

## CASE COMMENT: X VERSUS THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT. OF NCT OF DELHI & ANR

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### INTRODUCTION

Women's rights have been a topic of debate for many years. The subject of women's reproductive rights is one such discussion area. Women's reproductive rights refer to their capacity to make rational choices regarding their reproductive health, including whether or not to have children, when to have them, and how many. The right of women to get abortions has been a contentious issue in this area in particular for many years.

The Medical Termination of Pregnancy Act, introduced in 1971, was created to safeguard women's autonomy over their bodies. Certain pregnancies may be safely and legally terminated under the legislation by licensed medical professionals. The act was a progressive step towards legalizing abortion, but it did not explicitly state that single women had a right to abortion. The case on hand also deals with such a right to abortion. In the present case of X vs THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT. OF NCT OF DELHI & ANR,<sup>1</sup> the Supreme Court delivered a revolutionary judgment and emphasized the constitutional rights of Article 14 & Article 21 to the petitioner. The three-judge bench stated that all women are entitled to safe and legal abortion, the distinction between married and unmarried women is unconstitutional. All women in the country, regardless of marital status, can undergo an abortion up to 24 weeks into pregnancy to access **safe and legal abortion care**. The judgment is noteworthy due to the Apex Court's progressive stance.

### FACTS OF THE CASE

The petitioner is a consenting adult female who is unmarried and 25 years of age. She was in a consensual relationship. The petitioner was deserted by her partner, later discovered that she was 22 weeks pregnant, and filed a writ petition in the Delhi High Court to permit her to terminate her pregnancy as she is an unmarried woman. The petitioner due to her financial situation and social stigma approached the court for the termination of her pregnancy. The petitioner prayed for three points before the court:

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<sup>1</sup> Civil Appeal No 5802 of 2022

- Permit the Petitioner to terminate her ongoing pregnancy through registered medical practitioners at any approved private or government center hospital.
- Restrain the Respondent from taking any coercive action or criminal proceedings against the Petitioner or any Registered Medical Practitioner terminating the pregnancy of the Petitioner.
- Direct the Respondent to include unmarried women also within the ambit of the Rule 3B of the Medical Termination of Pregnancy Rules 2003 (as amended on 21.10.2021) for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the MTP Act, for a period of up to twenty-four weeks.

The Delhi High Court did not provide any relief to the petitioner by mentioning that only married women are permitted to obtain an abortion after 20 weeks under the MTPR, and her case does not come under any of the clauses under MTPR, 2003.

The category of women who are eligible to have their pregnancies terminated up to 24 weeks is mentioned in Rule 3B of the MTP Rules, 2003. These categories were added following the 2021 revision. It consists of survivors of sexual assault or rape or incest, minors, women with a change of marital status during the ongoing pregnancy, women with physical disabilities, mentally ill women, and women whose child born may suffer from such physical or mental abnormalities to be seriously handicapped, and women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.<sup>2</sup>

The petitioner then subsequently filed a special leave petition in the Supreme Court and argued that due to the absence of a source of livelihood and the social stigma associated with a single women's parent, continuing the unwanted pregnancy will result in immense and grave injury to her mental health.

### **LEGAL ISSUES BEFORE THE COURT**

- Validity of the exclusion of unmarried and single women under Rule 3B of the MTP Rules, 2003<sup>3</sup>.
- Whether the rule is violative of Article 14 of the Constitution of India.

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<sup>2</sup> The Medical Termination of Pregnancy( Amendment) Rules,2021, Rule 3 B

<sup>3</sup> Ibid

## OBSERVATIONS BY THE SUPREME COURT

The bench comprising Chief Justice D.Y. Chandrachud, Justice A.S. Bopanna, and Justice J.B. Pardiwala observed that the approach taken by the Delhi High Court was too narrow and restrictive. The court observed that the object of Rule 3(2) (b) of the MTP Act, 1971 read with Rule 3B is to facilitate safe and legal abortion to women between 20 to 24 weeks of pregnancy which is rendered unwanted due to specified circumstances. Therefore, there is no reason or rationale for the exclusion of single or unmarried women from the ambit of the rule.

“It seems to us that to give Rule 3B a restrictive and narrow interpretation would render it perilously close to holding it unconstitutional, for it would deprive unmarried women of the right to access safe and legal abortions between twenty and twenty-four weeks if they face a change in their material circumstances, similar to married women.”<sup>4</sup>

The bench was of the opinion that purposeful interpretation was necessary and took cognizance of the amendment that substituted the term ‘husband’ with ‘partner’ and ‘married women’ with ‘any woman’. This shows that the legislature did not intend to leave unmarried women from the scope of the act. The bench noted that laws must be interpreted in light of evolving social standards, and while the MTP Act, of 1971 focused primarily on married women, it is now essential for the law to adapt and acknowledge legal non-traditional family structures.

The bench further noted that restricting the interpretation of the law to only married women would be discriminatory and go against Article 14<sup>5</sup> of the Indian Constitution. Denying access to abortion for unmarried or single pregnant women whose pregnancies are between twenty and twenty-four weeks, while allowing married women to access them during the same period, would violate the essence of Article 14 of the constitution.

The three-judge bench also observed that Article 21<sup>6</sup> of the Constitution of India recognizes and protects the right of women to undergo termination of pregnancy if it is causing grave and immense injury to the women’s mental health. The understanding of the term mental health cannot be only taken in a medical context but should also be considered in regard to common

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<sup>4</sup> X vs. The Principal Secretary Health ... on 29 September, 2022, Civil Appeal No 5802 of 2022 <<https://indiankanoon.org/doc/123985596/>>

<sup>5</sup> Constitution of India, 1950, Article 14

<sup>6</sup> Constitution of India, 1950, Article 21

parlance. Section 3(3) of the MTP act recognizes the surrounding environment of the woman when interpreting injury to her health<sup>7</sup>.

