

**A (MOTHER OF X) V STATE OF MAHARASHTRA AND ANOTHER [2024] 5 SCR****470****Kartikeya Yadav\*****INTRODUCTION**

This case revolves around a legal and medical battle of a minor girl who wants to terminate her pregnancy after she was victimized by a sexual assault. The minor girl here referred to as 'X' is merely about 14 years old. The incident took place in September and by the time she or any person in her family knew about the incident she was 24 weeks pregnant, subsequently, the criminal proceedings and the medical examination were made. The major question that arises before the court is to judge whether the termination of pregnancy should be allowed considering the physical and mental well-being, gestational age of the fetus, and practicing the fundamental rights of the minor. The involvement of medical boards, legal authorities, and the judiciary underscored the balance between protecting the fundamental rights of a pregnant person, their physical and mental well-being, legal framework surrounding pregnancy termination. This case examines the crossroads of medical expertise, legal provisions, and individual autonomy, shedding light on the complexities inherent in such sensitive matters.

**FACTS OF THE CASE**

'X' is a minor girl aged about 14 years. An alleged perpetrator sexually assaulted her. The incident didn't come to light until she revealed it to her mother ('A' petitioner in the case) by the time she was 24 weeks pregnant, subsequently 'A' registered an FIR in Turbhe MIDC Police Station against the alleged perpetrator, Under Section 376 of the IPC<sup>1</sup> and Sections 4, 8, and 12 of the Protection of Children from Sexual Offences (POCSO) Act—2012, on March 20, 2024, 'X' was taken to the hospital for examination on March 21, 2024, and later she was transferred to the J.J. Group of Hospitals for abortion of the pregnancy. The Medical Board was constituted under the Medical Termination of Pregnancy Act, 1971, and opined that X was physically and mentally fit for termination of her pregnancy, subject to the permission of the High Court. Accordingly, 'A' (the mother of the minor girl 'X') moved to the High Court of

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<sup>1</sup> India Penal Code 1860

Judicature at Bombay under Article 226<sup>2</sup>, where the medical board denied the termination of pregnancy by issuing a clarificatory opinion because the gestational age of the fetus exceeded the statutory period of 24 weeks. Without reexamining the 'X' as the opinion of the medical board, the High Court dismissed the writ petition. 'A' raised an appeal to the Supreme Court<sup>3</sup> of India against the order where the Justice noticed that the medical report of the Medical Board dated April 3, 2024, did not deal with the impact of pregnancy on the physical and emotional well-being of 'X' accordingly directed to constitute a fresh medical board<sup>4</sup> to present an opinion on whether the termination of the pregnancy can be carried out at this stage without any threat to the life of minor? And whether carrying the pregnancy to the full term would negatively impact the physical and mental well-being of the minor. A medical board was constituted at Tilak Municipal Medical College, Sion, Mumbai, of six doctors examined the minor; later, the medical board forwarded the opinion Yes, termination can be carried out at this stage, and the risk of death is lower in termination than in full-term pregnancy, but this could cause psychological trauma to the patient. Hence, the court granted leave and pronounced to set aside the judgment of the High Court and requested the Dean at Sian Hospital to establish a team for medical termination of the pregnancy of minor girl 'X' Arrangements for the termination and post-termination shall be made by the state. Subsequently, on April 26, 2024, the Dean at Sian Hospital wrote a letter to the Additional Solicitor General stating a change of statements of minor parents as they wanted a living baby, which they will give to their relative for adoption, because of which the Dean at Sian Hospital sought guidance from the Supreme Court. Accordingly, the court, after a detailed discussion through the video conferencing platform with parents and the medical team, informed that the parents of the minor have chosen not to press further with the termination of the pregnancy, and as a consequence, the earlier order of the court dated April 22, 2024, shall be recalled.

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<sup>2</sup> Constitution of India 1950, Art 226

<sup>3</sup> Constitution of India, Art 136

<sup>4</sup> The Medical Termination of Pregnancy Act, 1971

## LEGAL ISSUE

1. Whether the opinion of the medical board reflects the effect of pregnancy on the pregnant person's physical and mental health.
2. Whether the MTP Act and the reproductive rights of a pregnant person give importance to their consent.
3. Whether the courts shall intervene in matters regarding pregnancy termination.

