



**X VERSUS THE PRINCIPAL
SECRETARY, HEALTH AND
FAMILY WELFARE
DEPARTMENT, GOVT. OF NCT
OF DELHI & ANR**

*By Rashmi Singh & Shreya Singh
From Shambhunath Institute of Law,
Prayagraj.*

ABSTRACT

The right to bear a child or not is an essential part of the bodily and reproductive autonomy of woman. It is the woman who has to go through all the direct and indirect effects of carrying a child in her womb. While it is often seen that unmarried or single women engaging in pre-marital sexual relations have to deal with prevalent societal stigmas, majorly relating to pregnancies and abortions, this latest judgement by the Supreme Court makes an attempt to do away with it. The Hon'ble Court gave a wide interpretation to Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (hereinafter referred as MTP Rules). It included in the ambit of Rule 3B of the MTP Rules, unmarried women as well as survivors of marital rape as being eligible for abortion of their pregnancy of 20-24 weeks.

The court, in the present case, permitted an unmarried woman to terminate her pregnancy of 24 weeks which resulted out of a consensual relationship. The Hon'ble Court reasoned that continuance of pregnancy would constitute grave injury to the mental health of the woman.

In the current ruling, the Hon'ble Court acknowledged "marital rape" as well, noting that married women may also fall under the category of rape or sexual assault victims. The Court ruled that a woman can become pregnant as a result of

her spouse having non-consensual sexual contact with her. For this reason, it would be rational to include marital rape within the meaning of 'rape' under Rule 3B(a) of the MTP Rules. Thus, even victims of marital rape are allowed to end their pregnancies, and they don't need their husbands' permission to do so.

The ruling has been hailed as a landmark decision.

BACKGROUND FACTS

The present case was an appeal before the Supreme Court of India, arising out of the judgement of a Division Bench of the High Court of Delhi dated 15 July 2022. The appellant is an Indian citizen and a permanent resident of Manipur. She is an unmarried woman aged about twenty five years old. She invoked the writ jurisdiction of the High Court of Delhi to seek permission of the Hon'ble High Court to terminate her pregnancy before the completion of 24 weeks as on 15 July 2022. The appellant became pregnant, out of wedlock, as a result of a consensual relationship. She wanted to terminate her pregnancy owing to the "social stigma and harassment" in the society against unmarried single parents (especially women), as "her partner had refused to marry her at the last stage". The appellant further contended that she, being an unemployed graduate, was not ready to raise a child as an unmarried single mother and the continuation of the pregnancy would involve a "risk of grave and immense injury to her mental health".

However, the High Court of Delhi, by its order dated 15 July 2022, rejected the prayer of the appellant to grant permission for terminating her pregnancy and to prevent the respondents from taking any coercive action or criminal proceeding against the appellant or the Registered Medical Practitioner for terminating the appellant's pregnancy, observing that the Medical Termination of Pregnancy Act 1971 (hereinafter



referred as MTP Act) did not apply to the appellant's case since she was not covered by or under any sub-clause of Rule 3B of the MTP Rules.

Aggrieved by the order of the High Court, the appellant appealed before the Hon'ble Supreme Court. The Supreme Court, vide order dated 21 July 2022, modified the order of the High Court and thereby permitted the appellant to terminate her pregnancy, only after a Medical Board constituted under the All India Institute of Medical Sciences (AIIMS) opines that the pregnancy could be terminated without danger to the life of the appellant.

ISSUE IN THE CASE

Interpretation of Rule 3B of the MTP Rules.

CONTENTIONS OF THE PARTIES

Appellant : Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Rules are arbitrary and discriminatory as they exclude unmarried women from their ambit, thereby violating Article 14 of the Constitution of India as they are discriminative against women on grounds of their marital status.

Respondent : It was submitted by the respondents that Rule 3B(c) of the MTP Rules includes within its ambit unmarried or single women who are in long term relationships. In support of the same, the following points were also laid down:

“.....

