

JUSTICE AND REPRODUCTIVE RIGHTS: A CASE COMMENT ON THE SUPREME COURT'S DECISION ON MEDICAL TERMINATION OF PREGNANCY

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ABSTRACT

*This comprehensive research paper delves into the intricate legal and ethical facets of **X v. Union of India and Anr.**¹ where a 27-year-old married woman seeks legal permission for a medical termination of her pregnancy. The paper unfolds by first examining the factual background that led to this complex legal scenario. It proceeds to elucidate the Indian legal framework for pregnancy termination, notably the Medical Termination of Pregnancy (MTP) Act². The study delves into the jurisdiction of the Supreme Court and analyzes the legal requirements that must be met for granting the requested relief. Moreover, it scrutinizes the ethical and medical aspects of the case, exploring the implications of the termination and the preservation of the pregnant woman's life. The paper culminates in a robust conclusion and offers recommendations for legal professionals, healthcare providers, and policymakers dealing with similar cases.*

FACTUAL BACKGROUND

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A 27-year-old married woman has sought legal permission for a medical termination of her pregnancy, invoking Article 32³, due to significant and multifaceted concerns. The petitioner's situation is marked by unique circumstances. She discovered her pregnancy late, after approximately 24 weeks, primarily because she was experiencing lactational amenorrhea, a phenomenon in which breastfeeding leads to the absence of menstruation. Her initial lack of awareness regarding her pregnancy and the subsequent late diagnosis prompted her to consult a gynaecologist. An ultrasound scan revealed her pregnancy, estimated at around 24 weeks.

However, the petitioner faced formidable legal hurdles due to the Medical Termination of Pregnancy (MTP) Act of 1971⁴ and its accompanying rules, most recently amended in 2021. These legal provisions impose restrictions on the termination of pregnancies based on

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² Medical Termination of Pregnancy Act 1971.

³ Constitution of India 1950, art 32.

⁴ Medical Termination of Pregnancy Act 1971.

gestational age and other factors, and her case fell within the scope of these regulations. An initial evaluation by a Medical Board, specifically constituted by the All India Institute of Medical Sciences (AIIMS), advised against pregnancy termination. This recommendation was grounded in concerns about the foetus's viability and potential complications arising from the procedure, thus posing a significant challenge for the petitioner.

The case proceeded to a two-judge Bench, where it encountered a split verdict. One judge felt compelled by their judicial conscience to deny the petitioner's request based on new information from AIIMS, specifically an email raising questions about the foetus's potential viability and health. Meanwhile, the other judge emphasized the petitioner's well-being, the socio-economic factors affecting her family, and the importance of respecting her decision.

To address the differing opinions and the unique legal, medical, and ethical considerations in the case, it was subsequently referred to a three-judge Bench for further examination. This Bench, recognizing the gravity of the situation, requested more comprehensive reports from AIIMS. These reports would specifically address the nature of the foetus's condition, the impact of medication on the petitioner's pregnancy, and her mental health, particularly her history of postpartum psychosis and its management with medication. The Medical Board's subsequent assessment affirmed that the foetus showed no abnormalities, and continuing the pregnancy with revised medication was unlikely to significantly increase risks. They also acknowledged the petitioner's history of postpartum psychosis, which was currently controlled with medication, and prescribed a revised medication regimen to ensure optimal management.

MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The legal framework for pregnancy termination in India, as outlined in the Medical Termination of Pregnancy (MTP) Act⁵, is a multifaceted system with conditions that depend on the length of the pregnancy. This Act is designed to regulate and provide guidelines for the termination of pregnancies in a manner that respects the rights and well-being of pregnant women.

For pregnancies up to twenty weeks, a single Registered Medical Practitioner (RMP) plays a crucial role. The termination can be carried out based on the opinion of this RMP, which must be formed in good faith.

⁵ Medical Termination of Pregnancy Act 1971.

