

Abortion case could set an ugly precedent

**By Leslie Cannold
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We should not further restrict women's access to late abortions, writes Leslie Cannold.

The charging of Dr Suman Sood for manslaughter and procuring an unlawful abortion in NSW is the first such prosecution in that state since 1971, though it was only seven years ago that two West Australian doctors were charged as criminals for providing terminations. Indeed, Australia has a long history of prosecuting women and doctors over abortions and, because of the consistent refusal of politicians to legislate progressively on the issue, common law rulings have had a profound impact on the development of abortion law.

What might Sood's prosecution - for terminating the pregnancy of a woman who was between 21 to 24 weeks pregnant - mean for the women of NSW and the nation? If found guilty, she could be jailed and deregistered, relieving women of the risks they were unknowingly assuming by placing themselves in the doctor's care.

But the DPP's prosecutory strategy may also pose significant risks to Australian women's reproductive autonomy and health. If successful, it will reaffirm the regulation of abortion under the Crimes, rather than the Health Act, and by so doing the potential criminality of abortion service providers and their patients. This reassertion of the quasi-illicit nature of the procedure will ensure that it continues to be surrounded by secrecy and stigma and, as a result, that women's access to quality information and timely services suffers.

It will also give a new millennium stamp of approval to the law's patronising contempt of women's capacity to make important moral decisions for themselves and by themselves, without judicial approval or medical oversight. Such a reconfirmation of women's status as second-class citizens in need of patriarchal guidance could be felt across Australia. Not just because of the anti-choice rabidity of powerful players in the Howard Government, but because of its potentially persuasive effect on states with similar legal frameworks. Reconfirmation of the legal status quo in NSW, in other words, might lead other states, like Victoria, to affix fresh seals of approval on their existing abortion laws. A particular worry is that the Bracks Government, now modernising the criminal code, might leave Victoria's archaic abortion statutes untouched.

But it is the manslaughter charge that has the greatest potential to undermine women's reproductive autonomy, although it may also offer the possibility of more ethical care for pregnant women. As usual, it is the small number of women seeking post-20-week terminations that are at greatest risk of a loss of dignity, quality of care or services all together. Figures suggest most women terminating later are responding to the diagnosis of serious foetal defects, including conditions that will lead the baby to suffer and die shortly after birth. Not surprisingly, some women and couples opt for termination as the most ethical option in such tragic, no-win circumstances.

But what many people do not know is that women are finding it harder and harder to access post-20-week terminations inside and outside of hospitals. Across the country, only a few clinics provide them. Increasing numbers of hospitals are refusing to offer any on religious grounds, while others have adopted time-consuming and secretive assessment processes that deliver verdicts - on unclear grounds - to women about their eligibility for services.

In addition, most clinics and hospitals compel women to labour and give birth to their dead baby, despite clear and convincing evidence that in skilled hands, surgical termination improves women's physical and mental outcomes.

Unlike a surgical procedure, induction of labour carries the risk of a foetus being born alive. This is what happened in Sood's case, and may account for the manslaughter charge. Of course, not all foetuses born alive are viable. A recent study of British and Irish birth outcomes found that of those born before 24 weeks, only 15 per cent left hospital and half of these had significant cognitive and neurological impairment.

However, the low survive-and-thrive rate of infants at "threshold" viability does not change the moral and medical unacceptability of allowing foetuses to live, and possibly suffer through, the abortive procedure. If a guilty verdict in Sood's case means that doctors will in future select procedures where this cannot happen, then women and their families - knowing they have acted to prevent suffering, not cause it - will benefit. What we can't allow is medical practitioners using the manslaughter charge as another excuse to further tighten women's access to post-20-week procedures. Nationally, the numbers of such procedures is small (about 4 per cent), but each one is a tale of heartache, ethical dilemma and considered moral decision-making by the only people with the information to know what's necessary and right: the woman and, if she has one, her partner.

Society must not tolerate rogue medical providers. But neither must we allow isolated cases to deprive women and couples of critical health care when they need it.

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