

Miscarriage and Legal Injustice: A Survey-Based Proposal for Reforming Reproductive Laws in Bangladesh

Rehnuma Chowdhury

Assistant Professor, Department of Law, University of Information
Technology and Sciences, Dhaka, Bangladesh.

***Correspondence:** Rehnuma Chowdhury

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ABSTRACT: This study will discuss reproductive right and the
law in Bangladesh particularly how miscarriages are
canonized under the existing law. With very high pregnancy
loss rates and poor access to reproductive health services,
miscarriages are commonly punished or disgraced in the
laws of Bangladesh, which are dated colonial regulations as
well as formed by societal-cultural prejudices. Based on the
survey conducted among women, healthcare, and legal
practitioners throughout Bangladesh, the research establishes
that there is a lot of confusion, fear, and mistrusts when it
comes to determining the legal implications of losing a fetus
through a miscarriage. The results describe structural
weaknesses in the legal immunity, insufficient medical
standards, and ignorance on the part of citizens, as well as
the authorities. On these reflections, the discussion of the
paper introduces a set of suggestions of legal and policy
changes to decriminalize the loss of a pregnancy, increase
access to reproductive health services, and harmonize the
local laws with international human rights law.

Keywords: *Miscarriage, Reproductive rights, Legal
injustice, Criminalization, Law reform.*

1. Introduction

Miscarriage (or spontaneous abortion) is the premature loss of a pregnancy before the fetus is fully viable and millions of women experience it. Despite the relatively high rate of the problem of miscarriage as being rather frequent and emotionally traumatizing, the general attitude of society and the legal response that it creates to the problem of miscarriage is conventional in ancient stigmas predominantly in the case of those societies where abortion rights remain taboo. In Bangladesh, the country has not yet switched to new legal framework on this parameter besides the fact that the country operates on the system of colonial-era penal codes that do not provide the difference amid intentional abortion and involuntary pregnancy termination. This uncertainty has brought various cases of women who experience miscarriages into legal trouble, police persecution, or even prosecution, adding misery to the trauma. Because of the lack of legal clarity and the stigmatization of the process of loss of pregnancy, women, particularly women who belong to a marginalized or rural environment, with an already insufficient number of reproductive services, inefficient medical services, and high rates of gender-based discrimination, are being affected disproportionately. (Hafsah Mahzabin Chowdhury, 2025) Moreover, medical practitioners, in most instances, express fear of facing charges in event of miscarriage treatment hence resulting to medical negligence or delays in the administration of treatment. Such structural obstacles lead many questions regarding the safety of women rights, bodily autonomy, and the state as a party to the international human rights. This paper interrogates the role played by existing legislation in Bangladesh towards the legal and social marginalization of women who undergo miscarriage. Based on original survey data of the women afflicted, legal scholars and healthcare professionals, the research reveals a data set of injustice in the law that must end now. This paper will present an in-depth ground strategy that can lead to the decriminalization of miscarriage, the safeguarding of reproductive rights, and the affirmation that the law should be exploited and used as an instrument of justice and not one of punishment by analyzing the current legal framework critically and adding empirical data to it.

2. Objective of the Study

- To explore the legal and social issues surrounding miscarriage among the women in Bangladesh.
- To recommend the essential changes to the laws on reproduction system upon the results of the survey.

3. Methodology of the Study

As an instrument of the research, a mixed method survey design was utilized to reveal the attitudes of the respondents toward a miscarriage, legal regulation, and social relationships. The respondents selected to participate (n=100) were citizens of Bangladesh including twenty healthcare professionals, twenty legal experts, and sixty women, and all data was gathered based on the technique of combining structured questionnaires and in-depth interviews. All the participants voluntarily completed the questionnaire. In this study, Quantitative method was used, and simple percentage formula had been applied to analyze the collected data and presented in a table for analysis.

4. The Legal and Social Injustice of Miscarriage in Bangladesh

By merely glancing between the law and societal systems of Bangladesh to miscarriage one can detect a remarkable discrepancy existing between the reality and the legal explanation. Miscarriage is the medical term used to refer to the spontaneous loss of a gestation in the female body. It is a proven natural course of the reproductive system of a woman. However, the dominating legal framework regards miscarriage as more or less the same as abortion, which not only makes criminalizing the reproductive health processes of women but also leads to an insane sense of fear, stigmatization, and legal confusion.