The law acknowledges two legitimate grounds for pregnancy termination: first, when the pregnancy poses a threat to the life or substantial harm to the physical or mental health of the pregnant woman, and second, when there is a significant risk that the child if born, would suffer from severe physical or mental abnormalities. Importantly, the Act also takes into account pregnancies resulting from contraceptive failure or alleged rape, where the mental health of the woman is considered at risk, highlighting the principle of respecting the autonomy of the pregnant woman.

Between twenty and twenty-four weeks of pregnancy, the conditions for termination become more stringent. In this phase, the opinions of two RMPs are required, and the specific categories of women for whom termination is allowed are established by rules under the Act. These categories include survivors of sexual assault, minors, individuals experiencing a change in marital status during the ongoing pregnancy, women with physical disabilities, those with mental health issues, fetuses with substantial malformations likely to be incompatible with life, and pregnancies in humanitarian or disaster settings.

In situations where immediate termination is necessary to save the life of the pregnant woman, the MTP Act⁶ makes it clear that this takes precedence over other considerations. In such cases, the length of the pregnancy, as well as the requirement for two RMPs' opinions and certain provisions related to the place of termination, are waived. This highlights the Act's emphasis on the paramount importance of preserving the woman's life.

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Additionally, the Act recognizes cases where substantial fetal abnormalities are diagnosed by a Medical Board, composed of specialists in relevant fields. The Board is empowered to permit or deny pregnancy termination after conducting a thorough evaluation. The factors under consideration include the safety of the procedure and the potential substantial risk to the foetus's life or the likelihood of physical or mental abnormalities that could seriously handicap the child.

In summary, the legal framework for pregnancy termination in India is a nuanced and comprehensive system that takes into account the length of pregnancy, specific conditions, and the expert opinions of Registered Medical Practitioners and Medical Boards. Understanding

⁶ Medical Termination of Pregnancy Act 1971.

and adhering to these provisions are vital to ensure that pregnancies can be terminated in accordance with the law while respecting the rights and well-being of pregnant women.

LEGAL ISSUE

1. What type of jurisdiction does this Court possess for adjudicating this case?
2. Is it possible for the relief requested in the writ petition to be approved?

ANALYSIS

The analysis of the jurisdiction of the Supreme Court in this case is a critical aspect of the legal framework within which the Court operates. It explores the Court's authority to hear and reconsider a case after a final judgment has been delivered. The fundamental principle underlying this analysis is the concept of finality of judgments. In the legal system, once a judgment or order is rendered and achieves finality, it is typically considered conclusive and beyond ordinary legal challenge. This principle is central to providing legal certainty and closure to disputes.

In general, there are limited routes available to challenge a judgment that has reached finality. These routes include seeking a review of the judgment, filing an appeal to a higher court, or, in the case of the Supreme Court, submitting a curative petition. These mechanisms are in place to maintain order and consistency in the legal system and to prevent endless challenges to settled matters. However, the principle of finality also imposes restrictions on the ability to recall or modify judgments. Allowing parties to freely recall orders could result in legal chaos and unpredictability. The Supreme Court has, on multiple occasions, cautioned against the practice of filing applications to recall orders, noting that it can sometimes amount to an abuse of the legal process.

There are exceptions to this general rule. One such exception is when a party directly affected by the judgment was not served with notice of the proceedings. In such cases, the Court may reconsider the order to ensure that due process and fair representation are followed. This exception aims to correct procedural irregularities that could potentially affect the integrity of the judgment.

Article 142⁷ of the Indian Constitution grants the Supreme Court the authority to issue orders and decrees necessary to achieve complete justice in any pending case. This provision is an important tool for the Court to ensure that justice is done, taking into account the specific facts and circumstances of each case. In the case of *State v. Kalyan Singh*⁸, the court recognized that Article 142⁹ of the Constitution grants it the authority to make exceptions and relax the strict application of the law based on the specific facts and circumstances of a case. This decision underscores the court's ability to tailor its judgments to the unique situations it encounters, allowing for flexibility in dispensing justice. It allows the Court to relax the strict application of the law when the situation warrants it. However, it does not grant the Court the power to disregard substantive legal provisions entirely. The primary purpose of Article 142¹⁰ is to achieve complete justice in a case, based on its unique circumstances.