## OBSERVATION OF THE SUPREME COURT

The court is of the opinion that the RMP, medical boards, and the High Court must balance the legal intent of the MTP act and the Fundamental right of the pregnant person seeking termination, the whole object of filing a Writ Petition under article 226 of the Constitution of India is to enforce the fundamental rights guaranteed under Part III of the Constitution of India in doing so the court should refer the opinion of the medical board constituted under the MTP Act thereafter apply their judicial mind to the opinion the exercise of the jurisdiction of the courts would be affected if they did not have the advantage over the opinion of the medical board. The Supreme Court in XYZ vs State of Gujarat<sup>5</sup> held that the medical board or the High Court could not refuse abortion merely on the ground that the gestational age of the pregnancy is above the statutory period. The medical board at first stated that the pregnancy may be terminated with the permission of the High Court since the gestational age of the fetus was a permissible age for termination but the medical board did not elaborate on the change in circumstances, as a result, the board has to issue a clarificatory opinion on its earlier opinion without reexamining the minor which raises the basic issue of fear of prosecution among Registered Medical Practitioners for which the court referred to a judgment X vs State (NCT of Delhi)<sup>6</sup> where a three-judge bench of the Supreme Court also recognized that fear of prosecution among Registered Medical Practitioners (RMP) is a major barrier for pregnant persons who want to terminate their pregnancy safely and legally. The basic legislative intent of the MTP Act is to protect the health of a pregnant person and facilitate safe, hygienic, and legal abortion, Shah Committee report<sup>7</sup> recommends liberalizing the abortion laws in India it

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<sup>5</sup> 2023 SCC Online SC 1573

<sup>6</sup> [2022] 7 SCR 686; (2023) 9 SCC 433

<sup>7</sup> Report of the Committee to study the question of Legislation of Abortion, Ministry of Health and Family Planning, Government of India, dated December 1966

states two postulates: Firstly, the health of a pregnant person is most important and secondly disallowing termination does not stop abortions it only stops safe and accessible abortions.

## DECISION

After examining all the facts and circumstances of the case the court has issued the direction to the state to accommodate the petitioner for her delivery and the charges of hospitalization of the minor girl also if the parents of the minor girl want to give that child to adoption the state shall take all necessary steps in accordance with the provisions to accomplish this exercise. The court also provides guidance for the medical board that in forming the opinion on the termination of pregnancy they must not restrict themselves to the criteria under Section 3(2-B) of the MTP Act but also evaluate the physical and mental well-being of the pregnant person while issuing the clarificatory opinion the medical board must provide sound and convincing reasons for any change in the opinion. The court also raises its concern about the consent of the pregnant person in the termination of the pregnancy which is the most important.

## ANALYSIS

Section 3(1) of the MTP Act protects Registered Medical Practitioners from the fear of prosecution for forming an opinion in good faith on whether the pregnancy may be terminated this is because the Medical Termination of Pregnancy requires to empower the Registered Medical Practitioners (RMP) to form such opinion same applies to the medical boards under Section 3(2-C) and 3(2-D) when there fear of prosecution in the mind of RMP or the medical boards it directly jeopardizes the fundamental freedom of pregnant persons guaranteed under Part III of the Constitution of India, it is also reflected in the judgment that the limitation of the length of the pregnancy can be removed under Section 5 of the MTP Act regardless of the gestational stage of the fetus if the medical practitioner is of the opinion formed in good faith that the termination of the pregnancy is immediately necessary to save the life of a pregnant person also under Section 3(2-B) it is stated that no limit shall apply to the termination of pregnancy if there is any substantial abnormalities because substantial abnormal fetus can cause more harm to the pregnant person than any other circumstances it is also recommended by the Shah Committee report<sup>8</sup> that liberalizing the abortion laws in India is necessary for the safe and hygienic pregnancy termination the report states two postulates Firstly, the health of

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## CONCLUSION

An analysis of the case and all its facts and legal issues has brought us to the following learnings. Medical boards cannot limit the termination of the pregnancy merely on the criteria given under Section 3(2-B) of the MTP act but must also evaluate the physical and mental health of the pregnant person, consent of a pregnant person in the decision of termination of pregnancy and reproductive choices is the most important in case if there is a difference of opinion between the pregnant person and their guardians.

