

## CASE COMMENTARY – X V. THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT. OF NCT OF DELHI & ANR.

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### I. ABSTRACT:

Right now, the social climate on the planet is in a pretty depressing situation. All around the world, women are denied their rights. The rights of women are protected by Articles 14, 19, and 21 of the Indian Constitution. In those articles, all essential rights are guaranteed. This article will evaluate the recent ruling that unmarried women have the same right to abortion as married women. When the case law is analysed, the facts, the analysis, and a conclusion are revealed. We'll take a closer look at the ruling and assess the pertinent neighbouring case law. This specific right to an abortion is protected by the right to personal liberty guaranteed by Article 21 of the Indian Constitution, which will be examined in detail. Additionally, an analysis of the MTP Act's rules and guidelines, which are fundamental legislation that carry the right to abortion, will be done.

**II. KEYWORDS:** MTP Act, personal freedom, and progress

<b>Diary Number:</b>	21815 / 2022
<b>Case Number:</b>	C.A. No.-005802-005802 / 2022
<b>Petitioner Name:</b>	X
<b>Respondent Name:</b>	THE PRINCIPAL SECRETARY HEALTH AND FAMILY WELFARE DEPARTMENT GOVT. OF NCT OF DELHI
<b>Petitioner's Advocate:</b>	RAHUL SHARMA
<b>Bench:</b>	DR. D.Y. CHANDRACHUD; J., A .S. BOPANNA; J., J.B. PARDIWALA; J.
<b>Judgment By:</b>	HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
<b>Date:</b>	21 Jul, 2022

### III. INTRODUCTION:

Those related to pregnancies and abortions, this most recent ruling by the

Supreme Court makes an attempt to do away with it. Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (hence referred to as the MTP Rules) was given a broad meaning by the

Hon'ble Court. It included single women and unmarried women in the scope of Rule 3B of the MTP Rules. 20–24-week pregnancies of survivors of marital rape are eligible for abortion. In the current instance, the court gave an unmarried woman permission to end a consensual relationship-based 24-week pregnancy. The Honourable Court reasoned that the woman's mental health would be severely harmed if the pregnancy continued.

The Hon'ble Court acknowledged "marital rape" in the recent decision, emphasising that married women may also be rape or sexual assault victims. According to the Court's decision, a woman can become pregnant as a result of her spouse having extramarital intercourse with her. Due of this, it would make sense for Rule to define "rape" to include marital rape. The MTP Rules' 3B(a). As a result, women who have been the victims of marital rape are also permitted to terminate their pregnancies without their husbands' consent. The decision has been regarded as a crucial one.

#### IV. FACTS OF THE CASE:

The petitioner, who was born in Manipur, now resides permanently in Delhi. B.A. degree with five younger siblings and parents who are farmers. The petitioner was in a consensual relationship when she conceived a single intrauterine pregnancy, which she learned about on June 5, 2020, when the term was nearly 22 weeks old. Due to her incapacity to sustain the child, the petitioner sought a medical termination of pregnancy (often known as a "abortion"). The Medical Termination of Pregnancy Act, 1971 (also known as the "MTP ACT") and the Medical Termination of Pregnancy Rules, 2003 (also known as the "MTP RULE") were the subject of the petition that made it to the Hon. Delhi High Court.

The following was what the petitioners prayed for.

Before July 15, 2022, at any government facility or licenced private hospital, a doctor's approval is required before an abortion can be

performed. a need for Because the pregnancy will have advanced to week 24 and it will be impossible to use any such order after the limitation period has passed, please think about passing the order before July 15, 2022. Pass the order to stop the respondents from bringing any legal action against the petitioner's doctor and the doctors engaged in the abortion procedure.

Pass the resolution ordering the state to cover unmarried women for up to 24 weeks under Section 3(2) clause (b) of the MTP Act and Rule 3B of the MTP Rule for the cessation of pregnancy.

Honest Delhi High Court judgement

On July 15, 2022, the order was approved that disapproved Prayers A and B. The court considered Prayer C, in which the petitioner sought for the inclusion of an explicit unmarried woman in the MTP RULE and MTP ACT.

By order dated July 15, 2022, the Delhi High Court Division Bench gave notice to the Respondent.

As a result, the petitioner filed this SLP before the Honourable Supreme Court after being disappointed by the Hon. High Court's ruling.

