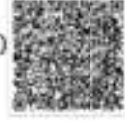




2025.PHHC:003140



CWP-75-2025

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

118

[REDACTED]
Date of Decision : January 13, 2025

[REDACTED]

[REDACTED]

[REDACTED]

FORTIS HOSPITAL MOHALI AND OTHERS**-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Ketan Chopra, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant writ petition cast under Article 226 of the Constitution of India, the petitioner, a tricenarian married woman, craves for issuance of directions upon the official respondents to terminate her pregnancy, without her husband's consent. The petitioner claims her pregnancy to be medically terminable on account of her pregnancy length not exceeding the period prescribed for termination in The Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the 'Act of 1971').

**GROUND CANVASSED IN THE WRIT PETITION FOR
SECURING THE RELIEF OF PREGNANCY TERMINATION**

2. The marriage of the petitioner was solemnized with one [REDACTED] on 22.08.2024, however, immediately thereafter, she was subjected to cruelty by her in-laws family on account of bringing less dowry. Moreover, the husband of the petitioner also maltreated her and he even brought a



2025.PHHC:003140



2

CWP-75-2025

portable camera twice in their bedroom to secretly record their personal moments. Not only this, the business of the petitioner's husband also closed down and he became dependent on the petitioner and her parents for day to day needs and expenditure.

3. Despite all the atrocities, the petitioner went on performing her matrimonial obligations and after approx. 1½ months of her marriage, the petitioner came to know about her pregnancy, whereupon, she informed about it to her husband and also informed him that their marital life has just begun and their financial condition is also not stable, therefore, she is not mentally prepared for the baby. However, in order to restrain the petitioner from aborting pregnancy by taking contraceptive measures within the requisite period, the husband of the petitioner orchestrated the scenario of love and affection towards her. However, the atrocities upon the petitioner did not pause and she was manhandled by her in-laws family, which resulted in hers suffering minor pain and mental trauma. Consequently, the petitioner had to depart from the company of her husband and had to come to her parents house. The petitioner also made a police complaint about the atrocities committed upon her. Moreover, owing to the atrocities (supra), the petitioner started bleeding on 03.12.2024, whereupon, she was taken to Iqbal Nursing Home by her parents. However owing to lack of proper treatment, the petitioner's parents also took her to DMC Hospital, Ludhiana, where she remained admitted from 03.12.2024 to 06.12.2024. In the medical summary report (Annexure P-3) prepared at the time of petitioner's discharge from hospital, it was specifically observed that the petitioner is



2025.PHHC:003140



3

CWP-75-2025

under stress and a victim of domestic violence.

4. Citing the hereinabove extracted facts and circumstances, especially her soured matrimonial relationship and her decision to walk out of her marriage, the petitioner claims that she does not want to continue with her unwanted pregnancy as it would cause grave injury to her physical and mental health, therefore, permission be granted to medically terminate her unwanted pregnancy.

PROCEEDINGS BEFORE THIS COURT AND REPORT OF THE BOARD OF DOCTORS

5. This Court had passed the hereinafter extracted order on 08.01.2025 upon the instant writ petition.

“On the oral request of the learned counsel for the petitioner, the State of Punjab, through the Department of Health and Family Welfare, is impleaded as a necessary party to the instant petition.

The petitioner, who is stated to be in the 19th week of her pregnancy, has approached this Court, seeking permission to terminate her pregnancy, without the consent of her husband.

Notice of motion.

Mr. Sahil R. Bakshi, AAG, Punjab, waives service for State of Punjab, and accepts notice. He seeks some time to file response to the instant petition.

Notice be issued to respondents No.4 to 6 only, at this stage, for 13.01.2025.

