
CASE NOTE: X VERSUS THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT. OF NCT OF DELHI & ANR (2022)

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ABSTRACT

In the matter of X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi & Anr. (2022), the Supreme Court has deeply departed from the traditional marriage-oriented approach in understanding reproductive autonomy in this country. The case presented an important issue of whether the provision 3B of the Medical Termination of Pregnancy Rules, 2003 should deny unmarried women the right of extending the time limit for the abortion procedure. Through this paper, I will in detail analyse the purposive interpretation of the Medical Termination of Pregnancy Act, 1971 made by the Court using the constitutional rights of equality, dignity, privacy and personal liberty enshrined in Articles 14 and 21 of the Constitution. I will demonstrate how the Court managed to abolish the existing discriminatory distinction between married and unmarried women and broaden the meaning of mental health in order to apply it to the social, economic and psychological implications of an unwanted pregnancy. The article explores the Court's acknowledgement of conjugal rape under Rule 3B and its consequences in terms of women's reproductive and bodily control. This research claims that the decision does not only expand the right to abortion but represents a constitutional refutation of the socio-political traditions making reproductive rights conditional upon marriage. Simultaneously, the judgment demonstrates restrictive nature of the MTP legal framework and indicates the necessity for unambiguous provisions in the law on such issues.

X VERSUS THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT. OF NCT OF DELHI & ANR (2022)

Court Name: - The Supreme Court of India
Jurisdiction: - Civil Appellate Jurisdiction
Appeal Number: - Civil Appeal No 5802 of 2022(Arising out of SLP (C) No 12612 of 2022)
Petitioner: - X
Respondent [s]: -The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr
Bench: -Dr Dhananjaya Y Chandrachud J., A S Bopanna J., J B Pardiwala J.
Date of Judgement: -September 29, 2022

FACTS OF THE CASE

The petitioner is a 25-year-old unmarried woman, a permanent resident of Manipur, who was in a consensual relationship that culminated in her pregnancy. Having been abandoned by her boyfriend, she discovered her pregnancy when she was about 22 weeks pregnant. Thanks to huge financial problems and social stigma of being an unmarried mother, she requested a writ petition in the Delhi High Court. In her application, she asked for three principal types of relief:

- (i) permission to end her pregnancy under the supervision of registered medical professionals at an approved medical centre;
- (ii) protection against any coercive force or criminal prosecution against her or the medical professionals who would perform the termination; and
- (iii) the coverage of unmarried women under the ambit of Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (as amended in 2021), permitting terminations up to 24 weeks for certain categories of women.

The Delhi High Court rejected her plea in an order issued on 15 July 2022, expressing that she did not qualify under the conditions listed under Rule 3B, which is limited to rape or incest survivors, minors, women whose marital status has altered, women with disabilities, individuals suffering from mental illness, cases of extreme fatal abnormalities, and pregnancies that arise in humanitarian or disaster scenarios. Therefore, the Court held that a termination after 20 weeks was not legally permissible in her case.

Discontented with this ruling, the petitioner appealed to the Supreme Court in the form of a special leave petition on the grounds that the continuation of the unwanted pregnancy would cause her severe detriment to mental health, particularly because she was an unemployed graduate with no support and had social stigma and harassment of being a single mother. The Supreme Court, in its order on 21 July 2022, modified the order of the Delhi High Court and permitted the petitioner to undergo termination of her pregnancy, subject to confirmation by a Medical Board at the All-India Institute of Medical Sciences (AIIMS) that the procedure would not endanger her life.

LEGAL ISSUES RAISED BEFORE THE COURT

- The legitimacy of excluding unmarried and single women as per Rule 3B of the MTP Rules, 2003¹.
- Whether this rule infringes upon Article 14 of the Constitution of India².

CONTENTIONS OF PARTIES

Appellant

The Appellant contended that Section 3(2)(b) of the MTP Act, 1971³, and Rule 3B of the MTP Rules, 2003⁴, are arbitrary and discriminatory since they deny unmarried women access to abortion services between the ages of 20-24 weeks. She asserted that this denial contravenes Article 14 of the Constitution of India⁵ by creating an irrational classification on the basis of marital status alone. The appellant maintained that a woman's reproductive decision-making must not be made conditional on whether she is "married" or "unmarried." She argued that it seriously damages the physical and mental health of an unmarried woman to be compelled to carry an unwanted pregnancy to term, especially with regard to societal stigma, economic susceptibility, and possible lack of familial support. Further, she contended that compelling her to carry on with an unwanted pregnancy violates her basic rights of privacy, dignity, and control over her body under Article 21⁶. Therefore, the appellant persuaded for a reading of the MTP

