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AND LEGAL ABORTION: SS AXING THE 51-  
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## **ENABLING UNMARRIED WOMEN TO SAFE AND LEGAL ABORTION: SS AXING THE 51-YEAR-OLD BARRIER**

Himanshu Yadav<sup>1</sup>

### **INTRODUCTION**

In India, abortions are governed under the Medical Termination of Pregnancy (MTP) Act, 1971. It allows women to abort under some special circumstances. Initially, when then the Act came in force, it was concerned with cases of pregnancy involving only a married woman and her husband. The presumption of such abortion was a grave injury to the mental and physical health of the woman. Opinion of one Registered Medical Practitioner (RMP) for termination of pregnancy up to 20 weeks of gestation. Opinion of two RMPs for termination of pregnancy of 20-24 weeks of gestation is required. But in a recent amendment, i.e., the MTP (Amendment) Act, 2021, the term ‘married women’ and ‘husband’ were replaced with ‘any women’ and ‘partner’ respectively and inserted in Section 3(b) of the MTP Amendment. The Act was expanded to include certain categories of women like divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape through MTP Rules 2003. Recently a matter came before Delhi High Court where the petitioner, a 25-year-old woman, who was 23 weeks pregnant, filed a plea in the Court for abortion. Her contention was that her partner, with whom she was in a relationship, had refused to marry her. She stressed that giving birth would cause her psychological agony. Delhi High Court did not permit the women to go for an abortion. The Court said "As of today, Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (which do not allow unmarried women) stands, and this court, while exercising its power under Article 226 of the Constitution of India, 1950, cannot go ultra vires to the statute. Then the petitioner

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reached Supreme court. In case of *X vs Principal Secretary Health and Family Welfare Department and Another*<sup>2</sup>, the Supreme Court gave a landmark judgement. where it allowed that unmarried women to abort her child. This article seeks to analyse whether the exclusion of unmarried women whose pregnancy arises out of a non -consensual relationship from rule 3(B) of the medical termination of the pregnancy rules, 2003 is valid or not.

### **OBSERVATION OF APEX COURT**

The Judgement was delivered by Justice D.Y. CHANDRACHUD, A.S. BOPANNA AND J.B. PARDIWALA, while delivering the judgement, the Supreme court stated that the Delhi high court has taken a restricting view of clause (c) of Rule 3B. Clause (c) states of a change of marital status during an ongoing pregnancy and is followed by the words “*widowhood and divorce*”. The expression “*change of marital status*” should be given a purposive rather than a restrictive interpretation and the statute must be read in its entirety. Moreover, the court stated that the Parliament replaced the word ‘Husband’ with ‘Partner’, it intended to include single and unmarried women within the ambit of this Act. Explanation 1 of Section 3 also states a situation where a woman or her partner for the purpose of limiting the number of children or preventing pregnancy. The intention of the Parliament, therefore, is clearly not to confine the beneficial provisions of the MTP Act only to a situation involving married women.

When this Act came in force in 1971 the situation and time were different. Live-in relationships were not that much prevalent as compared to today. In India, marriage is considered as a social institution but some group might hold a different view and in today’s time live-in relationships are common. So, when the MTP Act recognizes

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<sup>2</sup> X vs Principal Secretary Health and Family Welfare Department and Another, Civil Appeal No 5802 of 2022.

another category of women like divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape, it would be unfair to deny the right to unmarried women to terminate their pregnancy. And it would be also a violation of Article 14.

The bench also held that “A woman’s right to reproductive choice is an integral aspect of her personal liberty under Article 21 of Constitution. She has a sacrosanct right to bodily integrity.” The court also took reference to *K.S Puttaswamy vs Union of India*<sup>3</sup> where it held that the right of a woman to procreate or abstain from procreating has been recognized as a facet of her right to lead a life with dignity under the right to privacy under Article 21 of the Constitution.

Denying unmarried women, the right to abort her child is violation of her right to personal autonomy and freedom. It also held that distinction between the word Unmarried women and any women does not hold the nexus to the basic purpose of this legislation.

