



REPRODUCTIVE AUTONOMY ON TRIAL: A CRITICAL ANALYSIS OF X V. UNION OF INDIA (2022–2023)

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ABSTRACT

The series of judgments collectively known as X vs. Union of India (2022-2023) marks a significant shift in the Indian judicial tradition on the issue of reproductive rights. These cases, adjudicated within the context of the Medical Termination of Pregnancy Act, 1971 (as amended in 2021), presented the Supreme Court of India with the crucial question of what constitutes the essential right of women to intimate, personal choices about their own bodies in the context of reproductive autonomy and the constitutional guarantee of the right to abortion under Article 21 of the Indian Constitution. This case commentary offers a critical assessment of the factual context, legal questions, arguments raised by the parties, and judicial reasoning used by the Court in the 2022-2023 judgments. It is submitted that, while the Court made significant progress in recognising the right to reproductive choice as a part of dignity and decisional privacy, the Court's increasingly greater reliance on opinions of medical boards and statutory limitations in the later judgments indicate a cautious and measured approach. This case commentary suggests that, while the X v/s Union of India series of judgments enriched the debate on the right to reproductive autonomy, it also indicates the limitations of judicial protection of the right to abortion in the absence of comprehensive legislative measures.

Keywords: Medical Termination of Pregnancy Act, 1971, Article 21, Constitution, Reproductive Rights, Supreme Court.

INTRODUCTION

Reproductive autonomy is a vital part of the right to individual liberty, bodily integrity, and dignity under Article 21 of the Indian Constitution.¹ The Indian constitutional tradition has

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¹ Constitution of India, art 21.

developed over time to recognise that the right to make personal choices, including those about reproduction, is at the heart of individual liberty.² The group of cases that are collectively known as *X vs. Union of India* is an important milestone in this development.³

The cases, which arose in the context of the Medical Termination of Pregnancy Act, 1971, as amended in 2021, forced the Supreme Court to construe the statutory limits of abortion within the context of constitutional guarantees.⁴ The Court was faced with the task of reconciling the reproductive autonomy of women with the intent of the statute, medical views, and the issue of fetal viability. This commentary will critically evaluate the facts, issues, and holdings of the *X v. Union of India* decisions.

FACTS OF THE CASE

In the case of *X vs. Union of India* (2022), the petitioner, whose identity was anonymised, petitioned the Supreme Court of India for the opportunity to end her pregnancy after exceeding the legal gestational age set by the Medical Termination of Pregnancy Act.⁵ The petitioner argued that continuing her pregnancy would result in her experiencing severe emotional distress.

The Supreme Court started by allowing the termination, subject to a medical evaluation. Later, the medical board reports caused concerns about fetal viability and high gestational age. In 2023, similar petitions were brought before the Court concerning pregnancies beyond the statutory period, including those that resulted from changes in personal circumstances, fetal abnormalities, and late access to medical care.⁶

QUESTIONS RAISED

The following legal issues arose for consideration:

1. Whether the gestational limits fixed by the Medical Termination of Pregnancy Act are absolute or open to constitutional interpretation.⁷

² *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

³ *X v Union of India* (2022) SCC OnLine SC 1321.

⁴ Medical Termination of Pregnancy Act 1971 (as amended in 2021).

⁵ *X v Union of India* (2022) SCC OnLine SC 1321.

⁶ *X v Union of India* (2023) SCC OnLine SC 1150.

⁷ Medical Termination of Pregnancy Act 1971 (as amended in 2021).

2. Whether the right to reproductive choice under Article 21 encompasses the right to end a pregnancy outside the statutory period.⁸
3. Whether the opinions of medical boards are binding on courts in cases involving abortion.
4. Whether judicial intervention can override statutory restrictions in exceptional circumstances.

ARGUMENTS FROM BOTH SIDES

Petitioners / Claimant / Appellant: The petitioners submitted that the right to reproduce is an integral part of the right to personal liberty, privacy, and dignity under Article 21.⁹ It was submitted that compelling a woman to carry an unwanted pregnancy is equivalent to an infringement of her bodily integrity and autonomy. Relying on precedents that held that the right to reproduce is within the zone of privacy, the petitioners submitted that the right to abortion is guaranteed under the Constitution.¹⁰

The petitioners also submitted that the Medical Termination of Pregnancy Act has to be construed in a manner consistent with the spirit of the Constitution and not in a mechanical or literal manner. The medical board's opinion should be advisory in nature and not contrary to the informed consent and will of the woman.