The court also observed that the right to reproductive autonomy is closely linked with the right to bodily autonomy. The decision to carry the pregnancy to its full term or to terminate it is firmly rooted in the right to bodily autonomy of the pregnant woman.

“The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to make decisions about one’s body... the woman may experience swelling, body aches, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.”<sup>8</sup>

The bench made a crucial observation on marital rape, particularly since the court has observed that even married women form a class of survivors of rape or sexual assault. Considering that the challenge to an exception to Section 375 of the Indian Penal Code, 1860 is pending before the Court, it was observed further that notwithstanding the exception in Section 375 of IPC, the words 'sexual assault' or 'rape' in Rule 3B(a) includes marital rape and sexual assault for the Act.<sup>9</sup>

## **DECISION**

The Apex Court bench comprising of Judges D.Y. Chandrachud, A.S. Bopanna, and J.B. Pardiwala opined that the Delhi High Court's understanding of the legislation was limited in scope. The Supreme Court granted an interim order in response to the woman's plea, allowing her to undergo an abortion, subject to the decision of the medical board established by AIIMS Delhi.

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<sup>7</sup> ibid

<sup>8</sup> ibid

<sup>9</sup> ibid

The court also referred to the case of *Deepika Singh v. Central Administrative Tribunal*<sup>10</sup> and acknowledged that familial relationships could take the form of unmarried or queer partnerships. Thus, legal recognition of such relationships is essential to enable individuals in non-traditional familial structures to access the benefits of the Act. The law should not be based on narrow patriarchal principles that create unjust classifications and exclude groups based on their personal circumstances. According to Article 21, the rights of reproductive autonomy, dignity, and privacy provide unmarried women with the right to choose whether or not to have a child, which is similar to the rights of a married woman. The verdict also remarks on various facets like the equal status of married and unmarried or single women, the right to reproductive autonomy, the outcome of unwanted pregnancy on the mental health of the women bearing the child, and the right to dignity.

The Supreme Court ruled that the Medical Termination of Pregnancy Rules (MTPR) were unconstitutional as they excluded unmarried women who become pregnant through live-in relationships. The Court also noted that extending the benefits of MTPR only to married women would reinforce the social stereotype that sexual activity is exclusive to married women. The Court held that unmarried women have the same rights as married women regarding their reproductive autonomy. The bench referenced the case *Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors*<sup>11</sup> and recognized that a woman's decision to give birth or not is a component of her right to live with dignity and privacy under Article 21 of the Constitution.

Denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom, as per the ruling in *S Khusboo v. Kanniammal*<sup>12</sup>. The Court held that criminal law should not be wielded as a weapon to infringe on individual autonomy, and such actions violate Article 14 of the Indian Constitution. The court referred to *Suchita Srivastava v. Chandigarh Administration*<sup>13</sup> which provided that women's right to reproductive autonomy is a crucial part of their individual freedoms under Article 21 of the Constitution, which grants them an inalienable right to physical integrity.

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<sup>10</sup> *Deepika Singh vs. Central Administrative Tribunal* on 16 August, 2022, Civil Appeal No 5308 of 2022, <https://indiankanoon.org/doc/26134676/>

<sup>11</sup> *Justice K.S. Puttaswamy(Retd) vs. Union Of India* on 26 September, 2018, <https://indiankanoon.org/doc/127517806/>

<sup>12</sup> *S. Khushboo vs. Kanniammal & Anr* on 28 April, 2010, <https://indiankanoon.org/doc/1327342/>

<sup>13</sup> *Suchita Srivastava & Anr vs. Chandigarh Administration* on 28 August, 2009, <https://indiankanoon.org/doc/1500783/>

The bench also pointed out that in the case of *Kesavananda Bharati v. Kerala*,<sup>14</sup> the Court acknowledged that dignity is a fundamental value in our legal system and an inherent aspect of humanity. The concept of dignity is the very foundation of the Constitution and the rights enshrined within it. Therefore, the Court affirmed the claimant's right to dignity under Article 21 of the Indian Constitution. Therefore, the court permitted the petitioner to undergo the termination of her pregnancy. The bench passed an interim order for the formulation of a committee of doctors to see through the termination.

## **ANALYSIS AND CONCLUSION**

In this case *X vs THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT. OF NCT OF DELHI & ANR*, the Supreme Court made a purposive interpretation rather than a restrictive interpretation. The court's decision is considered historic because of its progressive view.

The ruling aims to substantially raise the importance of the right to privacy and dignity guaranteed under Article 21 of the Constitution, along with the physical and reproductive autonomy of women. Both married and unmarried women are equally entitled to the freedom to decide whether or not to have children, as per Article 21.

The court widely interpreted the definition of "mental health", as encompassing more than just the lack of mental impairment or illness. The court noted that an unwanted pregnancy could be considered detrimental to mental health, as per Section 3(2) (b) of the MTP Act. Another noteworthy observation by the bench was that the court rejected the notion that there is a distinction between the rape of an unmarried woman by a man and that of a married woman by her own husband, as well as the assumption that a husband cannot commit rape on his wife. It was held that the term 'rape' under Rule 3B of the MTP Act cover 'marital rape' as well. Hence, the verdict is a significant milestone toward acknowledging women's entitlement to their physical and reproductive independence.

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<sup>14</sup> *Kesavananda Bharati ... vs. State Of Kerala And Anr* on 24 April, 1973, <https://indiankanoon.org/doc/257876/>