In the meanwhile, the petitioner is directed to appear before the Chief Medical Officer, Civil Hospital, Ludhiana, on 09.01.2025 itself, and thereupon, the Chief Medical Officer concerned, shall constitute a Board of Doctors, as per the provisions of the Medical Termination of Pregnancy Act, 1971, to find out the age of the foetus, as well as the health condition of mother and the foetus, and thereupon, shall submit a status report in this regard, positively on



2025.PHHC:003140



4

CWP-75-2025

or before 13.01.2025, since the issue relates to the termination of pregnancy, where the time is the essence, and therefore, this Court presuppose that there should not be any kind of delay on the part of the doctors concerned, in making compliance of the directions (supra).

To be shown in the urgent list.”

6. In deference to the directions enclosed in the hereinabove extracted order, today the learned State counsel has furnished before this Court the photocopy of the report submitted by the Board of Doctors, as constituted under the Act of 1971. This report is taken on record as Mark ‘A’.

7. A perusal of the report (Mark ‘A’) reveals that the age of the foetus was 18 weeks and 03 days as on 11.01.2025, and, the Board of Doctors has opined that the pregnancy can be terminated before 20 weeks. Moreover, the report also voices that no psychopathology was found in the petitioner. The relevant portion of the report is reproduced hereunder:-

“As per board of doctors Dr. Surbhi Singhal (Medical Officer), Dr. Anupriya Bajaj (Medical Officer) and Dr. Lakhwinder Kaur (Medical Officer) was constituted by Dr. Deepika Goyal (Senior Medical Officer, I/c MCH, Civil Hospital, Ludhiana) on 09-01-25 for the opinion of Medical Termination of Pregnancy of Aarti Arora, 32 years female. (CWP No.75 of 2025).

Her LMP: 04-09-2024, EDOD: 11-06-2025

USG (09-01-25) (SAN/10/CH/LDH/25)- Single Live Intra Uterine pregnancy of average Gestational age 18 weeks, 3 days.

Her Psychological assessment was taken from DMC (MRD No.1857712 date: 11-01-25)

On analysis of Rorschach test- No Psychopathology was found.

According to the MTP Guidelines Act 1971 and amendment Act 2021, board of doctors is of the opinion that pregnancy can be



2025.PHHC:003140



5

CWP-75-2025

terminated before 20 weeks.”

8. Before this Court proceeds to gauge the merits/demerits of the instant writ petition and consequently evince any opinion thereon, it is deemed apt to initially capture a glimpse of some significant legal provisions and judicial precedents germane to the disposal of the instant writ petition.

ANALYSIS OF SIGNIFICANT LEGAL PROVISIONS AND JUDICIAL PRECEDENTS GERMANE TO THE DISPOSAL OF THE INSTANT WRIT PETITION.

9. The first provision, which is of utmost significance and which is reproduced hereinafter, is enclosed in Section 3 of the Act of 1971 inasmuch as there becomes prescribed the manner in which registered medical practitioners may terminate pregnancies.

“3. When pregnancies may be terminated by registered medical practitioners.—(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

[(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are,

of the opinion, formed in good faith, that—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental



2025.PHHC:003140



6

CWP-75-2025

health; or

(ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), 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 or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may



2025.PHHC:003140



7

CWP-75-2025

be.]

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is a [mentally ill person], shall be terminated except with the consent in writing of her guardian.]

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

10. Another important provision is encapsulated in Rule 3(B) of The Medical Termination of Pregnancy Rules, 2003 (hereinafter referred to as 'Rules of 2003'). This Rule prescribes the categories of women, who shall be considered eligible for termination of pregnancy for a period of upto twenty-four weeks. Rule 3(B) is reproduced hereunder:-

“3B. Women eligible for termination of pregnancy up to twenty-four weeks.—The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely:—

(a) survivors of sexual assault or rape or incest;

(b) minors;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)]; (e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or



2025.PHHC:003140



8

CWP-75-2025

emergency situations as may be declared by the Government.”

11. Taking into account the petitioner’s claimed change of marital status, coupled with the length of her pregnancy, which evidently does not exceeded twenty weeks, therefore, the provisions concerning the case at hand are the ones embodied in clause (b) of sub-section (2) Section 3 of the Act of 1971 and clause (c) of Rule 3(B) of the Rules of 2003.