#### Interpretation Of Legislative Intent behind MTP Amendment Act 2021

In a reply Ministry of health and Family welfare responded that the purpose of MTP Amendment Act 2021 was to increase the access of safe and legal abortion to all the women irrespective of their marital status. In a speech Dr. Harshvardhan (that time, Minister of health and family welfare) stated taking into consideration an ever-changing society, rights of single women, widows, and sex workers must be considered. After the amendment, the scheme of the MTP Act does not make a differentiation between married and unmarried women for the purpose of medical termination of pregnancies. The Amendment Bill was acquainted as a “*progressive legislation*” introduced to uphold women’s right to live with dignity”.

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<sup>3</sup> K.S Puttaswamy vs Union of India AIR 2017 SC 4161.

We can conclude that MTP Amendment Act 2021 intended to include unmarried women within its ambit when the term 'married women' and 'husband' were replaced with 'any women' and 'partner' respectively and inserted in Section 3(b) of the MTP Amendment 2021.

Understanding the injury to the mental health and social stigma attached to the pregnancy of Unmarried women.

Several social stigma is attached to women's pregnancy especially unmarried women. According to statistics, 8 women die everyday day in India because of unsafe abortions and the tally of maternal death is increasing in India. Another study published by BMJ Global Health states the grim statistics of unsafe abortions in India between years 2007 to 2011 where around 67% of the abortion were classified as unsafe abortions. India is a patriarchal society and there is too much social stigma attached to abortions of an unmarried women which leads women to go for unsafe abortion practices like taking abortion pills which hampers their health.

In the Judgement of *ABC v State of Maharashtra*<sup>4</sup>, Bombay High Court held, "*In India a child to an unwed mother is taken as a social stigma of a serious nature and she doesn't want to carry such stigma for her entire life. In the present social milieu in India, she can future complications in her social and life if she would be deprived of now to exercise her reproductive choice, which has its origin in her fundamental right to life*".

Section 3 of the MTP Acts allow termination of pregnancies up to 20 weeks of gestation period if the pregnancy causes grave injury to physical and mental health of the women. According to section 3(3) states that while interpreting "*grave injury to her physical or mental health*", account may be taken of the pregnant woman's reasonable and foreseeable environment. In *High court on its motion vs State of*

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<sup>4</sup> ABC v State of Maharashtra, W.P. (L) No. 22907 of 2022.

*Maharashtra*<sup>5</sup>, Bombay High court stated that compelling a woman to continue any unwanted pregnancy violates a woman's bodily autonomy, aggravates mental trauma and has a deleterious effect on the mental health because of societal pressure.

Undoubtedly the unmarried women facing mental trauma due to unwanted pregnancy falls within the ambit of section 3 of the MTP Act and shall be allowed to terminate her pregnancy.

### **CONCLUSION & SUGGESTIONS**

Women have right to reproductive autonomy. And this right not only includes whether to have children or not have children but it also includes right to have safe and legal abortions and right to reproductive healthcare. Right to bodily autonomy is closely linked to right to bodily autonomy.

In *K.S Puttaswamy* it was held that the right to privacy enables individuals to retain and exercise bodily autonomy under Article 21 of the Constitution. Therefore, right to legal abortions will be considered as a fundamental Right. Denying Right to safe and legal abortion to unmarried women would be an infringement of a fundamental right.

If the state forces a woman to carry an unwanted pregnancy, then it would not only deprive her of bodily autonomy but also amount an affront to her dignity. Right to live with dignity is a fundamental right under Article 21 of the Indian Constitution. Therefore, forcing an unmarried woman for an unwanted pregnancy would infringe her Fundamental right to live with dignity

The law must not be static. As the social mores change, law must also adapt. And the changing societal norms must be borne in mind while interpreting the provisions. When the law came in force in 1971 it was

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<sup>5</sup> High Court on its Own Motion v. State of Maharashtra S.M. PIL No. 1 of 2021.

only concerned with married women but now when the society is evolved. Its custom and tradition are also changed. Feeling of affection and being loved is what most people desire but the tie that marriage bind is too binding for them. And an alternative is a relationship but without obligations and responsibilities. This is when a live-in relationship comes into the picture. In the case of *S Khushboo vs Kanniammal*<sup>6</sup> it was held that life under live-in relationship comes under the ambit of right to life under Article 21 of the Indian Constitution and the live-in relationship cannot be held unlawful. There should be no distinction between married and unmarried women's right to abortion.

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<sup>6</sup> S. Khushboo v. Kanniammal & Anr. (2010) 5 SCC 600.