In the present case, the Supreme Court invoked its jurisdiction under Article 142¹¹ for several reasons. First, the case was not an ordinary civil case; it revolved around critical medical decisions related to the termination of a pregnancy and the status of the foetus. Second, new information and previously unseen aspects of the case came to light after the initial order was issued. These developments were beyond the control of the parties and had the potential to impact the directions given by the Court. Finally, there was an immense sense of urgency surrounding the matter due to its medical and ethical implications.

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The Court's decision to invoke Article 142¹² was not aimed at creating an intra-court appeal, which is impermissible, but rather at addressing unforeseen developments in a matter of significant importance. It underscores the delicate balance between the finality of judgments and the imperative to achieve complete justice, particularly in exceptional circumstances where new information surfaces and urgency is a critical factor. The Court's role is to ensure that justice prevails, even when faced with complex and evolving situations.

⁷ Constitution of India 1950, art 142.

⁸ (2017) 7 SCC 444

⁹ Constitution of India 1950, art 142.

¹⁰ Constitution of India 1950, art 142.

¹¹ Constitution of India 1950, art 142.

¹² Constitution of India 1950, art 142.

CONCLUSION

The decision holds significant legal, medical, and ethical implications, and the Court has meticulously evaluated the circumstances and the applicable legal framework to arrive at its determinations.

Firstly, the Court notes that the length of the pregnancy has exceeded the statutory limit of twenty-four weeks. Under such circumstances, a medical termination is only permissible if it meets the requirements set forth in either Section 3(2B)¹³ or Section 5¹⁴ of the relevant law. In the present case, neither of these legal conditions has been satisfied.

In particular, no "significant fetal abnormalities," as required by Section 3(2B)¹⁵, have been identified by a Medical Board. The Court went so far as to request a secondary medical report from AIIMS to verify the accuracy of the information, and this report also confirmed the absence of any fetal abnormalities.

Moreover, the two medical reports provided by the Medical Boards do not explicitly state that an immediate termination is essential to preserve the petitioner's life, which is a prerequisite according to Section 5¹⁶. Consequently, the legal prerequisites for a medical termination have not been satisfied.

The Court recognizes that, under Article 142¹⁷ of the Constitution, it possesses the power to do complete justice. However, it refrains from issuing a directive to stop the foetus's heartbeat, as one of the options flagged in an email from AIIMS, due to various reasons. The petitioner herself expressed her preference against such a course during the hearing. Consequently, without this directive, the viable foetus faces a substantial risk of enduring lifelong physical and mental disabilities, as outlined in the medical reports.

As a result, the Court decided not to grant the prayer for the medical termination of the pregnancy, emphasizing the importance of adhering to the law's requirements and principles of justice while dealing with this complex and sensitive matter.

¹³ Medical Termination of Pregnancy Act 1971, s 3(2b).

¹⁴ Medical Termination of Pregnancy Act 1971, s 5.

¹⁵ Medical Termination of Pregnancy Act 1971, s 3(2b).

¹⁶ Medical Termination of Pregnancy Act 1971, s 5.

¹⁷ Constitution of India 1950, art 142.

The Court also addresses the arrangements for the child's delivery, confirming that AIIMS will conduct it at the appropriate time, with all related medical expenses to be borne by the Union Government. Additionally, the Union Government commits to assisting with the adoption process should the petitioner opt to give the child up for adoption, emphasizing that this decision remains entirely within the parents' discretion.

In conclusion, the application for the recall of the October 9, 2023 order has been approved, and the petition and application have been resolved as directed. This conclusion underscores the Court's careful deliberation and adherence to both statutory requirements and the principles of justice while dealing with a complex and sensitive matter that involves issues of pregnancy, medical intervention, and parental choices. It reinforces the importance of balancing legal considerations, medical realities, and individual rights in such cases.