4.1 Legal Ambiguity and Criminalization

Under the Penal Code

To begin with the main statutory document that forms the basis of our legal stand on miscarriage, it is the Penal Code of 1860. In this code, abortion together with all the

practices meant to end a pregnancy are specifically prohibited. The mentioned law, section 312, makes a voluntary procuring of the miscarriage illegal, without exception even where the pregnancy is procured to save the life of the mother. Penalty may be an imprisonment term (up to three years), a fine or both. Under section 313, A person who induces miscarriage without the consent of the woman will be punished by an imprisonment term not more than seven years and up to fines. Section 314 stipulates that an individual (physician) or other person who breaks the law and administers medicine or medical procedure that causes miscarriage and subsequent death of the woman, would be sentenced to ten years of imprisonment with a corresponding fine. Sections 315-316: Address the issue of causing miscarriage that leads to death or injury of the child. Section 318 of the Code, cover-ups of birth involve getting rid of the body of the dead fetus. (Laws of Bangladesh, n.d.).

This legislation treats two events miscarriage and abortion differently, and this is confusing, and causes fear to women who miscarry naturally. Any miscarriage or abortion that is not very strict and specific can be taken to court.

Under the Constitution of Bangladesh

Miscarriage and abortion are not mentioned directly in the national Constitution of Bangladesh; however, the right to life is determined (Article 32) and specific responsibility of the state is expressed to deliver healthcare (Article 18). (Laws of Bangladesh, n.d.)

4.2 Legal Gaps in the Menstrual Regulation (MR) Framework

Although abortion is predominantly not permitted, there is a Menstrual Regulation program in Bangladesh and termination of pregnancy is open to around 10-12 weeks after the last period. The law does not permit MR but controls it as a family planning policy under the family planning policies as a public health service. MR services are numerous and governed by the Ministry of Health and Family Welfare; they are one of the means of lowering unsafe abortions. (Crouthamel, 2021) MR is also not necessarily a law, only a policy, so during some time there exists no legal protection

of women or providers afterward. Abortion is also illegal after the MR limit unless it is to save the life of the mother.

4.3 Social Stigma and Medical Hesitation

In addition to the juridical structure, the existing cultural values and societal perceptions of women reproductive rights clinch the situation. Miscarriage is often, interpreted as the fault of the woman, or even taken as a hidden form of abortion. This kind of stigmatization indicts women and makes them hesitate to seek medical help which can have disastrous results. In addition, healthcare practitioners might withhold or withhold care due to the fear of legal penalties or failure to have proper education on the law of reproduction. This atmosphere is a ground of mistrust, it leads to lack of reporting of problems encountered, it leads to women not getting proper and safe medical care. (Reza.K.L, 2023)

4.4 Contradiction with International Human Rights Commitments

Bangladesh has signed several international agreements on human rights such as CEDAW and the International Covenant on economic, social and cultural rights and signing these holds implications of the state obligation to lead women in the right to health, dignity and non-discrimination. (World Health Organization, 2024) However, the current legal framework on miscarriage and abortion is by no means compatible with these statements. The criminalization of miscarriage-related care in general devalues the reproductive agency and leaves women degraded of their bodies.

5. Comparative Study: Miscarriage Laws in Bangladesh and India

Both India and Bangladesh have provided their statutes of abortion alongside the Penal Code of 1860 which was released by the British colonialists and had made miscarriage (termination of pregnancy) a criminal offense, with exception of those done to save the life of the pregnant woman. The later developments have been very different both in legal and policy terms. In Bangladesh, the ban on abortion is criminalized in the Penal Code and there has been no change in the law that seeks to increase the access. However, there is a government sponsored avenue through a policy known as Menstrual Regulation (MR). MR enables the end of the pregnancy

