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**Case commentary – X Vs. THE PRINCIPLE SECRETARY OF HEALTH AND FAMILY WELFARE DEPARTMENT, GOVERNMENT OF NCT, DELHI [APPEAL NO : 5802 of 2022]**

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**Abstract**

Medical termination of pregnancy Act,1971 & amendment Act,2021 and Medical termination of pregnancy rules 2003 were enacted to regulate the unsafe abortions and to legalize the abortion in certain cases. It provides some

criteria who were eligible to legal and safe abortion for women. Medical termination of pregnancy act does not include the unmarried women. It only includes the married woman, divorced wife, minor and widow. In this case the Supreme Court held that section 3(2)(d) of the Medical termination of pregnancy act, 1971 also include married and unmarried woman and also held that unmarried women are entitled to abortion within 20 to 24 weeks. This verdict recognise the right to equality , right to privacy and right to reproductive choice of the women. This judgement is a landmark judgement in Indian legal history.

**Key words :**

Unmarried woman – Abortion – Reproductive choice – Pregnancy – Medical termination

**Introduction:**

CASE TITLE	X Vs. THE PRINCIPAL SECRETARY HEALTH,FAMILY WELFARE DEPARTMENT , GOVERNMENT OF NCT DELHI.
CASE NO	APPEAL NO : 5802 OF 2022
DATE OF THE ORDER	JULY 21 , 2022
CITATION	APPEAL NO : 5802 OF 2022 SPECIAL LEAVE PETITION CIVIL NO: 12612 OF 2022
JURISDICTION	SUPREME COURT OF INDIA
QUORUM	DR. DHANANJAYA Y CHANDRACHUD
AUTHOR OF THE JUDGEMENT	HON'BLE JUSTICE DR. CHANDRACHUD
APPALENT	X
RESPONDENT	THE PRINCIPAL SECRETARY HEALTH,FAMILY WELFARE DEPARTMENT , GOVERNMENT OF NCT DELHI.
COUNSEL FOR APPALENT	MR.DR AMIT MISHRA
COUNSEL FOR RESPONDENT	MS AISHWARYA BHATI, ADDITIONAL SOLICITOR GENERAL, MR G S MAKKER, AOR.
ACTS &SECTIONS INVOLVED	SECTION 3(2)(D) – MEDICAL TERMINATION OF PREGNANCY ACT, 1971 AND MEDICAL TERMINATION OF PREGNANCY AMENDMENT ACT,2021. MEDICAL TERMINATION OF PREGNANCY RULES, 2003 ARTICLE 21, 140 & 14 OF INDIAN CONSTITUTION

The decision in this case is very significant one in Indian legal history. Marriage is a basic and essential institution in Indian society. But in recent days marriage institution faced so many changes, for example living relationship is in practise nowadays. This concept was avoided by Indian society for a long time then it was the decriminalised by Hon'ble Supreme Court. In this case within the meaning of section 3(2)(d) of the Medical termination of pregnancy act, 1971 the unmarried woman also entitled to safe abortion . Before this case termination of pregnancy under the Medical termination of pregnancy act 1971 is only available to divorced wife, minor , widow and married woman. After this case unmarried women also entitled to safe abortion with in 20 to 24 weeks.

#### Facts of the case:

- In this case appellant was a 25 years old unmarried woman .
- She was in consensual relationship in June 2022. Later she came to know that she was pregnant .
- An ultrasound scan revealed a pregnancy of a term 22 weeks on July 5,2022. Her relationship was breakdown.
- She is the eldest sister and she have five siblings. Her father and mother where agriculturalist. She hold a BA degree.
- She should not able to raise the child because of the absence of livelihood. So she decided to terminate her pregnancy .
- She filed a writ before High Court of Delhi for permission to terminate her pregnancy under section 3(2)(d) of Medical termination of pregnancy act,1971 and Rule 3B Medical termination of pregnancy rules,2003.

#### SECTION 3(2)(D)

There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a

grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

#### RULE 3B

Women are eligible for termination of pregnancy within twenty to twenty four weeks .

- In prayer C She prayed to direct the respondent to include the unmarried woman in Section 3(2)(d) of Medical termination of pregnancy act.

