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CASE COMMENTARY ON X v. PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT 2022 (2022) 14 SCC 1

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INTRODUCTION

The medical procedure of termination of pregnancy in India is governed through the Medical Termination of Pregnancy (MTP) Act, which was originally formulated in 1971 and last amended in 2021. It was formulated with the aim of providing protection cover to unmarried women, whereas the original act only covered married women. This case was adjudged by the learned coram consisting of Justice D. Y. Chandrachud, A.S. Bopanna, and J.B. Pardiwala, JJ. The final judgment was duly delivered on the 29th of September, 2022.

This case is often celebrated because of the judges' avant-garde, transformative, and liberal interpretation, which allowed a broader elucidation of Rule 3B of the MTP Rules, 2003, which now also includes unmarried women and victims of marital rapes, all cases where pregnancy is a consequence of non- consensual sexual intercourse. While the judgment indeed marks a quite progressive stance in the judiciary's eyes, it lacks serious loopholes, which need clarification and could eventually erode the positive effect of the judgment.

FACTS

The appellant was an unmarried young lady of around twenty-five years of age, originally a resident of Manipur, who was residing in Delhi. While the pregnancy arose out of consensual sexual intercourse, the partner later denied obligations and refused to marry. The petitioner invoked the writ jurisdiction of the High Court under Article 226, for seeking termination of pregnancy,

which was then of twenty weeks. It was contended that the appellant isn't capable of handling the obligations of a child, and neither has the resources for the same. Moreover, her status as an unmarried woman in society would lead to constant fear of social stigma and societal judgment. The Delhi High Court, relying on the strict literal scope, denied any protection as an "unmarried woman" because she does not qualify for the same. Unmarried women are not protected from the termination of pregnancy at this stage. This was challenged in her appeal to the apex court.

ISSUES

The court focused on these four legal questions:

1. Whether "woman" under the MTP Act and Rules covers unmarried women and victims of marital rapes too?
2. Whether Rule 3B, which excludes unmarried women from the ambit of protection, is violative of fundamental rights guaranteed under Articles 14 and 21, which provide the right to equality and right to life and personal liberty, respectively?
3. Are pregnancy and reproductive autonomy safeguarded under Article 21?
4. Whether individualistic rights and constitutional morality override social morality?¹

ARGUMENTS:

Appellant:

The appellant argued that the exclusion of unmarried women from the ambit of the whole Act is violative of their fundamental right to equality, as it is arbitrary and discriminatory. It discriminates against women based on their marital status, which isn't backed by any reasonable objective. Abortion rights are directly related to a woman's own body, and hence, she should have complete autonomy over her own body. It is protected under Article 21, which guarantees the right to life and personal liberty.² It also guarantees the right to privacy.³ and the right to dignity.⁴ These rights also pave the way for reproductive rights. The narrow and

¹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)

² India Const. art. 21

³ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)

⁴ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (India).

rigid interpretation by the High Court defeats the objective of the act and is also against the principles of constitutional morality.

Respondent:

The state argued that the contested Rule 3B reflects the intent of law framers to provide safeguards at differentiated levels to different categories of people. It also stated that the statutory framework needs to be interpreted in strict language, while avoiding judicial intervention. The rules provide safeguards for unmarried women, too, but they specifically protect women in long-term relationships.

SC JUDGEMENT

The court held that the term ‘women’ needs to be interpreted in a broader sense, which shall now include unmarried women as well as victims of marital rapes, to save its validity in consonance with the constitution. It upheld the appellant’s contention that the classification of women was arbitrary and discriminatory in nature, without any reasonable objective. The earlier classification of not including these categories was violative of their right to equality, guaranteed through Article 14 of the Indian Constitution.⁵ The court opined that bodily autonomy is an integral part of life and privacy.⁶ Complete autonomy over one’s body is very well protected under the Right to life and personal liberty, protected under Article 21, of the Indian Constitution.

The scope of rape under the MTV Act was also expanded to include the victims of marital rape. It held that no one shall be coerced into having kids, arising from the results of non- consensual sexual intercourse.

