



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

CASE COMMENTARY

SUCHITA SRIVASTAVA & ANR. V. CHANDIGARH ADMINISTRATION

Harmanpreet Kaur

CITATION: (2009) 9 SCC 1

DATE OF JUDGMENT: 28 August 2009

HON'BLE BENCH: K.G. Balakrishnan, C.J.I. ; P. Sathasivam & B.S. Chauhan, JJ.

ABSTRACT

This case revolves around reproductive rights and the importance of decisional autonomy and legal agency of persons with disabilities. In Indian jurisprudence, this case is remarked as landmark case for recognition of rights of disable persons against sexual violence especially heinous crimes like rape. It involves a mentally retarded women being victim of rape in a state-run institution who became pregnant. The right to termination became the nucleus of the case, especially looking at the mental condition of the victim.

FACTS OF THE CASE

A young girl aged around nineteen to twenty with a mild moderate mental retardation, not yet fully declared mentally ill who is also an orphan. She was living under institutional care as she had no guardians. Initially under the guardianship of charity in New Delhi by missionaries, she was later admitted to different government hospitals including the government institute for mentally retarded children and lastly shifted to “Ashreya”, a home for women with special needs run by Chandigarh administration. On the 16th of May 2009, the staff of Ashreya observed nausea in the victim, and later test reports indicated her being pregnant with a foetus of approximately eight to nine weeks. The medical examination further revealed that there was non-consensual sexual intercourse, triggering a police investigation.

An FIR was registered under sections 376¹ and 120B² of the Indian Penal Code³,1860, against two security guards. the Chandigarh Administration, apprehensive of the woman's mental condition and capacity to bring up a child, turned to the Punjab and Haryana High Court seeking court sanction to abort the foetus under the Medical Termination of Pregnancy (MTP) Act, 1971.

The High Court first directed the setting up of a medical Expert Body to determine the physical and mental status of the woman, including her capability of understanding and being able to deal with pregnancy. The panel of doctors representing fields like psychiatry, gynecology, pediatrics, and internal medicine concluded that the woman was not mentally ill but was mildly to moderately mentally retarded. Most importantly, she had indicated a definite wish to continue the pregnancy and seemed emotionally committed to the possibility of motherhood despite her vague recognition of the social status implications of unwed pregnancy and sexual intercourse. The Expert Body held that the pregnancy posed no serious physical or psychological threat to the health of the woman and strongly stressed the individual's right over her body and that termination without her permission was not an option.

Notwithstanding, on 17 July 2009, the High Court sided with the Chandigarh Administration and ordered termination of the pregnancy based on the inability to understand motherhood responsibilities and the dependent status of the woman. The High Court invoked the doctrine of *Parens Patriae*, ruling that the State is duty-bound to act in the woman's best interest even if it involves overruling her expressed wishes.

Suchita Srivastava, a lecturer who had first brought the issue to light, filed a Special Leave Petition in the Supreme Court. The Supreme Court suspended the High Court's order on an emergent basis, as the pregnancy was already 19 weeks old, and went on to consider the validity and constitutionality of the High Court's instructions.

ISSUES

1. Whether it legally permissible to terminate the pregnancy of the victim despite her clear expression of desire to carry the child to term?
2. Whether the decision to terminate the pregnancy, taken in her supposed 'best interest', was justified in light of her rights and personal autonomy?

¹ *Punishment for rape*

² *Punishment of criminal conspiracy*

³ *ACT NO. 45 OF 1860*

INTERPRETATION OF STATUTE

The medical termination of Pregnancy (MTP) Act, 1971, was interpreted by the Hon'ble Court that section 3(4)(a)⁴, which states that only a guardian has the right to consent to allow termination of pregnancy in case if woman is minor or classified as a mentally ill person.

The court clarified that victim although suffering from mild to moderate mental retardation which is not completely mentally ill. A key distinction was drawn between "mental illness" and "mental retardation" as only guardian consent is required for termination in case of illness. This distinction was taken by the reference to the 2002 amendment to the MTP Act, where the term "lunatic" was replaced by "mentally ill person."

Accordingly, the Court held that a woman with mild to moderate mental retardation, who has attained the age of majority, cannot be presumed incapable of making decisions regarding her pregnancy, and thus her own consent is essential under Section 3(4)(b) of the Act.

