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# **DECOLONIZATION OF ABORTION LAWS OF INDIA: FROM HUSBAND TO PARTNER**

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## **ABSTRACT**

By substituting spouse for “partner,” the 2021 Medical Termination of Pregnancy (Amendment) Act updated India’s reproduction laws & gave unmarried female the same entitlement to termination of pregnancy. It established stringent secrecy under “section 5A” & increased “gestational restrictions to twenty-four-weeks” for specific groups. Reproductive freedom is a “fundamental right dignity & privacy” under article 21 of the Indian Constitution according to significant decisions from 2022 to 2026. In advanced stages when there is no life-threatening complication, the courts weigh the protection of liberty over fetal viability. Medical gatekeeper views still make effective enforcement difficult notwithstanding these legislative developments. In the end, the amendment puts a female’s physical & mental well-being ahead of her marriage status or social status.

### **Keywords**

Reproductive Autonomy, Fetal Viability, Reproductive Freedom, Medical Board

## **THE JUDICIAL REFORM AND THE 2021 AMENDMENT**

Medical Termination of Pregnancy Act, 2021 (Amendment): A Comprehensive Examination  
The 2021 Amendment represented a significant change in India’s reproductive policy rather than merely a small update. The 1971 Act’s “*Victorian biases*” were intended to be rectified.

### **Replacing “Husband” with “Partner”**

Explanation 1 of section 3 of the 2021 Amendment contains the most notable modification.

**1971 Act-** Only “married woman” & husband were used in the 1971 Act while discussing the malfunction of contraceptives.

**2021 Act-** These phrases were swapped out for “woman” & “her partner.”

**Effect on the Law:** By dropping the term “husband,” the law at last recognized that sexual independence is not limited to marriage. It gave single woman the identical legal protections that had only been available to married woman by decriminalizing the “contraceptive

malfunction” defense.

### **The Gestational Threshold Revision**

The amendment acknowledged that for numerous females, twenty weeks was often insufficient time to find out they were pregnant or schedule a surgery.

**0-20 weeks** – Abortion permitted on the recommendation of 1 registered medical practitioner.

**20-24 weeks**- Abortion permitted on the recommendation of 2 registered medical practitioner for special categories of females (such as victim of rapes, children & woman with disabilities).

**Over 24 weeks**- Only significant fetal deformity as judged by a Medical Board are permitted after 24 weeks.

### **Section 5A Strict Confidentiality**

The newly added section 5A of the 2021 Act stipulates that only a legally authorized individual may be given the name & personal information of a female seeking an abortion. Imprisonment is one form of punishment for violating the privacy. It is an essential safeguard against “societal lynching” for an unmarried female.

#### **1. Case Investigation: 1. X v. Principal Secretary (2022)<sup>1</sup>**

The freedom of an unmarried female to make use of her sexual autonomy is the subject of this landmark ruling.

#### **Case Facts**

In the present instance, the appellant a native of Manipur was residing in New Delhi. The appellant was around 22 weeks intrauterine pregnant at the time when abortion petition was submitted before the Hon’ble Delhi Court. The appellant was single when she conceived after engaging in a mutually beneficial relationship. Because her spouse had rejected marrying her at the last moment, she wanted to end the pregnancy. The appellant requested abortion under Rule 3B (c) of the “*Medical Termination of Pregnancy Rules, 2003*” (amendment made in 2021) & section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 Act. Because the Act isn’t applicable to unmarried women like the ones in this case, the Hon’ble Delhi High rejected the abortion petition. Because it raised a substantial question of law, the case went to

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<sup>1</sup> X v. Principal Secretary (2022) SCC Online SC 1321

the Hon'ble Supreme Court of India.

### **Issues**

Given a shift in the female's material conditions, is it possible for an unmarried female person to request abortion according to section 3(2)(b) of the Medical Termination of Pregnancy Act read with Rule 3B of the MTP Rules?

### **Observations**

#### **Goal of the 2021 Medical Termination of Pregnancy Act (Amendment)**

Medical Termination of Pregnancy Act (Amendment) purpose was examined by the Supreme Court. It was noted that the MTP (Amendment) Act, 2021 aims to provide every female including married & unmarried females, with the benefits of the Act

The phrase "*married women or her husband*" was substituted with the phrase any woman or her partner in the MTP (Amendment) 2021.

By taking the aforesaid actions, the legislative branch seeks to provide legal protection for pregnancies that take place beyond the institution of marriage. Therefore, the 2021 revision, the MTP Act's framework does not distinguish between married & unmarried females in order to provide abortions.