¹ The Medical Termination of Pregnancy (Amendment) Rules, 2021, Rule 3 B

² Constitution of India 1950, Article 14

³ The Medical Termination of Pregnancy Rules, 1971, Rule 3 (2) (b)

⁴ The Medical Termination of Pregnancy Rules, 2003, Rule 3B

⁵ Supra note 2

⁶ Constitution of India 1950, Article 21

Act and Rules that does not limit reproductive rights over only married women but rather upholds the autonomy and equality of all women irrespective of their individual circumstances. Arguments of the Respondent

Respondent

The Respondent (State authorities) is represented by the Additional Solicitor General. They argued that Rule 3B(c) of the MTP Rules ⁷is to be interpreted in a broad, purposive sense so as to encompass unmarried or single women in long-term relationships. The arguments were made in an orderly manner as the following discloses:

Interpretation of the term "change of marital status": They proposed that this term should be interpreted in a general sense as a "change in the status of a relationship." This would encompass not just married women who are divorced or widowed but also unmarried women who are abandoned, separated, or deserted by their partners while pregnant.

Equivalence of live-in and marriage relationships: The Respondents emphasized the fact that live-in relationships are virtually on par with marriage relationships since women in both contexts have rights to maintenance through courts of law, and the children who result from those relationships enjoy inheritance rights.

Recognition of reproductive rights: The Respondents also argued that women are entitled to bodily integrity, decision-making autonomy, and reproductive decisions that cannot be curtailed on the basis of marriage status. A woman's right to decide whether or not she continues or aborts her pregnancy has to be protected as a fundamental right under Articles 14⁸ and 21⁹.

By making these submissions, the Respondent invited the Court to make a purposive and socially progressive reading of the MTP Act and Rules so that unmarried women would have the same legal protection that was accorded to married women.

RATIONALE

A bench consisting of Chief Justice D.Y. Chandrachud, Justice A.S. Bopanna, and Justice J.B.

⁷ The Medical Termination of Pregnancy (Amendment) Rules, 2021, Rule 3 B (c)

⁸ Supra note 2

⁹ Supra note 6

Pardiwala stated that the stance adopted by the Delhi High Court was overly narrow and limiting. The court remarked that the purpose of Rule 3(2)(b) of the MTP Act, 1971¹⁰ in conjunction with Rule 3B is to ensure that women between 20 to 24 weeks of pregnancy, whose circumstances render their pregnancy undesired, can access safe and legal abortion. Thus, there is no justification for excluding single or unmarried women from this provision.

The bench expressed that interpreting Rule 3B in a constricted manner could potentially bring it dangerously close to being deemed unconstitutional, as it would deny unmarried women the right to safe and legal abortion between twenty and twenty-four weeks if they encounter a shift in their circumstances, akin to married women. The justices believed a purposeful interpretation was vital and acknowledged the amendment that replaced the term 'husband' with 'partner' and 'married women' with 'any woman.' This indicates that the legislature did not intend to exclude unmarried women from the scope of the act. The bench noted that laws should be construed in light of changing societal norms, and whereas the MTP Act of 1971 primarily catered to married women, it has become crucial for the law to evolve and recognize non-traditional family structures.

The justices further commented that confining the law's interpretation exclusively to married women would be discriminatory and contradictory to Article 145 of the Indian Constitution¹¹. Preventing unmarried or single pregnant women from having access to abortion during the twenty-to-twenty-four-week timeframe while simultaneously permitting married women to do so—would infringe upon the fundamental essence of Article 14 of the Constitution¹². The three-judge panel also highlighted that Article 216 of the Constitution of India¹³ safeguards the right of women to seek termination of pregnancy if it poses a serious threat to their mental health. The concept of mental health should not only be understood in a medical sense but should also be regarded in the context of everyday language. Section 3(3) of the MTP Act¹⁴ takes into account the environment surrounding a woman when interpreting harm to her health.

The court additionally remarked that the right to reproductive autonomy is intrinsically connected to the right to bodily autonomy. The decision to continue a pregnancy or to terminate it is based solidly on the pregnant woman's bodily autonomy. The right to reproductive

¹⁰ Supra note 3

¹¹ Constitution of India 1950, Article 145

¹² Supra note 2

¹³ Constitution of India 1950, Article 216

¹⁴ The Medical Termination of Pregnancy (Amendment) Rules, 2021, Section 3 (3)

autonomy closely tracks bodily autonomy, which is the right to make decisions concerning one's body. The woman will experience symptoms such as swelling, pain in the body, contractions, vomiting in the morning, and limited mobility, among a variety of other side effects. In addition, it may also cause complications that could endanger a pregnant woman's life. A simple list of side effects of a pregnancy cannot appropriately portray the nightmare of forcing a woman to continue an unwanted pregnancy. Thus, the decision to continue a pregnancy or terminate it is rooted in the bodily autonomy and decision-making ability of the pregnant woman.