Respondents / Union of India: The Union of India argued that the Medical Termination of Pregnancy Act is the result of a “carefully balanced legislative framework” that takes into account the rights of women as well as the state’s interest in the protection of potential life.¹¹ It was submitted that the gestational periods mandated by law cannot be easily waived by court orders.

The respondents also highlighted the significance of medical board evaluations, especially in cases of late-term pregnancies where the risk of termination could pose a serious threat to the mother as well as the fetus. Exceeding the legal limits for terminations could result in challenges to the law, it was submitted.

⁸ Constitution of India, art 21.

⁹ Constitution of India, art 21.

¹⁰ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

¹¹ Medical Termination of Pregnancy Act 1971 (as amended in 2021).

JUDGMENTS AND RATIONALE

In its 2022 ruling, the Supreme Court has adopted a progressive interpretation of the MTP Act by recognising that unmarried women are also equally entitled to access abortion services.¹² The Court held that the law must be interpreted in a manner consistent with the principles of equality and dignity.

However, in its 2023 orders, the Court took a more measured tone. Although reaffirming the need to uphold the right to reproductive freedom, it refused to allow the termination of pregnancies based on medical board assessments about the viability of the fetus and the advanced stage of pregnancy.¹³ The Court held that after a certain point, the interests of the fetus and medical factors become more important, and as such, judicial restraint is necessary.

ANALYSIS OF THE JUDGMENT

The *X vs. Union of India* series of cases represents both progress and ambivalence in the Indian reproductive rights jurisprudence. On the positive side, the Court categorically held that reproductive freedom is not dependent on marital status and that decisional privacy is a constitutional right.¹⁴ This is a departure from the patriarchal assumptions that were hitherto implicit in the abortion laws.

However, the Court's growing tendency to rely on opinions of medical boards in subsequent cases gives rise to serious concerns. The Court's tendency to be guided by medical opinions has the potential to undermine the pregnant woman's autonomy in favour of medical paternalism. The comparative study of jurisprudence indicates that although medical opinions are important, they should not override the autonomy of the pregnant woman.¹⁵

Moreover, the Court did not go to the extent of applying stringent constitutional review to statutory gestational periods.¹⁶ The Court's hesitation in doing so reveals the tension between constitutional morality and the doctrine of legislative supremacy. Judicial restraint, on one hand, maintains the balance of power between the judiciary and the legislature. On the other

¹² *X v Union of India* (2022) SCC OnLine SC 1321.

¹³ *X v Union of India* (2023) SCC OnLine SC 1150.

¹⁴ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

¹⁵ *A v Secretary of State for Health* [2017] UKSC 41.

¹⁶ *X v Union of India* (2023) SCC OnLine SC 1150.

hand, it also reveals the vulnerability of reproductive rights when the statutory structure fails to be sufficiently responsive to reality.

The lack of a strong dissenting opinion in the latter cases further emphasises the Court's conservative approach. Thus, although the cases have contributed to the discourse on reproductive freedom, they also illustrate the Court's reluctance to protect reproductive rights without comprehensive legislative action.

CONCLUSION

The X vs. Union of India (2022-2023) cases represent an important landmark in the reproductive rights jurisprudence of India. The cases reiterate the importance of a woman's right to make decisions about her body to the cause of constitutional liberty, dignity, and privacy.¹⁷ However, the cases also reveal the tension between individual autonomy and medical/legislative regulation.

Although the Supreme Court has made commendable progress towards inclusivity and recognition of the autonomy of decision-making, the cautious tone adopted by the court in later decisions highlights the need for more definitive legislative guidance. Taken together, this series of cases illustrates that reproductive justice cannot be achieved through judicial interpretation alone. Rather, a holistic approach that incorporates judicial interpretation, legislative responsiveness, and social transformation is necessary to guarantee the protection of reproductive rights in India.

¹⁷ Constitution of India, art 21.