CONTENTIONS BY THE PARTIES

The appellants had argued that the High Court had acted grossly in ordering the pregnancy to be terminated without the woman's consent, while she had obviously stated that she wished to go on with it. They contended that the woman was not a minor, nor mentally ill in the sense of Section 3(4)(a) of the MTP Act, 1971. She, therefore, had complete legal competence to provide or withhold consent. They reiterated that the difference between "mental illness" and "mental retardation" is legally established, and that mental retardation does not, in itself, deprive a person of her right to decide on reproduction. The appellants further depended on the Expert Body's findings that had established the woman's desire to carry the child and determined that there was no grave danger to her physical or psychological health from the pregnancy. Additionally, the appellants argued that coercing an abortion would be tantamount to a violation of the woman's constitutional fundamental rights under Article 21 of the Constitution, specifically her rights to privacy, bodily integrity, and reproductive choice.

⁴ (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 health; or

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

Whereas the respondent, Chandigarh Administration, contended that the continuation of pregnancy was not in the best interest of the woman, considering her mental state, her incapability to understand motherhood, and the trauma to pregnancy due to rape. They argued that the woman was an orphan with no family support and was solely reliant on the State for care, and the State, therefore, would have to bear the responsibility of bringing up the child on already scarce State resources. The Administration also asserted that the woman's mental retardation severely affected her ability to comprehend the implications of pregnancy, giving birth, and motherhood. On these premises, they invoked the doctrine of *Parens Patriae*, claiming that the State was acting in a protective role to ensure the welfare of a vulnerable subject. They also referred to the finite mental, emotional, and social abilities of the woman as a basis for the High Court's order, and persuaded the Supreme Court to permit the termination on humane and pragmatic grounds.

JUDGMENT AND RATIO DECIDENDI

The Supreme Court, in a unanimous decision delivered by Chief Justice K.G. Balakrishnan, set aside the judgment of the Punjab and Haryana High Court that had authorized the termination of the pregnancy of the mentally retarded woman without her consent. The Supreme Court held that the order of the High Court was legally unsustainable and against the statutory provisions under the Medical Termination of Pregnancy Act, 1971 (MTP Act), as also the woman's fundamental rights under Article 21 of the Constitution. The Court highlighted that the pregnant woman's consent is a requirement under Section 3(4)(b) of the MTP Act, and only minors or "mentally ill" individuals are excepted to whom the guardian's consent may stand in place of the woman's own.

The Court held that the victim was not "mentally ill" according to the statutory definition, but was diagnosed with "mild to moderate mental retardation," which the MTP Act expressly excludes from the rubric of mental illness in the wake of the 2002 amendment. Therefore, the **woman had complete legal capacity to determine whether or not she wanted to terminate the pregnancy.**

In addition, the Court emphatically **rejected the High Court's invocation of the doctrine of Parens Patriae over the woman's autonomy.** It ruled that the doctrine cannot be invoked to negate an individual's legally enshrined rights except where the individual is unequivocally incapable of making an informed choice, which was not so in this case. The Court emphasized that the woman had freely chosen to continue the pregnancy, and that the Expert Body

appointed by the High Court itself in this case had found no grave risk to her physical or mental health in so doing. Further, the Court also emphasized that the pregnancy had already reached almost 20 weeks when the hearing took place, and termination at such a late term would be fraught with a considerable medical risk, which would also be an infringement on her bodily integrity.

Significantly, the Court established that a **woman's right to choose regarding reproductive matters is a component of her personal liberty under Article 21 of the Constitution**. It established that such a right entails both the liberty to continue a pregnancy to the point of birth and the liberty to have an abortion, depending on conditions set by statute. Reproductive rights became therefore enshrined in conjunction with constitutional values of privacy, dignity, and control of the body.

Finally, the Supreme Court ruled that the abortion of the pregnancy without the woman's approval would constitute an unconstitutional infringement of her reproductive autonomy, and such a step could not be supported on any legal or ethical ground. The appeal was granted.

The Court ordered that the pregnancy must be continued, with proper medical treatment and social support coming from the State and the National Trust. The ruling thus established a strong precedent in defense of bodily integrity, the decisional autonomy of individuals with disabilities, and constitutional protection of reproductive rights in India.