dimension of personal liberty under Article 21 of the Constitution of India.

The Honorable Supreme Court has also upheld the rights and privacy of individuals and come down hard on discrimination and violation of rights. It has rightly questioned patriarchal mind sets and societal stereotypes, which are not in line with individual rights and choices. Given this we believe the observations, reported in the news article, made by the bench are not consistent with the Supreme Courts judgments and observation on rights, privacy and discrimination. We acknowledge that the reported observations is not part of the final order

Over the past few years a large number of women and providers have knocked on the doors of the Supreme Court and High Courts to seek approval for abortion, even in cases where the gestation has been below 20 weeks. The number of cases and it's reporting in media, along with the implementation of PCPNDT Act and POCSO Act, seem to have stigmatized abortion and abortion providers and is resulting in women facing barriers in accessing abortions under the MTP Act. Most of the cases have focused on specific issues and the Courts have missed an opportunity to clarify the MTP Act. We would urge the Honorable Supreme Court to clarify the MTP Act, so that unnecessary litigation could be avoided and women's reproductive rights are protected.



**PRATIGYA** Campaign for Gender Equality and Safe Abortion a network of individuals and organizations that have been working at the national and state level on issues of women's empowerment and enabling women's access to healthcare services. Pratigya focuses upon finding common ground that simultaneously addresses the serious issue of gender biased sex selection while protecting women's right to safe, legal abortion services in India.

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