(d) The term “change of marital status” in Rule 3B(c) ought to be interpreted as “change in the status of a relationship” to include unmarried or single women as well as women who are not divorced but are separated or have been deserted;

(e) “Live-in relationships” are equivalent to marital relationships because in both types of relationships, the woman is entitled to maintenance. Further, the children born out of such a relationship are vested with the right of succession. Various national legislations, including the MTP Act, do not make a distinction between married women and unmarried or single women; and

(f) Women enjoy the right to bodily integrity and autonomy, as well as reproductive rights. They are entitled to exercise decisional autonomy.”¹

JUDGEMENT AND REASONING

The Hon'ble Supreme Court's judgement in the case of *X versus Principal Secretary Health and Family Welfare Department* is being applauded and is accredited as historic.

The court while interpreting Rule 3B of the MTP Rules observed that there is no logic behind excluding unmarried or single women from the ambit of the aforementioned provision and such a narrow interpretation leads to violation of Article 14 of the Constitution. The court held, *“A narrow interpretation of Rule 3B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Article 14 requires the state to refrain from denying to any person equality before the law or equal protection of laws. Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14.”²*

¹ X versus The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr. , Civil Appeal No. 502 of 2022 (Arising out of SLP (C) No. 12612 of 2022)

² Id. at 1.



Giving a blow to the orthodox and patriarchal notions attached to the pregnancy of an unmarried woman, the Court observed that, *"The law should not decide the beneficiaries of a statute based on narrow patriarchal principles about what constitutes "permissible sex", which creates invidious classifications and excludes groups based on their personal circumstances. The rights of reproductive autonomy, dignity and privacy under Article 21 give an unmarried woman the right of choice on whether or not to bear a child, on the similar footing of a married woman."*³ The Court also laid down that women who are going through a change in their marital status in the course of their ongoing pregnancy shall also be eligible to terminate or abort their pregnancy under Rule 3B(c) of the MTP Rules.

The judgement intends to significantly elevate the right to privacy and dignity as guaranteed by Article 21 of the Constitution, as well as the physical and reproductive autonomy of pregnant women. The freedom to choose whether or not to have children is guaranteed under Article 21 for both married and unmarried women equally.

In the present case, the Hon'ble Court permitted an unmarried woman to terminate her pregnancy on significant grounds, one of them being that the continuance of pregnancy will constitute 'grave injury to the mental health of the woman' as provided under Section 3(2)(ii) of the MTP Act.

The term "mental health" has been broadly construed in this context, and it now implies much more than only the "absence of mental impairment or a mental illness". The court observed that unwanted pregnancy can be construed as injury to mental health under Section 3(2)(b) of the MTP Act. The court noted, *"The determination of the status of one's mental health is located in one's self and experiences within one's environment*

*and social context. Our understanding of the term mental health cannot be confined to medical terms or medical language, but should be understood in common parlance."*⁴

Another observation and decision of the Court in the present case which is worthy of appreciation is that not just unmarried or single women, but even married women may also form part of the class of survivors of sexual assault or rape. It was held that, *"A woman may become pregnant as a result of non-consensual sexual intercourse performed upon her by her husband. We would be remiss in not recognizing that intimate partner violence is a reality and can take the form of rape. The misconception that strangers are exclusively or almost exclusively responsible for sex- and gender-based violence is a deeply regrettable one."*⁵

The court disregarded the difference between rape of an unmarried woman by a man and that of a married woman by her own husband and the assumption that a husband can never commit rape on his wife, by observing that, *"The ordinary meaning of the word 'rape' is sexual intercourse with a person, without their consent or against their will, regardless of whether such forced intercourse occurs in the context of matrimony."* It also observed that *"The nature of sexual violence and the contours of consent do not undergo a transformation when one decides to marry."*⁶

The Court held that the term 'rape' under Rule 3B of the MTP Act includes 'marital rape' too. *"Notwithstanding Exception 2 to Section 375 of the IPC, the meaning of the words "sexual assault" or "rape" in Rule 3B(a) includes a husband's act of sexual assault or rape committed on his wife. The meaning of rape must therefore be understood as including marital rape, solely*

³ Id. at 1.

⁴ Id. at 1.

⁵ Id. at 1.

