

DELHI HC DENIES PERMISSION TO AN UNMARRIED WOMAN FOR AN ABORTION, SC ALLOWS LATER: AN INSIGHT INTO MTP ACT

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IN NEWS:

The Delhi High Court just a few days ago, rejected permission for an unmarried woman to medically abort a 23-week gestation on Friday, July 15, 2022. This drew a lot of attention because the United States supreme court recently made a historic judgement by striking down the Roe v. Wade case, which legalised abortion in 1973. The Supreme Court later allowed the abortion within 24 weeks conceiving even out of a consensual relationship.

BACKGROUND:

Abortion is the exclusion of a foetus from the uterus prior to the stage of viability (in human beings, generally about the 20th week of pregnancy). An abortion may take place spontaneously, in which case it is also known as a miscarriage, or it may be brought on by one's own free will, in which case it is often called an induced abortion. Previously, abortion was not allowed at all, whether it was voluntary or involuntary. Following the case of Roe v. Wade 410 US 113 (1973), abortion was made legal and also known as one of the essential rights under fundamental rights. It is included as a part of the Right to Privacy. The Medical Termination of Pregnancy Act was passed in 1971 due to an increase in abortion rates, majorly due to female foeticide and maternal mortality rates due to unsafe abortions. India introduced the medical termination of pregnancy 2 years before the United States legalised abortion. Prior to this law, abortion was illegal as well as punishable under sections 312 and 313 of the Indian Penal Code. It states that inciting a pregnant woman to miscarry willingly is a punishable offence with a sentence of three years or a fine or both. The exception is when it's done in order to save the life of the woman who is pregnant. The preamble of the Medical Termination of Pregnancy Act, 1971 says that it is "an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto." The preamble clearly specifies the main objective of the MTP act. Only some pregnancies will be allowed to be terminated under the MTP Act by registered medical practitioners. Solely

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married women and rape victims were permitted to attempt abortions under this act, and no other woman, like a widow, divorcee, or unmarried, was allowed to have an abortion. Furthermore, they were coerced to proceed with their pregnancy or they had to go for a fatal, illegal abortion. Even married women had to prove that their pregnancy was because of a failure of contraceptive measures, which is again a violation of the right to privacy. This resulted in demands for amendments, which included a minor girl in 2019, who was a rape victim and was coerced to give birth to her rapist's child after a high court rejected her request for an abortion. This act was apparently amended in 2021, in which they made changes as follows: It permitted unmarried women to also terminate gestation in the case of failure of contraceptive methods, in addition to married women. This decision was considered progressive. It was suggested that an opinion of one registered medical practitioner (RMP) is mandatory for termination of pregnancy up to 20 weeks of pregnancy, but an opinion of two RMPs is required in the case of termination of pregnancy between 20 and 24 weeks of gestation, and an opinion of the state-level medical board is compulsory for a pregnancy to be terminated after 24 weeks in the case of substantial foetal abnormalities. This amendment also increased the upper gestation limit from 20 to 24 weeks for some special categories of women, which included the survivors of rape, victims of incest, and some other vulnerable women, like differently abled women and minors, among others. This amendment also emphasized the right to privacy, by declaring that "the name and other particulars of a woman who opted for an abortion shall not be revealed, the exception being the individual authorized in any law that is currently in force."¹

The Delhi High Court on Friday declared that it will not allow a 25-year-old young unmarried woman to go through medical termination of pregnancy at 23 weeks, affirming that it would "virtually" result in "killing the child", and advised that she should bear this child and go for adoption instead.² The court also said that she decided to wait for 18 weeks in the hopes of getting married to her partner, who apparently left her. They said that the legislature has excluded consensual relationships purposefully. But the SC denied this and said that they are of the view that permitting the petitioner to suffer from an unwanted pregnancy will go against the parliamentary intent and the benefits of the act cannot be denied just because she is unmarried. They said that there is no nexus given by the parliament between married and

¹<https://www.indiacode.nic.in/bitstream/123456789/1593/1/A1971-34.pdf><https://www.indiacode.nic.in/bitstream/123456789/1593/1/A1971-34.pdf>

²<https://indianexpress.com/article/cities/delhi/delhi-high-court-abortion-8030690/>

unmarried women. They also emphasised on the fact that her relationship status has now changed since her partner left her.³

CONCLUSION

India passed an act relating to abortion rights in late 1971, earlier than the United States. It made certain provisions, making it relatively easy for at least married women to get abortions but made abortions illegal beyond 20 weeks. Though in lockdown, there were 1 million unsafe abortions in India. Obstetricians also argued that a cottage industry has been spurred on to provide unsafe abortion services. Due to an amendment last year, making it legal for beyond 24 weeks, but only when the foetus has abnormalities. But even the new amendment fails to satisfy all the women, since the act only permits abortion after 24 weeks in cases where a medical board diagnosis foetal abnormality. So, in the cases of rape, where pregnancy exceeds 24 weeks, the women have to resort to a writ petition. There's also a 75% shortage of doctors in rural areas, making it highly difficult to access safe abortions. But SC still permitted an unmarried woman to go for abortion, making it a very historic judgement.



³<https://indianexpress.com/article/cities/delhi/sc-allows-plea-end-24-wk-pregnancy-cant-deny-abortion-unmarried-woman-8044114/lite/>