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X VS THE PRINCIPLE SECRETARY HEALTH AND FAMILY WELFARE
DEPARTMENT, GOVT OF NCT OF DELHI & ANR (2022)

ABSTRACT –

Does the right to terminate pregnancy depend on someone's marital status, or are termination rights vested in sole status only? Is the legislative text the sole basis to understand the true essence of abortion rights, or is any interpretation needed to move beyond the myopic and constrained approach? Some questions had been raised in the landmark judgment where the Supreme Court extended the scope of abortion rights to unmarried women, and the contours of equality, dignity and privacy that are guaranteed under the Indian Constitution. This case breaks outdated norms and stereotypes through its ruling and invites deeper reflection on abortion access, balancing medical safety with personal liberty.

INTRODUCTION-

The human body has been conceived in such a way that it can perform all the necessary functions and provide pace to life. The human body has certain divisions, which are mainly of bodily structure, that are further classified as male

and female. Both genders have distinct musculoskeletal systems, in which their biological and physical functioning differ significantly from one another. The process of reproduction is one of them, where the pair must contribute equally in multiplication and procreate for the foundation of life. Each of them has a divergent role; however, the objective is identical, in which Women are meant to be child bearers, and the father is the child begetter. Numerous nations have already acknowledged the right to reproduce as a right of women, which allows a woman to carry a child in her womb without coercion and restrictions. Medical termination of pregnancy is also commonly known as abortion, which is a common gynaecological Procedure with certain moral and legal conditions. The Medical Termination of Pregnancy Act 1971 basically governs this procedure, which mainly covers conditions for legal abortion, time limits, who can perform this procedure, consent requirements, confidentiality and balance of rights. Section 312 of the Indian Penal Code states that voluntary interruption of pregnancy (VIP) is a criminal offence, although the Medical Termination of Pregnancy Act is an exception to the above-stated provision. Some of the mandates of the act are as follows-

- Section 1 explains the short title, extent and commencement of the act, where it clarifies that this act may be called the Medical Termination of Pregnancy Act and come into force after notification in the official gazette by the central government.
- Section 2 is the definitional clause where different terms are explained -
 - a) Guardian – a Person who is legally responsible for taking care of a child who is below 18 years old or a lunatic.

- b) Lunatic – Section 3 of the lunatic Act 1972, which has now been replaced with a newer act, defines a person who is mentally ill or challenged.
- c) Minor – A person who has not become an adult as per the Indian Majority Act, which is a person below 18 years of age.
- d) Registered Medical Practitioner- A Person who :
 - ☐ Hold a recognized medical qualification such as MBBS, BDS, BHMS AND BAMS, etc. (as per the Indian Medical Council Act)
 - ☐ Has registered in the state medical register (an official list of qualified doctors)
 - ☐ Has special training or experience in gynaecology and obstetrics as required by rules under this act.
- e) Medical board – The Medical board has been constituted under the act, which is going to monitor such practices.
- f) Termination of pregnancy – Means termination of pregnancy by surgical or medical methods.
- Section 3 of this act outlines when and how pregnancy can be legally terminated if :

Even if causing abortion is a criminal offence under the Indian Penal Code and the Bhartiya Nyaya Sanhita but a termination of pregnancy by a registered medical practitioner will not be punishable if foetal evacuation is performed as per the rule prescribed by this act.

 - a) Permission for abortion –
 - 1) If the pregnancy reaches only up to 20 weeks, then, with the consultation of one registered medical practitioner, termination can be allowed if the following conditions are fulfilled –

- Continuation of pregnancy has a potential risk to the woman's life or can cause serious harm to her or
 - A born child may face physical or mental abnormalities
- 2) There are certain cases, such as survivors of rape, minors, etc., where pregnancy is reached between 20 to 24 weeks and not possible to terminate, in which two registered medical practitioners must agree on above mentioned conditions for termination.
- b) If Pregnancy happens due to the failure of contraceptive methods (condom, IUD, pill) and rape, the mental stress will be treated as “ grave injury to her mental health”
- c) Pregnancy can be terminated even if beyond 24 weeks on the advice of the medical board when there are serious foetal abnormalities
- d) Every state/union territory must form a medical board which is comprised of a gynaecologist, a paediatrician and a radiologist / sonologist.
- Section 4 clarifies the place where pregnancy can be terminated – No termination can be performed other than in a hospital established or maintained by the government or a place approved for the time being for this purpose.
- Section 5 demonstrates when to permit and prohibit such practice :
 - 1) Duration of termination and permission from the registered doctor are not required in cases where pregnancy endangers the life of the woman
 - 2) If anyone who is not a registered doctor performs such a procedure and tries to end the pregnancy, this act of termination will be treated as a criminal offence under the Bhartiya Nyaya Sanhita.