for 10-12 weeks, which is often carried out by specially trained paramedics or doctors, although the practice of terminating a pregnancy has not been enacted in legislation. The access is not uniform particularly in rural areas and there is serious social stigma and religious conservatism that limits reproductive rights. India has come up with a far more liberal model. In 2002, and 2021, the Medical Termination of Pregnancy (MTP) Act, 1971 was amended. In the latest amendment, a variety of reasons including risks to physical or mental health, fetal abnormalities, rape, incest, and contraceptive failure among others could be given as reasons behind the termination; it does not depend on the marital status. The 2021 amendment also raised the gestational limit to 24 weeks in exceptional cases and eliminated gestational limits in the case of serious fetal abnormalities (with medical-board exception). (World Health Organization , 2021) Despite there being inequality in rural access, the laws that govern India today provide a notably more liberal environment, within which one can access safe abortion, as compared to the law in Bangladesh. (Dhaka Tribune, 2022)

6. Result and Discussion

Survey Question	Yes (%)	No (%)	Undecided/Don't Know (%)
Have you or someone you know had a miscarriage?	38%	62%	
Do you think women in Bangladesh face social stigma after miscarriage?	68%	28%	4%
Have you heard that Bangladeshi law may criminalize miscarriage in some circumstances?	58%	36%	6%
Do you consider that current reproductive legislation in Bangladesh is unjust to women?	73%	17%	10%

Should miscarriage be considered a health condition instead of a crime?	86%	9%	5%
Do you think that present reproductive laws of Bangladesh need to be changed and updated?	93%		7%
Do you think there should be awareness campaigns regarding reproductive rights and miscarriage?	90%	4%	6%
Do you agree that the government should invest in programs that train law enforcers and health practitioners on reproductive health and rights of women?	95%	2%	3%

Table-01: Public Attitudes Toward Miscarriage, Criminalization, and Legal Reform in Bangladesh.

The current survey explores the wide-ranging consequences of miscarriage in Bangladesh, with a focus on emotional distress, legal uncertainty, social stigmatization, and the resultant need to address empathetic legal change.

Prevalence of Miscarriage:

Miscarriage is regarded as a very common complication of the reproductive system and a significant number of women are reported to have experienced it. Often these losses come with a huge emotional and social stress accompanying it.

Legal Ambiguity:

Women consistently face the problem of lack of awareness on the legal entitlement in the event of miscarriage.

Social Stigma:

The exacerbation of trauma on women is often characterized by the existing societal and cultural attributions that either blame individuals or engage in discriminatory activities.

Inadequate Medical and Legal Support:

The healthcare professionals note that there is a lack of carefully defined legal guidelines and well-established institutional support mechanisms.

Call for Reform:

Most of the respondents such as those in the legal field supported stronger legislation and expressed the need to legislate more explicitly and empathetically in a manner that would protect the reproductive rights of women.

7. Recommendations***Legal Reform:***

- Explain & Deregulate the Penal Code Sections 312 -316 and differentiate the legal regulation of menstrual (MR), miscarriage and abortion; decrease criminal responsibility among women particularly in case of rape or cases involving of minor pregnancy.
- Broaden legally accepted MR and MRM reasons that are concerned with saving the life of the mother to cover such things as rape, minors, and incapacitation as is happening in other countries.
- The reform of law should work towards harmonization of domestic laws with international obligations relating to human rights.

Remove Consent Requirements

Remove spousal or guardian consent requirements which are routinely forced even though not codified.

Public Awareness Campaigns:

Training the masses to eradicate misinformation and prejudices about miscarriage.

Healthcare Improvements:

- Educating healthcare providers in matters of legal rights and handling of cases of miscarriage with sensitivity.
- All facilities should adequately equip and staff to perform MR, particularly in rural and primary care facilities.

Monitoring Data System:

Improve record-keeping and structured follow up of MR, miscarriages and to discover gaps and quality concerns in the system.

Support Systems:

Setting up counseling or legal aid to women who had miscarriage.

8. Conclusion

This study highlights, why there is a necessity of modernizing outdated and penal reproductive laws relating to miscarriage. Women who have a miscarriage are disproportionately impaired by legal and social injustice and this situation is empirically proved with the help of the generalized survey. As a counter measure, the study recommends rights-based legal reforms that ensure humanitarian treatment, resolving the decriminalization of miscarriage, and defending the dignity, and the reproductive autonomy of women in Bangladesh.

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