12. Now, the issue arising for consideration before this Court is “*whether in the given facts and circumstances, where although the petitioner has departed from the company of her husband on account of domestic violence but not legally divorced, yet she is eligible for termination of pregnancy without consent of her husband on the basis of change of marital status?*”.

13. The Hon’ble Supreme Court has, while passing the interim order dated 21.07.2022, in case titled as “***X Vs. Principal Secretary, Health and Family Welfare Department and Anr.***”, 2022(4) RCR(Criminal) 37, held that the expression “change of marital status” should be given a purposive rather than a restrictive interpretation. The expressions “widowhood and divorce” need not be construed to be exhaustive of the category which precedes it.

14. The Hon’ble Supreme Court has also observed that the Parliament, by amending the Act of 1971 through Act 8 of 2021, intended to include unmarried women and single women within the ambit of the Act. The relevant paragraphs of the interim order (supra) are reproduced hereunder:-



2025.PHHC:003140



9

CWP-75-2025

“14. Prima facie, quite apart from the issue of constitutionality which has been addressed before the High Court, it appears that the High Court has taken an unduly restrictive view of the provisions of clause (c) of Rule 3B. Clause (c) speaks of a change of marital status during an ongoing pregnancy and is followed in parenthesis by the words "widowhood and divorce". The expression "change of marital status" should be given a purposive rather than a restrictive interpretation. The expressions "widowhood and divorce" need not be construed to be exhaustive of the category which precedes it.

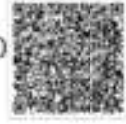
15. The fundamental principle of statutory interpretation is that the words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act and the intent of the legislature. Parliament by amending the MTP Act through Act 8 of 2021 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.”

15. Furthermore, at the time of delivering the final verdict dated 29.09.2022 in the case (supra) bearing Civil Appeal No.5802 of 2022, the Hon’ble Supreme Court considered at length the question “whether Rule 3B includes unmarried women, single women, or, women without a partner under its ambit”, and, while rendering an answer thereto, also referred to the aims and objects of the Act of 1971. The relevant paragraphs of this verdict are reproduced hereinafter:-

“51. In this background, the Medical Termination of Pregnancy Bill was drafted and introduced in the Rajya Sabha on 17 November 1969. On 2 August 1971, the MTP Bill was introduced in the Lok Sabha with the intent to “liberalise some of the restrictions under Section 312 of the IPC.” The MTP Act was enacted by Parliament as a “health” measure, “humanitarian” measure and “eugenic” measure. The relevant portion of the Statement of Objects and



2025.PHHC:003140

**CWP-75-2025****10**

Reasons of the MTP Act is extracted below:

“1. The provisions regarding the termination of pregnancy in the Penal Code, 1860 which were enacted about a century ago were drawn up in keeping with the then British Law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. It has been stated that this very strict law has been observed in the breach in a very large number of cases all over the country. Furthermore, most of these mothers are married women, and are under no particular necessity to conceal their pregnancy.

2. In recent years, when health services have expanded and hospitals are availed of to the fullest extent by all classes of society, doctors have often been confronted with gravely ill or dying pregnant women whose pregnant uterus have been tampered with a view to causing an abortion and consequently suffered very severely.

3. There is thus avoidable wastage of the mother's health, strength and, sometimes, life. The proposed measure which seeks to liberalise certain existing provisions relating to termination of pregnancy has been conceived (1) as a health measure—when there is danger to the life or risk to physical or mental health of the woman; (2) on humanitarian grounds—such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc.; and (3) eugenic grounds—where there is substantial risk that the child, if born, would suffer from deformities and diseases.”