- 3) A registered medical practitioner who performs such surgery is not allowed to reveal the name and essential details of the woman whose pregnancy has been ended under this law unless specified.
 - 4) If the doctor does so, he will be punished with imprisonment for up to one year, a fine or both.
- Section 6 empowers the central government to make rules regarding experience or training and a doctor's opinion under this act and mandates the central government to present such a proposal of rules before both houses of parliament for acceptance and rejection of the proposed regulations.
 - Section 7 empowers the state government to make rules in the following manner –
 - 1) A doctor who prescribes or gives an opinion on abortion must be in a written format decided by the state government within a specified time, and these certificates must be kept safely and disposed of accordingly as per the rule.
 - 2) A doctor who performs such a procedure of abortion must inform the authorities about the abortion, along with the other details, if necessary, and the provided information must be kept confidential, shared with a specific person and for specific purposes, followed by the rules.
 - 3) Information or a report must be forwarded to the chief medical officer by the doctor who prescribes or gives their consent for abortion.
 - 4) Anyone who intentionally violates the rules will be punished with imprisonment and a fine, which may extend to one thousand rupees.

- Section 8 protects the medical officer who performs the abortion honestly and in good faith under this law; no one can file a criminal suit or legal action against a doctor for the harm that may be caused or is likely to be caused.

CASE NARRATIVE

- 1) Case type** – Appeal was presented before the Supreme Court of India against the ruling of the writ petition of the Delhi High Court divisional bench dated 15 July 2022.
- 2) Appellant** –
 - a) She was an Indian citizen and a permanent resident of Manipur, but she is currently residing in New Delhi.
 - b) She is the eldest amongst the five siblings, and her parents are agriculturists.
 - c) 25-year-old unmarried women
 - d) An unemployed graduate
- 3) Cause of pregnancy** –
 - a) Pregnancy is the result of a consensual relationship

b) Partner refused to have a lawful relationship at the last stage.

4) Reason for seeking medical termination –

a) Pregnancy does not come from the matrimonial relationship.

b) Fear, pressure and harassment from society to have this unwanted pregnancy.

c) Being an unmarried and unemployed mother would be hard to bear financial expenses and raise this child with emotional incapacity

d) Continuation would cause grave injury to her mental health, which may be hard to recover from

5) Relief sought in the high court –

a) Seeking permission to terminate this pregnancy before 24 weeks in terms of section 3(2)(b) and rule 3B(c) of the Medical Termination of Pregnancy Act 2021.

b) Protection against regulatory action or criminal proceedings against her or any medical practitioner who performs such surgery.

c) The High Court rejected her plea on the grounds that the Medical Termination Act and the rules made under 3B did not apply, and she is out of the ambit of any of the categories that are mentioned in the act.

d) She filed the appeal against the rejection order that was passed by the high court.

e) Later, the decision of the high court was modified and allowed the termination based on medical opinion, which must be certified by the AIIMS medical board stating that this procedure can be done without endangering her life.¹

ISSUE RAISED –

- 1)** Is it legally valid under the Constitution of India to exclude unmarried women from the specified ambit?
- 2)** Can abortion of unmarried women be done even after 20 weeks of pregnancy under the MTP Act?
- 3)** Does it violate constitutional guarantees rights such as Article 14 and 21?

CONTENTION OF PETITIONER

- 1. Legislative intent** – Recent amendments in the Medical Termination of Pregnancy Act 2021 clearly acknowledge the word “ any woman”, which shows deliberate efforts for expansion and clear legislative intent to adopt abortion rights for women from any domain. It works beyond the premarital framework and offers abortion rights to women irrespective of their marital status, and provides equal access to abortion and reproductive choices.
- 2. Exclusion under rule 3B** – Even after progressive amendments of MTP, rule 3B permitted abortion beyond 20 weeks only to a specific category, such as minors, rape survivors and married women, but restricted the unmarried women who had been pregnant in consensual relationships and wanted to abort their child. Such exclusion from the legislative sphere perpetuates a discriminatory approach and outdated notions.

3. Violation of constitutional rights – exclusion of unmarried women from the abortion rights, as other women are enjoying, is discriminatory and violates Article 14 of the Indian Constitution. Abortion rights are given to a specific category, which has been stated in section 3 (2)(b) and rule 3B of the Medical Termination of Pregnancy Act.

4. Justification - In law, there must be an intelligible differentia and rational nexus to distinguish two different sects from each other. The sole motive of this act is to protect women's health, and excluding unmarried women has no connection to this purpose, despite both married and unmarried women face the same issue when it comes to abortion.

5. Impact - denial of the right to reproductive choice and safe abortion of unmarried women pushes her to face substantial issues such as social stigma, harassment, discrimination, loss of opportunities, grave injury to her mental health and punishes her for being consensual in a relationship.

CONTENTION OF RESPONDENT –

1) Expert advice – Senior advocate and Additional Solicitor General Ms. Aishwarya Bhat gave a broad interpretation of Rule 3B(c) 2003 read with section 3(2) of the MTP Act, where she argued and stated that the scope of this provision, which implicitly includes single or unmarried women in a spousal or live-in relationship and gives access to abortion care beyond the 20 weeks.