#### **Formulation of MTP Rule 3B**

All the females in the various categories listed in Rule 3B share the trait of being in a particular & frequently challenging situation concerning their economic, psychological or physical well-being. In this scenario, the Court also noted something about "*marital rape*". The Court ruled that a husband's acts of rape or sexual assault against his spouse is included in the definition of "*rape*" in Rule 3B (a). Therefore, the Court decided that rape must be interpreted to include marital rape for the intent of the MTP Act.

#### **Modification of Marital Status**

The foundation of Rule 3B (c) is based on the understanding that a female's material situations alter when her relationship with her husband changes.

When a married female's spouse passes away or gets divorced there may be a shift in her material situations.

An arbitrary division between married & unmarried females would result from interpreting the benefits granted by Rule 3B(c) as limited to married woman. Married & unmarried woman get

the same legal benefits.

Therefore, every woman who experience a significant change in their circumstances must be eligible for the benefits of Rule 3B.

### **Medical Termination of Pregnancy Act 1971 & the Protection of Children from Sexual Offences Act 2012 (POCSO):**

The Court noted that it's crucial to bring young woman & teenagers under the purview of MTP Rule 3B.

In order to avoid a clash between the statutory requirement of a Registered Medical Practitioner under POCSO & the minor's right to reproductive independence & privacy under Article 21 of the Indian Constitution the court emphasized that the Registered Medical Practitioner is prohibited from disclosing the name as well as additional personal details needed in a criminal case at the request of minor & their legal guardians solely.

### **Article 21 of the Indian Constitution & the right to reproductive independence:**

The court ruled that a female's autonomy of choice either to bear a child or terminate her pregnancy are subjects which come within the domain of "privacy" in the K.S Puttaswamy v. Union of India Case.<sup>2</sup>It held that,

*The safeguarding of life & personal liberty with respect & dignity are inextricably linked as our constitutional law has acknowledged over the past forty years. The Preamble expresses dignity as a constitutional ideal. One aspect of "human dignity" is the "right to privacy." The practical connection between confidentiality & dignity is what gives it the sacredness. By protecting the inner workings of the human psyche from unwelcome interference, privacy guarantees that a individual can live a life of dignity. Privacy acknowledges each person's individuality & right for making life-changing decisions.*

In the aforementioned case, the Court reaffirmed that a female's fundamental right to make reproductive decisions under Article 21 of the Constitution of India is related to her statutory right to have her pregnancy terminated under the MTP Act.

### **Rule 3B "Purposive Interpretation":**

The Court noted that it is important to avoid a restrictive reading that contradicts the objective of the constitutional requirement. It was reaffirmed that the purpose of MTP Act Section along

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<sup>2</sup> K. S Puttaswamy v. Union of India WP (Civil) no. 494 of 2012

with MTP Rule 3B is to grant female between the twenty & twenty-four weeks the right to abortion if their pregnancy has become unwelcome because of major shift in their situation.

Given the aforementioned object, a restrictive interpretation of Rule 3B that solely applies to married woman would make the rule biased against unmarried females & as a result violative of Article 14 of the Indian Constitution.

## **2. XYZ v. State of Gujarat (2023)<sup>3</sup>**

### **Case Facts**

In accordance with Section 376(2)(n) of the Indian Penal Code, 1860 (IPC), the women submitted a first information report (FIR) against an individual who was suspected of engaging in sexual intercourse under false pretenses of marriage. The women submitted a writ petition with the Hon'ble Gujarat High Court to end her pregnancy after discovering that she was pregnant at roughly twenty-five weeks, alleging possible harm to her psychological and physical well-being. The High Court denied the petition after first ordering a medical report, mainly due to the later stages of pregnancy (twenty-seven weeks). The case reached the Hon'ble Apex Court.

### **Issues**

Is it possible to end a pregnancy even when it is twenty-seven weeks along?

### **Decision**

The doctor's report, which said that the victim was medically competent to receive medical care and that abortion would have no effect on her long-term well-being, wasn't completely taken into account by the High Court, which the Apex Court deemed to be troublesome. According to medical report, the pregnancy was caused by sexual assault and may have an impact on the female's psychological well-being. According to Article 21 of the Constitution, the right of women to make reproductive decisions is an essential component of her personal liberty. The Supreme Court acknowledges that pregnancy brought on by sexual assault is especially distressing and can have a major negative effect on a female's physical and emotional well-being. If medical professionals confirm to the operation's safety and the female's permission, the right to terminate a pregnancy may be taken into consideration even at advanced phases.