The bench highlighted an important point regarding marital rape, specifically noting that married women are also part of the group of survivors of rape or sexual assault. In light of the ongoing challenge to the exception in Section 375 of the Indian Penal Code, 1860¹⁵, it was further noted that despite the existence of this exception in Section 375 of the IPC, the terms 'sexual assault' or 'rape' in Rule 3B(a) encompass marital rape and sexual assault for the purposes of the Act.

DECISION

The bench of the Supreme Court, consisting of Judges D.Y. Chandrachud, A.S. Bopanna, and J.B. Pardiwala, observed that the Delhi High Court's interpretation of the law was too narrow. In response to the woman's petition, the Supreme Court issued an interim order permitting her to have an abortion, contingent upon the verdict of a medical board appointed by AIIMS Delhi.

The court also cited the matter of *Deepika Singh v. Central Administrative Tribunal*¹⁶ and highlighted that familial ties may include unmarried or queer couples. Accordingly, the recognition of such partnerships as legally equivalent is essential in order to allow individuals in non-traditional family circumstances to receive the protections of the Act. Laws should not be founded on unreasonable patriarchal standards that create unequal definitions and alienate persons based on their particular circumstances. Article 21¹⁷ guarantees that the right to reproductive autonomy, dignity and privacy will provide unmarried women equal rights to decide if they wish to have a child, similar to married women. The judgment further recognizes different components such as the equality of married and unmarried women, the right to

¹⁵ Indian Penal Code § 375 (1860)

¹⁶ *Deepika Singh v. Central Administrative Tribunal*, (2022) SCC OnLine SC 1088

¹⁷ *Supra* note 6

reproductive autonomy, the impact on women's mental health caused by unwanted pregnancies, and the right to dignity.

The Supreme Court found that, given that unmarried women who are pregnant and in a live-in relationship were not beneficiaries of the Medical Termination of Pregnancy Rules (MTPR), these rules were declared unconstitutional. The Court stated that providing MTPR screening benefits to only married women would reinforce the societal perception that sexual relations are restricted to marriage. The Court argued that unmarried women have the same rights to their reproductive choices as married women. The bench quoted from the case of Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors¹⁸ when considering that the choice of a woman to become a parent or not is an integral component of her right to live with dignity and privacy under Article 21 of the Constitution¹⁹.

The court held that the denial of safe abortion access to an unmarried woman violates her autonomy and freedom, consistent with the ruling in *S Khusboo v. Kanniammal*²⁰. The Court emphasized that the criminal law should not be used to infringe upon autonomy, as that would be a violation of Article 14 of the Indian Constitution²¹. The court referenced *Suchita Srivastava v. Chandigarh Administration*²², which outlined that the right to reproductive autonomy is an essential facet of personal liberty secured under Article 21 of the Constitution²³, which provides a right to bodily integrity.

In the case of *Kesavananda Bharati v. Kerala*²⁴, the bench noted that dignity is a core principle of our legal framework and an inherent part of humanity. Dignity lies at the very heart of the Constitution and its associated rights. Consequently, the Court upheld the claimant's right to dignity as enshrined in Article 21 of the Indian Constitution²⁵. Hence, the court allowed the petitioner to proceed with terminating her pregnancy and issued an interim order to establish a committee of doctors to oversee the procedure.

¹⁸Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors (2017) 10 SCC 1, AIR 2017 SC 4161

¹⁹ Supra note 6

²⁰ *S Khusboo v. Kanniammal* (2010) 5 SCC 600

²¹ Supra note 2

²² *Suchita Srivastava v. Chandigarh Administration* [2009] 13 SCR 989 Supra note 6

²³ Supra note 6

²⁴ *Kesavananda Bharati v. Kerala* [1973] Supp SCR 1

²⁵ Supra note 6

DEFECTS OF LAW

The case pointed to gross defects in the law governing abortion in India. To begin with, Rule 3B of the MTP Rules, 2003 ²⁶made an artificial distinction between wedded and unwedded women by restricting termination of pregnancy up to 24 weeks only to specified classes, e.g., married women whose marital status is likely to change (through divorce or widowhood), rape victims, or minors. This excluded unmarried women such as the petitioner, thus rendering the law arbitrary and discriminatory. Secondly, the MTP Act and Rules bore a marital bias, expressing archaic social perceptions that only married women engage in lawful sexual relationships, which reinforced stereotypes and were oblivious to changing social realities such as consensual relationships, live-in relationships, and single motherhood. Thirdly, the law was afflicted with imprecise and limiting drafting, as the phraseology of Rule 3B(c) ("change of marital status") was read tightly by the Delhi High Court, leading to refusal of relief until the Supreme Court applied a purposive approach.