#### V. ISSUES RAISED:

The following concerns regarding abortion under the terms of the MTP Act and MTP Rule were brought before the Honourable Supreme Court: -

- Does clause c of Rule 3B of the MTP RULES and section 3(2)(b) of the MTP ACT cover unmarried women when it comes to abortions?
- Infringing on an unmarried woman's right to equality under INDIAN CONST. art. 14 by denying her the ability to end an unwanted pregnancy?
- Under Indian Constitution Article 21 of the Right to Life, are unmarried women entitled to end a pregnancy?

## VI. ARGUMENTS:

### Petitioner's side:

- The petitioner's knowledgeable attorney, Dr. Amit Mishra, stated the following arguments:
- The petitioner is a single lady whose partner left her and declined to propose marriage. The applicant wants to end an undesirable pregnancy. Nothing shall prevent the same.
- The petitioner is not only not mentally prepared to give birth to a kid in her difficult condition, but she is also unable to support a child financially, endangering the child's future.
- Due to its exclusion of unmarried women from their scope, Rule 3B(c) of the MTP RULES and Section 3(2)(b) of the MTP ACT are both discriminatory with respect to Indian Constitution, Art. 14.

### Respondent's side:

The Additional Solicitor General and knowledgeable senior lawyer Ms. Aishwarya Bhati provided advice to in interpreting Rule 3B(c) of the MTP RULES and Section 3(2)(b) of the MTP ACT, the court. According to the respondent, the following facts support the claim that unmarried or single women who are in long-term partnerships are already covered by Rule 3B(c):

- Understanding the law's purpose and phrasing is crucial for assessing whether or not unmarried women are eligible for an abortion procedure. All women are meant to be included in this. Liberal interpretation is crucial; taking anything literally is not always the best course of action.
- If ACT is implemented and supporting RULES are available for efficient application. The MTP scenario RULE must adhere to and support the ACT. If there is a dispute a conflict developed between the ACT and the RULE, the ACT will take precedence. The highly specific

wordings of the MTP ACT and the MTP RULE (Amendment of 2021) have been altered from married woman to "any woman" and husband is replaced by "partner." It very clearly demonstrates that it encompassed unmarried women as well as anyone else who was not the woman's husband and the relationship was voluntary, in addition to the scope of marriage.

- The phrase "change of marital status" in Rule 3B(c) should be construed as a "change in the status of a relationship" in order to assure the inclusion of unmarried or single women. Women who are divorced but not yet separated from their marriages would also be included.
- Live-in partnerships are the as both entitle women to maintenance, legal authorities view these unions as having the same value as marriage. Many laws, including the MTP Act, do not distinguish between married and single women.
- Women have the right to choose whether to have children and to exercise their physical independence. They have the right to independent decision-making without any restrictions. It is still a married woman's fundamental right to have an unplanned pregnancy, and no one can force her to do so out of prejudice or bias.

## VII. JUDGEMENT

In this ruling, the Apex Court reached the following conclusions.

- The Supreme Court approved the abortion after the AIIMS Medical Board came to the conclusion that safe pregnancy termination with the women's permission is achievable.
- Unmarried women are included in the scope of the MTP Act and MTP Rule, according to the Hon. Supreme Court. They are as entitled to safe abortions, as are married women.

- Nothing in this judgement should be interpreted as weakening the restrictions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994, the Hon. Supreme Court further observed in an important comment.
- Both the WRIT petition before the Honourable High Court and the current SLP before the Honourable Supreme Court were dismissed.

### VIII. CONCLUSION

It is significant to note that the Court considered the social stigma and financial limitations faced by the Petitioner when rendering its decision, but did not tailor it to her particular social circumstances, instead opining that "all unmarried women" should be considered when interpreting the Act. This implies that all women's fundamental rights are upheld, no matter what social circumstances they may come from. Knowing that the judiciary is defending the autonomy over their bodies and what they choose to do with them is, therefore, a welcome shift for all women. With the increasing complexity of the world today, the transcendental type of interpretation is more important than ever. The judiciary consistently renders decisions that do not protect women's personal freedom. The US Supreme Court made a key ruling in Roe v. Wade that established the right to an abortion. One can go so far as to successfully assert that, given the overturning of Roe V. Wade and other regressive rulings by the court, a welcome ruling in the midst of the public's moments of mistrust in the judiciary can obviously be a beacon of hope. The public's confidence in the judiciary would be restored if decisions were made in this comprehensive manner.

### IX. REFERENCE:

- Judgment dated October 06, 2021 in WRIT PETITION(L) 21977 of 2021 (Bombay High Court).
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