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<sup>3</sup> XYZ v. State of Gujarat 2023 INSC 752

### 3. X v. Union of India & Others<sup>4</sup>

#### Case Facts:

The Petitioner was a married mother of 27 years having 2 children. Because of the “*lactational amenorrhea*” the **lack of periods** while nursing her 2<sup>nd</sup> child, she wasn’t aware that she had become pregnant until **twenty weeks**. She was **twenty-six weeks pregnant** when she went to the Court.

The grounds for her request for a abortion were twofold: **Psychological Health:** She experienced serious “postpartum psychosis” & “postpartum depression” which left cognitively & emotionally incapable of raising a 3<sup>rd</sup> kid. **Financial Distress:** Since her spouse was the only breadwinner, they were unable to afford to raise another child.

**Initial Order:** On October 9, 2023 a 2 judge Apex Court bench first approved the abortion, noting the woman’s psychological state. But the following day, an AIIMS doctor emailed the Court to request a “*recall*” since the fetus was viable- that is healthy & able to survive beyond the womb.

#### Issues:

A bigger 3 judge panel headed by CJI D.Y. Chandrachud was asked to decide the following issues:

**Fetal Viability v. The Right to Decide:** If the developing baby is healthy & the life of the mother is not in danger, is it permissible for a woman to end a pregnancy upon reaching the twenty-four weeks.

**The Heartbeat Predicament:** In the case of a viable fetus with no anomalies, should the court mandate a “*foeticide*”- the halting the heart from beating.

**Section 5 Interpretation:** Is immediate “*bodily life*” or “*psychological life*” included in the expression to “preserve the life of the pregnant woman”?

#### Judgment and Ratio Decidendi:

Finally, the Supreme Court issued a more restrictive decision compared to the 2022 verdict & rejected the request to end the pregnancy:

**Statutory Limits:** The Court ruled that a pregnancy was entitled to be terminated only if the following conditions were met as it was more than 24 weeks.

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<sup>4</sup> X v. Union of India & Others (2023) INSC 919

1. Significant fetal anomalies were found Section 3(2B)
2. In order to safeguard the life of the mother, abortion was required right away. (Section 5).

The Medical Board stated that the developing baby was “healthy” and “normal.” It was ruled that it opposed to delivering a order to halt the heartbeat of a healthy, viable fetus at twenty-six weeks was the court’s statement. The court made a distinction between “*saving the life*” (permitted beyond twenty-four weeks) & “injury to psychological health” (permitted up to twenty-four weeks). It came to the conclusion that although the petitioner was upset, there was no urgent threat to her life.

**State Responsibilities:** The Court ordered that the “*Union of India*” pay for all medical expenses & that the delivery should take place at AIIMS. Additionally, it made clear that the parents had the choice of putting the child for adoption.

### **The Legal Consequences of the Change from “Spouse” to “Partner”**

#### **The “Married Status” criteria are over**

The medical community utilised “marriage” as an indicator to determine who was eligible for a safe termination of pregnancy for fifty years. Since “Partner” was adopted, intimacy rather than merely institutions are now protected by the legislation.

**Legal Repercussions-** It is no more permissible for a medical professional to request for a certificate of marriage or spouse’s approval. The female’s personal well-being is now the top priority instead of her standing in the community.

#### **The Acceptance of “Live-in Relationship”**

For the thousands of females living together, the term “Partner” offers protection under the law. It recognises the the diversity of contemporary Indian partnerships. “The Domestic Violence Act, 2005” that additionally acknowledges relationships in the form of marriage, is one legislation that this amendment brings the MTP Act into compliance with.

#### **The “Gatekeeper Attitude” is one of the lingering obstacles**

Even after switching towards “Partner,” societal obstacles still exist.

**The Opposition:** In year 2026, a lot of physicians continue to be afraid of the POCSO Act. In order to stay out of problems, medical professionals frequently urge upon having a man as a “guardian.” Even though the legislation specifies “Partner.”

**Effects:** This demonstrates that change in institutions is required to guarantee that the “Partner

clause” is enforced in the hospitals that are run by the government; legislative change alone is insufficient.

