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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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

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Case Title	X V. Principal Secretary, Health and Family Welfare Dept, Govt. of NCT of Delhi
Citation	Special Leave Petition (Civil) No: 12612 of 2022
Court	The Supreme Court of India
Petitioner	Mrs. X
Respondent(s)	Principal Secretary, Health and Family Welfare Department , Govt. of NCT of Delhi & Anr
Bench	Justice D.Y. Chandrachud, Justice B. Pardiwala, Justice S. Bopanna
Relevant Provisions	1. Section 3(2)(b) of Medical Termination of Pregnancy Act, 1971 2. Rule 3B of Medical Termination of Pregnancy Rules, 2003

INTRODUCTION:

Medical Termination of Pregnancy (MTP) also known as abortion was legalized in India. Since, the enactment of Medical Termination of Pregnancy Act in 1971 based on the recommendations of Shah Committee. Later in 2003, Medical Termination of Pregnancy Rules was introduced by Parliament and amended in the year of 2021.

The Section 312 of IPC provides that “Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Provided that a woman who causes herself to miscarry, is within the meaning of this section”¹. This Provision remains intact, however MTP Act laid down the procedure and conditions for safe abortion.

MTP Act ensures to protect the personal autonomy of women over their bodies. But it didn't explicitly state whether an unmarried woman can terminate her pregnancy. This question was raised before the Supreme Court of India in the case of X vs. Principal Secretary, Health and Family Welfare Dept, Govt of NCT of Delhi²

FACTS OF THE CASE:

A 25-year-old unmarried women found out she was pregnant at 22 weeks after her partner abandoned her. Due to financial constraints and social stigma, she petitioned the Delhi High Court to have her pregnancy terminated. The right to end her pregnancy was one of three requests the petitioner made before the court.

The following are the 3 request made by the petitioner:

- To permit the petitioner to terminate her pregnancy through licensed medical professionals at an authorized hospital.
- To prohibit the respondent from using coercion or bringing legal action against the petitioner or any doctor who ends her pregnancy.

¹ Section 312 of Indian Penal Code, 1860

² Special Leave Petition (Civil) No 12612 of 2022

- To pass the resolution ordering the state to extend The Medical Termination of Pregnancy Rules 2003, as revised on October 21, 2021, for termination of pregnancy under clause (b) of subsection (2) Section 3 of the MTP Act, also apply to unmarried women and allow for termination of pregnancy for up to 24 weeks.

The Delhi High Court declined to take up the petitioner's case, citing that the MTPR only permits married women to have abortions after 20 weeks. The case does not fit into any of the groups listed in Rule 3B of the MT Rules from 2003, which include children, survivors of sexual assault, people with physical disabilities, women who are mentally ill, and those in humanitarian situations. The petitioner filed a special leave petition in the Supreme Court, arguing that continuing her unwanted pregnancy would result in severe mental health damage due to the lack of a livelihood source and social stigma.

ISSUES BEFORE THE COURT:

1. Whether women right to reproduction falls within the ambit of “right to life and personal liberty” under Article 21 of the Indian Constitution.
2. Whether unmarried women can terminate their pregnancy under Rule 3B of Medical Termination of Pregnancy Rules?
3. Whether section 3(2)(b) of the MTP Act and rule 3B of the MTP rules are violative of fundamental rights guaranteed under Article 14 and Article 21 of the Indian Constitution?

CONTENTIONS:

a). Arguments of Petitioners:

Dr. Amit Mishra, counsel for the petitioner, argued that the petitioner was a single woman whose partner had turned down their engagement. Because she lacked the money to do so, she did not want to carry the pregnancy to term and give birth to the child outside of marriage. Her parents were farmers, and she did not have a job. Additionally, she stated that her client lacked the mental capacity needed to parent a child alone. She would suffer severe harm to her bodily and emotional health if she were forced to do so. The appellant was unprepared to deal with the stigma associated with unwed mothers in society. Unmarried women are excluded from their scope under Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Rules, which are arbitrary and discriminatory. They violate Article 14 of the Constitution by discriminating against women based on their marital

status.³

b). Arguments of Respondents:

Ms. Aishwarya Bhati, counsel for the respondents contended that the fundamental principle of statutory interpretation is that the words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act and the intent of the legislature. Parliament by amending the MTP Act through Act 8 of 2021 intended to include unmarried women and single women within the ambit of the Act. This is evident from the replacement of the word ‘husband’ with ‘partner’ in Explanation I of Section 3(2) of the Act.

Explanation 1 expressly contemplates a situation involving an unwanted pregnancy caused as a result of the failure of any device or method used by a woman or her partner for the purpose of limiting the number of children or preventing pregnancy. The Parliamentary intent, therefore, is clearly not to confine the beneficial provisions of the MTP Act only to a situation involving a matrimonial relationship. On the contrary, a reference to the expression “any woman or her partner” that has been amended by the Medical Termination of Pregnancy (Amendment) Act, 2021 would indicate that a broad meaning and intent has been intended to be ascribed by Parliament. The statute has recognized the reproductive choice of a woman and her bodily integrity and autonomy. Both these rights embody the notion that a choice must inhere in a woman on whether or not to bear a child. In recognizing the right, the legislature has not intended to make a distinction between a married and unmarried woman, in her ability to make a decision on whether or not to bear the child.