2) Principles and interpretations- she emphasized what has been in the text, conditions and objects which must be read, considered and interpreted altogether, not just mere reading of bare acts. Goal, purposive constructions and social conditioning must be incorporated in such a manner that eliminates narrow and rigid reading.

3) Beneficial legislation and social context –

- a) The MTP Act is a welfare and beneficial legislation which must not be read or interpreted in a restrictive manner.
- b) If the Interpretation is consistent with the constitutional framework must be preferred.
- c) Parent acts and subordinate rules must be read in harmony.
- d) Social changes, such as the concept of live-in relationships, should be accepted socially and interpreted according to the environmental needs.
- e) The right to have bodily autonomy must be asserted by the women, which includes the choice to have children or not, freedom to have control over the body and maintenance in both cases, marriage and live-in relationship.

4) Statutory harmony - The Medical Termination of Pregnancy Act does not create a difference between the terms such as married and unmarried women. These restrictions come from the rule of 3B of the MTP Act, which needs to be interpreted as per the Constitution and the Parents Act.

- a) The term such as “ change in marital status” should be expanded in rule 3B(c)
- b) Inclusion of unmarried and deserted women within the scope of the change in status of relationships.

DECISION

The three-judge bench comprised Justice D.Y. Chandrachud, Justice A.S.Bopanna, and Justice J.B.Pardiwala. They examined the Delhi High Court's interpretation of the Medical Termination of Pregnancy Act, read with the rules and found that the Delhi High Court had taken a very narrow and strict view on abortion rights. The Supreme Court passed the interim order to terminate the pregnancy of the woman and gave directions to ensure the procedure which must be conducted under the supervision of the medical board of AIIMS Delhi. The court relied on the case of Deepika Singh vs the Central Administrative Tribunal and said that the concept of family is not limited to the matrimonial domains, but also includes relationships such as live-in relationships, queer partnerships and single parenthood. The court criticized a gender-biased perspective which excludes women from abortion rights and leads to unjust discrimination. Right to life and personal liberty, which is guaranteed under Article 21 of the Indian Constitution, inclusive of reproductive autonomy, dignity and privacy of the unmarried women. Such practices of discrimination, gender biased perspective and the status of individuals strengthen the outdated norms and stereotypes. The Court referred several landmark judgments, such as Justice K.S.Puttaswamy, S. Khusboo v. Kanniammal, Suchita Srivastava v. Chandigarh, Kesavananda Bharti v. State of Kerala, where privacy, dignity and autonomy are the core constitutional rights under Article 21. In the

landmark case court held that the rules made under the MTP Act are unconstitutional and violate articles 14 and 21 of the Indian Constitution. The court clearly stated that both unmarried and married women must be entitled to reproductive liberty and safe abortion.

CONCLUSION

The Supreme Court in this case had taken significant steps to protect the reproductive rights of women irrespective of their marital status and also ensured personal liberty, bodily autonomy and privacy, which is guaranteed under Article 21 of the Indian Constitution. Allowing the petitioner to go for the medical termination under supervision, which balanced individual rights with medical safety.

REFERENCE

1. Nikhil Datar, MTP after 20 weeks: when & how? (*National Library of Medicine*, July 31, 2021) <https://share.google/J1VY3YYtvetmzxtjI> accessed 28 August 2025
2. X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another (*Indian kanoon*, 29 September 2022) < <https://share.google/jpmSiiAlujmmFdhUU>> accessed 28 August 2025
3. Aditi Shree, 'X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another' Vol 2 issue 3 < <https://share.google/ecldH2CqLwS2vQZrE>> accessed 29 August 2025

4. Ragini Pandit, 'X vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another' Vol VII Issue I < <https://share.google/IBK2NGmsfNnJm2fHY>> accessed 28 August 2025
5. Medical Termination of Pregnancy Act 1971, s 1
6. Medical Termination of Pregnancy Act 1971, s 2
7. Medical Termination of Pregnancy Act 1971, s 3
8. Medical Termination of Pregnancy Act 1971, s 4
9. Medical Termination of Pregnancy Act 1971, s 5
10. Medical Termination of Pregnancy Act 1971, s 6
11. Medical Termination of Pregnancy Act 1971, s 7
12. Medical Termination of Pregnancy Act 1971, s 8
13. Indian Penal Code 1860, s 312
14. Constitution of India 1950, art 14
15. Constitution of India 1950, art 21
16. *S. Khusboo v. Kanniammal*, AIR 2010 SUPREME COURT 3196
17. *Justice K.S. Puttaswamy (Retd) And Anr. vs Union Of India And Ors.* AIR 2017 SC (CIV)
18. *Suchita Srivastava v. Chandigarh*, AIR 2010 SUPREME COURT 235
19. *Kesavananda Bharti v. State of Kerala*, AIR 1973 SUPREME COURT 1461