CRITICAL ANALYSIS

Article 14

Article 14 provides the obligation on the state to provide equal protection under the law and equality before the law to everyone.⁷ It also protects people from any arbitrary action of the state. In the case of E.P. Royappa, it was established that arbitrariness on behalf of the state is antithetical

⁵ India Const. art. 14

⁶ India Const. art. 21

⁷ India Const. art. 14

to equality.⁸ Whereas, the state is empowered to make affirmative actions, or reforms for the development of a certain section of society, but it should have a clear objective behind it. The classification needs to be reasonable, backed by proper reasoning and logic, and it should seek to fulfill a rational objective in society. If these two conditions or either of them is void, it could be held violative of Article 14.⁹

Discriminating between women based on their marital status is no reasonable basis for a classification, and the exclusion of unmarried women doesn't lead to any rational objective; it only creates them more vulnerable to societal pressure and stigma. ¹⁰The objective of the law is to protect women as individuals, but the approach through it is literal interpretation; it seems that the law is more concerned with the matrimonial relationship and status. This divergence defeats the very aim of the act.

Article 21: Right to life and personal liberty

The rights of bodily autonomy have been contested for a very long time. In the case of *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court realized that women shall have an absolute right over their bodies, and being forced to continue an unwanted pregnancy may result in deteriorating health and future complications. It is an important and indispensable part of the right to personal liberty; in turn, the case is obligated to respect the same. ¹¹

Later on, in the case of *KS Puttaswamy*, it was held that the right to privacy is also a distinct right under the right to life and personal liberty.¹² These two rights together strengthen the Supreme Court's stance in the case for granting autonomy over one's body, protecting decisional rights, and the privacy of the aggrieved party.

Lacunae in the judgment:

Although the court has very creatively embedded the idea of bodily autonomy and reproductive rights, it has not yet clarified the scope and implications of these. The court failed to limit the time

⁸ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3 (India).

⁹ *State of West Bengal v. Anwar Ali Sarkar*, 1952 AIR 75 (India).

¹⁰ *Navtej Singh Johar v. Union of India*, **AIR 2018 SUPREME COURT 4321**

¹¹ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 SCC 1 (India)

¹² *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India)

frame for the upper gestational period. It could lead to serious health concerns for the unborn kid, and even the rape survivors who couldn't approach the court for a remedy early. The 24-week pregnancy time frame can prove to be fatal in those cases. The court has also negated the consent of either partner in case of unwanted pregnancies, which can lead the other party to feel alienated from the decisions related to pregnancies in case of marital relations. Another very stark, contradictory provision that can be observed here is the recognition of marital rape as a crime against the will of the married woman by their husband; it is recognized as a coercive, forceful sexual intercourse, whereas in the criminal legislation, it is still excused, under Explanation 2 to Section 375 of IPC.¹³ Consent as an essential has been established in this case, but cases where consent is invalidated in the eyes of laws aren't taken into consideration, this may include sexual intercourse with minors, mentally compromised, cognitive disorder affected person, etc. it also offers a lot of authority to the Medical Board, the board is bestowed with the extreme powers to make the final decisions in all cases, which compromised the legislative intent for protection to victims to more procedural based system. its burden of success is also now dependent on the implementation.¹⁴

CONCLUSION

The judgment has transformed the character of abortion laws in principle, and through this judgment, the judiciary has tried to mold it into the lines of constitutionalism. It has expanded various rights and provided a more inclusive and individualistic nature to the act. It has also marked an attempt towards a more society-centric approach, as in recent times, marital rapes have been recognized, and the demand for protection of bodily rights has also seen an uproar. Despite all its flaws, this judgment seems to acknowledge the same social evils and provides a progressive tilt towards solving them as well.

¹³ Indian Penal Code, No. 45 of 1860, § 375 expl. 2 (India).

¹⁴ RIT Foundation v. Union of India, 2022 SCC OnLine Del 1404 (India)