Rule 3B of the Medical Termination of Pregnancy Rules, 2003, prescribe 7 categories of women who could terminate their pregnancies even after 20 weeks of gestation but within 24 weeks, according to Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971. One such category is Widows and Divorcees during the ongoing pregnancy. The list given in rule 3B of the MTP Rules is not exhaustive but inclusive. This is evident from the recent amendment of the MTP Act, which replaces the terms ‘married women’ and ‘husband’ with ‘any woman’ and ‘partner’ respectively. Thus, reading Rule 3B of the Medical Termination of Pregnancy Rules along with Section 3(2)(b) of the MTP Act. Thus, the MTP Rules include both the married women and

³ Dibyojit Mukherjee, Case Analysis on X v. Principal Secretary, Health and Family Welfare, Govt of NCT Delhi, available at <https://legalvidhiya.com/x-v-principal-secretary-health-and-family-welfare-govt-of-nct-delhi/>

unmarried women. Therefore, these provisions are in consonance with the provisions of Articles 21 and 14 of the Indian Constitution and are not in infringement of any fundamental rights guaranteed by Part III of the Indian Constitution.

JUDGEMENTS:

The Three Judges Bench of the Supreme Court held that a woman's right of reproductive choice is an inseparable part of her personal liberty under Article 21 of the Constitution of India. In *Suchitha Srivastava v. Chandigarh Administration*⁴, the Honourable Apex Court has held that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution. The court has observed that: "It is important to recognise that reproductive choices can be exercised to procreate as well as abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods.

In *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁵, the decision of a woman to procreate or abstain from procreating has been recognized as a facet of her right to lead a life with dignity and the right to privacy under Article 21 of the Constitution. The Bombay HC in *High Court on its Own Motion v. State of Maharashtra*⁶, observed that: "If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health."

In 2011, the Delhi High Court issued a landmark joint decision in the cases of *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors* and *Jaitun v. Maternity Home, MCD, Jangpura & Ors*⁷ concerning denials of maternal health care to two women living below the poverty line. The court stated that "these petitions focus on two inalienable survival rights that form part of the right to life: the right to health and in particular the reproductive rights of the mother".

In 2012, the High Court of Madhya Pradesh echoed the Delhi High Court's Judgement in *Sandesh Bansal v. Union of India*, a PIL seeking accountability for maternal deaths, recognizing that "the inability of women to survive pregnancy and child birth violates her fundamental right to live as guaranteed under Article 21 of the Constitution of India and it is the primary duty of the

⁴ (2009) 9 SCC 1.

⁵ (2017) 10 SCC 1.

⁶ 2017 Cri LJ 218 (Bom HC).

⁷ 2010 (172) DLT 9.

government to ensure that every woman survives pregnancy and child birth.”

In 2012, the High Court of Madhya Pradesh echoed the Delhi High Court’s Judgement in Sandesh Bansal v. Union of India ⁸, a PIL seeking accountability for maternal deaths, recognizing that “the inability of women to survive pregnancy and child birth violates her fundamental right to live as guaranteed under Article 21 of the Constitution of Indusland and it is the primary duty of the government to ensure that every woman survives pregnancy and child birth.”

In case of Hallo Bi v. State of Madhya Pradesh and Ors ⁹, the High court of Madhya Pradesh affirmed the importance of providing victims of rape, access to abortion without requiring judicial authorization, stating that “we cannot force a victim of violent rape / forced sex to give birth to a child of a rapist. The anguish and the humiliation which the petitioner is suffering daily, will certainly cause a grave injury to her mental health.” Thus, here the court treated the right to abortion as a fundamental right under Article 21.

The Court observed “criminal law should not be wielded as a weapon to infringe on individual autonomy, and such actions violate Article 14 of the Indian Constitution”¹⁰

Thus, it is clear that a woman’s right to reproductive choice is a Fundamental Right guaranteed under Article 21 of the Constitution and the state cannot abridge her rights. Section 3(2)(b) of the MTP Act, read with Rule 3B of MTP Rules, is intended to allow abortions between 20 and 24 weeks which are no longer desirable due to a change in the women's material circumstances. If rule 3B of MTP Rules were strictly interpreted to be applicable for only married women. Then, it violates the right to equality under Article 14 and right to live a dignified life under Article 21 of Indian Constitution.

ANALYSIS & CONCLUSION

The Decision of the Supreme Court in this present case recognized women’s right to make decisions about their bodies, including the decision to terminate a pregnancy as it falls within the ambit of bodily autonomy. Therefore, it should be extended to all women, regardless of their marital status. Unmarried women should not be discriminated against or judged for seeking a safe and legal abortion. The health and wellbeing of unmarried women who are denied access to safe abortion procedures may suffer significantly as a result. Limiting their ability to receive safe and legal abortions forces women to seek out risky treatments that endanger their lives. It is crucial to

⁸ W.P. No: 9061 of 2008

⁹ 2013 Cri Li 2868

¹⁰ S. Khusboo v. Kanniammal & Anr, (2010) 5 SCC 600

put women's health and safety first by ensuring that they have unrestricted access to complete reproductive healthcare services, including abortion. Legal policies and societal attitudes that stigmatize unmarried women seeking abortions support damaging gender stereotypes and uphold ingrained moral and sexual values. Such viewpoints ignore the various conditions and complexity of women's choices, which ultimately impedes the advancement of gender equality.