⁶ Id. at 1.



for the purposes of the MTP Act and any rules and regulations framed thereunder.”⁷

It was further held that in order to attain the benefit under Rule 3B(a) of the MTP Rules, a woman does not necessarily need to seek recourse to formal legal proceedings for the purpose of proving 'factum of sexual assault, rape or incest'. It is also not necessary to register an FIR or prove the allegations of rape in any court of law before it could be considered true for the purpose of the MTP Act.

The Hon’ble Court left the constitutional validity to be decided in other appropriate proceeding by this Hon’ble Court as the challenge to Exception 2 to Section 375 of the IPC 1860 is pending for consideration in the Supreme Court before another Bench of Judges.

CONCLUSION

Marital rape was formerly believed to be impossible until recent decades. It was really incorporated into the rape statutes in many countries of the world that married couples were excused from prosecution if the perpetrator was not a stranger and was someone to whom the victim was married at the time of commission of the rape. Therefore, it took until the 1970s-80s for the first marital rape conviction to occur in the United States.

In India, thirty two per cent of the women who have ever been married have experienced spousal violence- whether physical, sexual or emotional.⁸

Out of the 195 countries in the world, 150 of them have recognized marital rape as an offence and have criminalized the same, as of 2019. These include Norway, Canada, New Zealand, France,

Sweden, all the fifty states of the United States of America, Soviet Union and Poland.

However, in India, marital rape has not yet been recognized as an offence and is, therefore, not criminalized till date. India falls in the list of the 32 countries that have not yet criminalized marital rape. In India, Exception 2 to Section 375 of the Indian Penal Code 1860 exempts the act of rape by a husband on his wife from falling under the ambit of the offence of rape.

It states that, “*Sexual intercourse or sexual acts by a man with his own wife, wife not being under fifteen years of age, is not rape.*”⁹ This exception under the Indian Penal Code is violative of women’s right to personal liberty, dignity, equality etc. The right to life under Article 21 is not restricted to mere “animal existence” but also includes the right to live with dignity.¹⁰ There is an assumption that in a marital relationship, there is always an implied, absolute and irrevocable consent to have sex from the wife’s end. Therefore, in order to abort a pregnancy arising out of spousal rape, the victim had to seek consent of her husband or approach Courts to obtain order for termination of her pregnancy.

With the increasing need for reform in Indian Criminal Laws for recognition of marital rape as an offence, the judgement of the Supreme Court in the present case has opened doors of hope for the criminalization of this act. The Hon’ble Court did not criminalize marital rape yet, and has left it for the Legislature to decide and recognize it as an offence or not. However, the Court recognized marital rape as falling under the category of ‘rape’ for the purposes of the MTP Act, particularly for Rule 3B(a) of the MTP Rules, thereby, allowing victims of marital rape to terminate their pregnancy of upto 24 weeks. The judgement is

⁷ Id. at 1.

⁸ National Family Health Survey (NFHS-5) 2019-21, (2021).

⁹ Indian Penal Code, 1860, §375, No. 45, Acts of Parliament, 1860.

¹⁰ Maneka Gandhi v. Union of India, AIR 1978 SC 597.



being celebrated and hailed as a historic one as it is undoubtedly a progressive one for another reason that while the Indian judiciary is giving recognition to legal abortion and is expanding its scope, a developed and highly progressive country like America has recently joined the list of four countries that have rolled back abortion rights. In America, protection for legal abortion has been removed by overturning the 50-year old judgement in *Roe v. Wade*¹¹ in which the Supreme Court of the United States legalized women's right to have abortions and guaranteed abortion as a constitutional right.

Another aspect of the judgement that has been much appreciated is that it recognizes the right of an unmarried woman to terminate her pregnancy arising out of a consensual relationship. The Court interpreted Rule 3B of the MTP Rules (categories of women who can seek abortion of pregnancy of 20-24 weeks) as inclusive of unmarried women whose pregnancy arises out of consensual relationship. They are considered eligible for termination of their pregnancy under the category of women who go through a change in their marital status during their ongoing pregnancy.

The judgement is, therefore, a stepping stone towards recognition of women's right relating to their bodily and reproductive autonomy

¹¹ 410 U.S. 113 (1973).