The whole tenor of the MTP Act is to provide access to safe and legal medical abortions to women. The MTP Act is primarily a beneficial legislation, meant to enable women to access services of medical termination of pregnancies provided by an RMP. Being a beneficial legislation, the provisions of the MTP Rules and the MTP Act must be imbued with a purposive construction. The



2025.PHHC:003140

**CWP-75-2025****11**

interpretation accorded to the provisions of the MTP Act and the MTP Rules must be in consonance with the legislative purpose.

52. The MTP Amendment Act 2021 intended to extend the benefits of the statute to all women, including single and unmarried women. The MTP Amendment Act 2021, which came into force from 24 September 2021, introduced a major change in Section 3 of the MTP Act by extending the upper limit for permissible termination of pregnancy from twenty weeks to twenty-four weeks. In terms of the unamended MTP Act, a pregnancy could only be terminated under Section 3(2) if it did not exceed twenty weeks. The MTP Amendment Act 2021 extended the upper limit and allowed termination of pregnancy up to twenty-four weeks for specific categories of women based on the opinion of two RMPs.

53. The MTP Amendment Act 2021 also extended the benefit of the legal presumption of a grave injury to the mental health of a woman on account of the failure of contraception, to all women and not just married women. In the unamended MTP Act, Explanation II provided that the anguish caused by a pregnancy resulting from a failure of any device or method used by any “married woman or her husband” for the purpose of limiting the number of children may be presumed to constitute a grave injury to the mental health of the woman. After the MTP Amendment Act 2021, Explanation I provides that the anguish caused by a pregnancy (up to twenty weeks) arising from a failure of a contraceptive device used by “any woman or her partner” either for limiting the number of children or for preventing pregnancy can be presumed to constitute a grave injury to a woman’s mental health. By eliminating the word “married woman or her husband” from the scheme of the MTP Act, the legislature intended to clarify the scope of Section 3 and bring pregnancies which occur outside the institution of marriage within the protective umbrella of the law.

54. The Statement of Objects and Reasons of the Amendment Act locates the purpose within the framework of reproductive rights:



2025.PHHC:003140



CWP-75-2025

12

“With the passage of time and advancement of medical technology for safe abortion, there is a scope for increasing upper gestational limit for terminating pregnancies especially for vulnerable women and for pregnancies with substantial foetal anomalies detected late in pregnancy. Further, there is also a need for increasing access of women to legal and safe abortion service in order to reduce maternal mortality and morbidity caused by unsafe abortion and its complications. Considering the need and demand for increased gestational limit under certain specified conditions and to ensure safety and well-being of women, it is proposed to amend the said Act. The proposed Bill is a step towards safety and well-being of women and will enlarge the ambit and access of women to safe and legal abortion without compromising on safety and quality of care. The proposal will also ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy.” (emphasis supplied)

55. *The Statement of Objects and Reasons indicates that the MTP Amendment Act 2021 is primarily concerned with increasing access to safe and legal abortions to reduce maternal mortality and morbidity. The increase in the upper gestational limit for terminating pregnancies under “certain specified conditions” was considered necessary to fulfil the goal of ensuring “dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy.” (EMPHASIS SUPPLIED)*

56. *The unamended MTP Act of 1971 was largely concerned with “married women”, as evident from paragraph 1 of its Statement of Objects and Reasons, which stated that most of the women seeking abortions were married, and thus “under no particular necessity to conceal their pregnancy.” Significantly, the 2021 Statement of Objects and Reasons does not make a distinction between married and unmarried women. Rather, all women are*



2025.PHHC:003140

**CWP-75-2025****13**

entitled to the benefit of safe and legal abortions. (EMPHASIS SUPPLIED)”

16. Moreover, the Hon’ble Supreme Court also held that, the words “widowhood and divorce”, which are mentioned in brackets at the tail end of Rule 3B(c) does not hinder interpretation of the rule because they are illustrative. The change in material circumstances when a woman is abandoned by her family or her partner was also recognized by the Hon’ble Supreme Court. Relevant paragraphs of the verdict (supra) in this regard are reproduced hereunder:-

“89. Rule 3B(c) states that a “change in the marital status during the ongoing pregnancy (widowhood and divorce)” renders women eligible for termination of their pregnancy under Section 3(2)(b). The impact of the continuance of an unwanted pregnancy on a woman’s physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3B(c) is comparable to the rationale for Rule 3B(g) i.e., a change in a woman’s material circumstances during the ongoing pregnancy.