Such uncertainty generated inconsistent court decisions and compelled women to go to courts even when their case concerned clear endangerment of mental and physical well-being. Fourth, the legal framework imposed a huge burden on registered medical practitioners (RMPs), rendering access to abortion provider-based and constituting a "chilling effect" out of fear of being prosecuted under the IPC. Such a flaw generated unnecessary delay, extra-legal requirements. Lastly, the law did not well complement constitutional rights to privacy, dignity, and reproductive autonomy under Article 21²⁷, as well as with India's international commitments ensuring reproductive rights. Lack of harmonization of domestic law with these benchmarks resulted in unmarried women being unfairly denied equal protection of law under Article 14.²⁸

CONCLUSION

In *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.* (2022)²⁹, the Supreme Court came to MTP Act, 1971 and the Rules from a purposive interpretation. To view the statute narrowly or literally would not be the correct

²⁶ Supra note 4

²⁷ Supra note 6

²⁸ Supra note 4

²⁹ *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.* (2022) MANU/SC/1257/2022

approach, but rather, the imitative aspect of the law seeks to protect women from undue, unwanted risk to health, dignity, and reproductive autonomy. To read the Act narrowly to bar unmarried women termination after 20 weeks would frustrate the overriding or essential intent of the Act. The case also is important in that it embodies a progressive, even revolutionary, ethos in regard to women's rights in India. In accepting the appeal, the Court assumed the position that both married and unmarried women are equal in reproduction. In this regard, the Court reaffirmed that Article 21 of the Constitution ³⁰embraces not merely a right to life and liberty, but all aspects of privacy, dignity, and bodily autonomy. Hence, the right to choose to continue or to not continue a pregnancy cannot depend on marital status. An important feature of the decision was the broad interpretation of "mental health" the Court gave to Section 3(2)(b) of the MTP Act³¹.

The Court stated further that mental health was more than just the absence of mental illness/disorder - mental health comprised several things, including emotional wellness, stigma associated with social issues, economic vulnerability, and coping with stress associated with an unwanted pregnancy. Hence, the Court acknowledged that an unwanted pregnancy, per se, is very harmful to mental health, and therefore any harm, will be allowed for medical termination, even for unmarried women.

The comprehensive reading fully supports the position that women's abortion is a right and a necessity, rather than mere charity. The second revolutionary aspect of this judgment was the Court's recognition of her "status as being sexually violated" by using the term "rape" in Rule 3B of the MTP Act³². Indian law has a history of not recognizing marital rape as a crime within the Indian Penal Code, continuing the antiquated determination that husbands have implied consent from a wife for sexual activity. The Supreme Court overturned this view and concluded that regardless of whether the perpetrator is a husband or stranger, it is still rape. As a result, Rule 3B is applicable to a pregnancy resulting from marital rape, and women in this situation are entitled to an abortion. The importance of this finding is significant in moving towards recognizing women's sexual autonomy in marriage, and dismissing patriarchal concepts of control over a wife's body. As such, the ruling is an essential step forward in Indian constitutional law and women's rights law. It brings law into alignment with the guarantees of

³⁰ Supra note 6

³¹ Supra note 3

³² Supra note 1

substantive equality in Article 14³³ and decisional autonomy principles in Article 21³⁴, and aligns domestic law with international human rights obligations under instruments such as CEDAW that India has signed. The judgment importantly rejects patriarchal stereotypes that understood legitimacy of sex in terms of marriage and substitutes those assumptions with justifications appealing to broader social realities including consensual relationships outside of marriage and the challenges faced by single mothers. The judgment as a whole thus fashions reproductive autonomy as an aspect of women's human rights. The ruling broadens the protective umbrella of the MTP Act, acknowledges the harms to women's health and dignity resulting from unwanted pregnancies, and takes a giant leap toward normalizing non-discrimination based on marital status and patriarchy.

³³ Supra note 2

³⁴ Supra note 6