#### **4. A (Mother of X) v. State of Maharashtra [2024]<sup>5</sup>**

##### **Case Facts**

In September 2023, 'X', a 14-year-old minor girl, was sexually assaulted. A complaint was filed in accordance with the IPC and POCSO Act, 2012, when the pregnancy was found on March 20, 2024, at around twenty-five weeks of gestation. 'X' was judged competent for abortion by the JJ Group of Hospitals' first Medical Board, but the High Court had to provide authorization since the twenty-four-week threshold had been exceeded. Due to late gestational age & the lack of fetal anomalies, a later "clarificatory" opinion rejected abortion. Due to a time, restriction specified by the statute, the Bombay High Court rejected the petition. A new medical panel at Sion Hospital was ordered by the Apex Court to step in and report that continuing would be detrimental to the minor's wellbeing. On April 22, 2024, the Court first issued an order for abortion. The parents then said that they would wish to carry the pregnancy to term for adoption. The parents chose not to terminate the pregnancy due to the latter stage (approaching thirty-one weeks).

##### **Issues**

1. Was it appropriate for the High Court to deny abortion authorization based only on gestational age surpassing the threshold set by law, without taking into account the effects on the young survivor of sexual assaults bodily & psychological well-being?
2. What is the required scope of opinion that a board of physicians must offer in situations when a pregnancy is terminated after the recommended gestational age, especially with regard to the thorough assessment of the expectant person's mental and physical health?
3. In order to protect the importance of reproductive freedom and the minor's well-being, can the Court revoke its order permitting abortion in light of the minor's and her guardians' later desire to carry the pregnancy to full term?

##### **Observations of the Court**

The Court underlined that choosing to end or maintain a pregnancy is a very personal choice

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<sup>5</sup> A (Mother of X) v. State of Maharashtra [2024]5 S.C.R. 470

that is based on fundamental rights within Article 21. The minor's safety and wellbeing have to come first, & the individual's decision to carry on with their pregnancy must be honoured. Section 3(2-B) of the MTP Act prohibits medical panels from limiting their views to confirming prenatal anomalies. Boards are required to do a thorough assessment of the pregnant women's psychological and physical well-being if the pregnancy is over twenty-four weeks. If continuing an abortion would be harmful to one's wellness, courts can't reject it based just on gestational age. The minor's perspective must be taken into consideration when there is a disagreement between the minor & guardians. Contrary medical conclusions that were given without reconsidering the patient were chastised by the Court, which noted that this ambiguity results in unnecessary trauma.

### **5. A (Mother of X) v. State of Maharashtra [2026]<sup>6</sup>**

#### **Case Facts**

The appellant's daughter became pregnant as a consequence of her intimate contact with a mate. She had an unusual menstrual cycle and stomach ache in January 2026. When pertinent tests were carried out, it was found that the woman was already twenty-three weeks pregnant. The mother filed a criminal case against the daughter's mate under the (BNS) & (POCSO Act). Given the detrimental effects the pregnancy might have on the adolescent's psychological and physical wellness, she then went to the High Court of Bombay to request authorization to end her pregnancy. The High Court declared that the pregnancy had passed twenty-eight weeks & refused authorization. The minor daughter had likewise reached majority and aged Eighteen by the expiration of the final order. According to the High Court, the fetus was healthy and might eventually be placed for adoption.

#### **Issues**

1. Can a female be forced to carry on an unintended pregnancy?
2. Should the possible life of a healthy fetus be subordinated to the reproductive liberties of pregnant female?
3. Do the mother's psychological and physical issues take a backseat to variables like the fetus's viability and potential for adoption?

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<sup>6</sup> A (Mother of X) v. State of Maharashtra 2026 INSC 112

### **Decision**

The High Court's ruling was overturned by the Apex Court, which granted the appeal. The Court made it clear that a female's entitlement to life, liberty, and dignity within Article 21 of the Constitution includes the freedom to reproduce. It was emphasized that a female alone has the right to decide whether or not to carry a pregnancy to term, and that no authority—not even the government or the judiciary—can force a female to end an unintended pregnancy.

### **Conclusion**

India's legal emphasis has effectively switched from "marriage status" to "individual biological liberty" under Article 21 of the Indian Constitution owing to the 2021 Amendment & following court decisions. The shift from "spouse" to "partner" acknowledges a variety of contemporary partnerships, but the courts still have to negotiate the difficult moral line between a "female's dignity" & "fetal viability". Although the strict secrecy under "section 5A" is an essential defense against societal prejudice, "institutional gatekeeper" mindsets continue to be a barrier to easy access. In the end, the development of the medical termination of pregnancy Act confirms that the freedom of choice is a fundamental aspect of human freedom that cannot be unilaterally superseded by any authority



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