Prayer C. Direct the Respondent to include unmarried woman also within the ambit of the Rule 3B of the Medical Termination of Pregnancy Rules 2003 (as amended on 21.10.2021) for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the MTP Act, for a period of up to twenty-four weeks;

- On special leave petition this case was here by Supreme Court.

#### Issues involved:

- WHETHER THE UNMARRIED WOMAN ENTITLED FOR ABORTION UNDER SECTION 3(2)(d) OF MEDICAL TERMINATION OF PREGANCY ACT ?
- EXCLUSION OF UNMARRIED WOMAN IS VIOLATIVE OF ARTICLE 21 AND ARTICLE 14 OF INDIAN CONSTITUTION?

#### Arguments on behalf of Appellant:

In this case the appellant submits that she was deserted by her partner. She is the eldest sister and she have five siblings. A woman have a right to reproductive choice. She has a personal liberty under article 21 of Indian constitution.

Suchitra srivastava vs Chandigarh administration



In this case it was held that woman's right to make reproductive choices also a dimension of personal liberty under article 21 of the constitution of India. The woman's right to privacy, dignity and bodily integrity should be respected.

Denying an unmarried woman's right to safe abortion violates her personal autonomy and freedom. The hon'ble court also have been decriminalised the live in relationship. She had moved to the court before 24 weeks. She was also not mentally prepared to raise a child. If she compelled to do so it will affect her mentally and physically.

In the case Khushboo vs Kanniammal

It was observed that to interfere with the domain of personal autonomy criminal laws should be weaponized.

Puttaswamy vs Union of India:

In this case it was held that woman have a right to lead a life with dignity and She have right to privacy under article 21. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual.

#### **Arguments on behalf of respondent:**

In India ,Marriage is an important social institution.

Section 3(2)(d) [ Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman] of Medical termination of pregnancy act, 1971 includes the married woman and her husband.

Where as in Section 3(2)(d) [ Where any pregnancy occurs as a result of failure of any

device or method used by any woman or her partner for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman]of medical termination of pregnancy amendment act, 2021 it was changed as any woman or her partner.

The word married woman in 1971 act was replaced by word any woman and the word husband in 1971 act was replaced by her partner. The term unmarried woman only includes categories of woman such as divorced woman ,windows ,minors , disabled and mentally ill woman, rape and survivors of sexual assaults . Beneficial provisions of medical termination of pregnancy act only involves a matrimonial relationship .

#### **Order of the court:**

In the above background, we pass the following ad interim order:

(i) We request the Director of the All India Institute of Medical Sciences, Delhi to constitute a Medical Board in terms of the provisions of Section 3(2D) of the Medical termination of pregnancy act, 1971 extracted in the earlier part of this order, during the course of 22 July 2022; and

(ii) In the event that the Medical Board concludes that the fetus can be aborted without danger to the life of the petitioner, a team of doctors at the All India Institute of Medical Sciences shall carry out the abortion in terms of the request which has been made before the High Court and which has been reiterated both in the Special Leave Petition and in the course of the submissions before this Court by counsel appearing on behalf of the petitioner. Before doing so the wishes of the Appellant shall be ascertained again and her written consent obtained after due verification of identity.

**Conclusion:**

As per the article 140 of Indian constitution , the court interpret in the ambit of section 3(2)(D) of medical termination of pregnancy act .

The court held that this provision includes the unmarried woman and entitle to safe abortion of pregnancy in the term of 22 to 24 weeks without danger to life. Exclusion of unmarried woman from the ambit of section 3(2)(D) of medical termination of pregnancy act is unconstitutional and it also violative of article 14 of Indian constitution.

The court also ruled that rape includes the marital rape for the purpose of this act.

It requested the director of the All India institute of medical science, Delhi to establish medical board in terms of the provisions of section 3(2)(D) of the medical termination of pregnancy act.

**Related case laws :**

1. Suchitra srivastava vs Chandigarh administration
2. Khushboo vs Kanniammal
3. Puttaswamy Vs. Union of India

**Reference:**

1. The Medical termination of pregnancy act, 1971
2. The Medical termination of pregnancy amendment act, 2021
3. The Medical termination of pregnancy rules, 2003
4. Article 14 and 21 of Indian Constitution, 1950.