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The explanation attached to the section says that a woman who causes herself to miscarry is also covered by this provision. In other words, any pregnant woman herself or any other person flouting the law as stated under this section is guilty of the offence. Voluntarily causing a woman with child to miscarry means voluntarily causing abortion of a pregnant woman. The word ‘voluntarily’ has the same meaning as given under section 39 of the Code. The stage to which the pregnancy has advanced is not really important as far as the liability of the offender under this section is concerned.

However, as regards punishment the same is important because miscarriage at an early stage is punishable with a maximum of three years’ imprisonment under the first part of the section, whereas the maximum punishment is for seven years when abortion is caused of a woman who is quick with child which means a period when the peculiar sensation of movement of the foetus is felt by a pregnant woman and this generally happens in the fourth or fifth month of pregnancy. But quickening is not a constant, uniform, and well marked distinction of the pregnant state. The provision states that if miscarriage is caused in good faith for the purpose of saving the life of the woman, then this section is not attracted. Miscarriage is the premature expulsion of the child or foetus from the mother’s womb at any period of pregnancy before the term of gestation is completed. If there is no pregnancy in fact, offence under this section cannot be committed.

A provision like this exists in the Offences against the Persons Act, 1861 in Britain. A person attempting to cause miscarriage but failing to do so is punishable under section 312 read with section 511 of the Code. In Queen Emp. v. Aruna Bewa where the pregnancy was almost mature and an

attempt at miscarriage resulted in the birth of the child, it was held that a conviction under section 312 was bad in law but the accused was guilty under section 312 read with section 511 for attempting to cause miscarriage. The Delhi High Court has ruled that provisions under section 312 can even apply to a pregnant woman herself who causes her own miscarriage. In the year 1971 the Parliament enacted the Medical Termination of Pregnancy Act, 1971 with a view to liberalise abortions and also minimise illegal abortions which have been taking place in India on a large scale, mostly by quacks. The Act, a small one with only eight sections, recognises a woman's right to privacy, space and limit pregnancies and take decisions with respect to her own body.

Encouragement to bring down population growth rate and permitting terminating unwanted pregnancy of a married woman because of failure of contraceptive device are other important features of the Act. The pregnancy can be terminated only by a registered medical practitioner where there is a risk of life of a pregnant woman, or risk of grave injury to her physical or mental health, or the pregnancy is caused by rape, or a substantial risk exists to the effect that if the child is born it would be severely handicapped because of physical or mental abnormalities, or where contraceptive method of a married woman has failed, or there exists a risk to her health because of her actual or reasonably foreseeable environment. The offence under this section is non-cognizable, bailable and non-compoundable, and is triable by magistrate of the first class where miscarriage falls under the first part of the section, and by court of session where it falls under the latter part of it.