90. Rule 3B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances. A change in material circumstance during the ongoing pregnancy may arise when a married woman divorces her husband or when he dies, as recognized by the examples provided in parenthesis in Rule 3B(c). The fact that widowhood and divorce are mentioned in brackets at the tail end of Rule 3B(c) does not hinder our interpretation of the rule because they are illustrative.

91. A change in material circumstance may also result when a woman is abandoned by her family or her partner. When a



2025.PHHC:003140



CWP-75-2025

14

woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent or by coparenting with her former partner. Similar consequences may follow when a woman's partner dies.

93. A recognition of the fact that there may be a change in a woman's material circumstance animates Rule 3B(c), Rule 3B(g) and Rule 3B(f). However, Rule 3B does not enumerate all the potential changes that a woman's material circumstances may undergo. It merely specifies some of the potential changes to a woman's material circumstances, in sub-rules (c), (f) and (g). From the object and purpose of the MTP Act, its overall scheme, and the categories of women specified in Rule 3B, it is evident that it was not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3B. Rather, the benefit granted by Rule 3B must be understood as extending to all women who undergo a change of material circumstances."

17. Moreover, in ***"K.S. Puttaswamy Vs. Union of India"***, (2017) **10 SCC 1**, a nine Judge Bench of the Hon'ble Supreme Court has held that the right to privacy enables individuals to retain and exercise autonomy over the body and mind. This issue came to be considered in ***"X Vs. Principal Secretary, Health and Family Welfare Department and Anr."*** (*supra*) also, whereupon, it has been held as under:-

"100. In K S Puttaswamy v. Union of India, a nine-judge bench of this Court recognized the right to privacy as a constitutionally protected right under Article 21 of the Constitution. In



2025.PHHC:003140

**CWP-75-2025****15**

Puttaswamy (supra), this Court held that the right to privacy enables individuals to retain and exercise autonomy over the body and mind. The autonomy of the individual was defined as “the ability to make decision on vital matters of concern to life.” The judgement delivered on behalf of four judges described the right to privacy in the following terms:

“297. ... Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt.” (emphasis supplied)

101. Importantly, *Puttaswamy (supra)* also deals with facets of reproductive autonomy. *Chelameshwar, J.* held that a “woman’s freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy.”⁹³ This Court recognized the right to bodily integrity as an important facet of the right to privacy. *Puttaswamy (supra)* considered *Suchita Srivastava v. Chandigarh Administration* to reiterate that the statutory right of a woman to undergo termination of pregnancy



2025.PHHC:003140

**CWP-75-2025****16**

under the MTP Act is relatable to the constitutional right to make reproductive choices under Article 21 of the Constitution.

102. In *Suchita Srivastava (supra)* this Court explicitly recognized the concept of reproductive autonomy. In this case, the victim, an orphaned woman of around 19 years, with mental retardation, became pregnant as a result of a rape that took place while she was an inmate at a government-run welfare institution. After the discovery of her pregnancy, the Chandigarh Administration approached the High Court of Punjab and Haryana seeking approval for the termination of her pregnancy. The High Court constituted an expert body to conduct an enquiry into the facts. The expert body recorded that the victim had expressed her willingness to bear the child and accordingly recommended the continuation of the pregnancy. However, the High Court directed the termination of the pregnancy on the ground that the victim was mentally incapable of making an informed decision on her own.

103. A three-judge Bench of this Court disagreed with the High Court's decision. In a judgment authored by K G Balakrishnan, C.J., this Court emphasized that the consent of the pregnant woman is an essential requirement to proceed with the termination of a pregnancy under the MTP Act. It was held that the state administration cannot claim guardianship of the woman as she was a major. It was further held that the woman only had "mild mental retardation" and was therefore competent to give her consent in terms of Section 3(4)(a) of the MTP Act. This Court concluded that the state must respect the reproductive rights of women with "mental retardation" with regard to decisions about terminating their pregnancy. In the process, this Court recognized that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution:

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the



2025.PHHC:003140



CWP-75-2025

17

Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to 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. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices."

104. Suchita Srivastava (supra) rightly recognised that the right of women to make reproductive choices is a dimension of personal liberty under Article 21. It held that reproductive rights include a woman's entitlement to carry the pregnancy to full term, give birth, and raise children. More importantly, it also recognised that the right to reproductive choice also includes the right not to procreate. In doing so, it situated the reproductive rights of women within the core of constitutional rights.

105. Decisional autonomy is an integral part of the right to privacy. Decisional autonomy is the ability to make decisions in respect of intimate relations. In Puttaswamy (supra) this Court held that personal aspects of life such as family, marriage, procreation, and sexual orientation are all intrinsic to the dignity



2025.PHHC:003140



CWP-75-2025

18

of the individual. The right to privacy safeguards and respects the decisional autonomy of the individual to exercise intimate personal choices and control over the vital aspects of their body and life. In Common Cause v. Union of India, this Court observed that right to privacy protects decisional autonomy in matters related to bodily integrity:

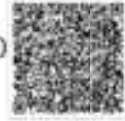
“441. The right to privacy resides in the right to liberty and in the respect of autonomy. The right to privacy protects autonomy in making decisions related to the intimate domain of death as well as bodily integrity. Few moments could be of as much importance as the intimate and private decisions that we are faced regarding death. Continuing treatment against the wishes of a patient is not only a violation of the principle of informed consent, but also of bodily privacy and bodily integrity that have been recognised as a facet of privacy by this Court.”

106. The right to decisional autonomy also means that women may choose the course of their lives. Besides physical consequences, unwanted pregnancies which women are forced to carry to term may have cascading effects for the rest of her life by interrupting her education, her career, or affecting her mental well-being.”

18. In ***“Amandeep Kaur Vs. The Postgraduate Institute of Medical Education and Research, Chandigarh”***, ***CWP-474-2024, Decided on: 20.01.2024***, the Co-ordinate Bench of this Court has held that “Forced into an unwanted pregnancy, a woman is likely to experience significant physical and emotional challenges. Dealing with the aftermath of such a pregnancy, even after childbirth, places an extra burden on the petitioner, affecting her ability to pursue other opportunities in life, such as employment and contributing to her family's income.”



2025.PHHC:003140

**CWP-75-2025****19****FINAL ORDER**

19. In view of the hereinabove discussed legal propositions, especially the one rendered in “*X Vs. Principal Secretary, Health and Family Welfare Department and Anr.*” (*supra*), and, Rule 3(B)(c) of the Rules of 2003, and, giving a purposive interpretation to the expression “change of marital status”, this Court can safely conclude that although the petitioner does not fall within the purview of “widow or divorcee”, however, since she has decided to live separately from the company of her husband without legally obtaining divorce, hence she is eligible for termination of pregnancy. Consequently, the issue framed by this Court in paragraph 12 of this verdict is answered in affirmative.

20. Therefore, the petitioner, who has a pregnancy length of approx. 18 weeks and 05 days as on today, is eligible for medical termination of her unwanted pregnancy. Consequently, the instant petition is **allowed**. The petitioner is directed to approach the C.M.O. concerned within three days from today, whereupon, the latter shall, in accordance with the requisite Act and Rules, take expeditious measures for medically terminating the pregnancy of the petitioner.

21. A copy of this order be supplied to the learned counsel for the petitioner and to the learned State counsel, under signatures of Special Secretary of this Court, for information and compliance.

January 13, 2025
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No