



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9782 OF 2022

ABC	]	
Currently residing at	]	
Ground Floor, Divya Apartment,	]	...Petitioner
Juinagar, Thane - 400 075.	]	

Versus

1. State of Maharashtra	]	
Through Principal Secretary	]	
Public Health Department and Anr.	]	
2. Union of India	]	...Respondents
Through Ministry of Social Justice and	]	
Empowerment, Maulana Azad Road,	]	
Rajpath, Delhi – 110 001.	]	

Ms. Kranti L. C., Advocate for the Petitioner.
Mr. M. P Thakur, AGP for Respondent No.1–State.
Ms. Punima Awasthi, Advocate for Respondent No.2.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED: 29 JANUARY 2026.

ORAL JUDGMENT (PER : BHARATI DANGRE, J.):-

1. The petitioner, apart from seeking permission of the Court to undergo medical termination of pregnancy through a registered medical practitioner, also challenged the validity of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 2021 (“MTP Act”) as *ultra vires* the Constitution *qua*, “in case of such category of woman as may be prescribed by rules made under this Act” being

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violative of Articles 14 and 21 of the Constitution of India. Though, by order dated 23.08.2022, this Court had directed the petitioner to be examined by expert Committee of Sir J.J. Group of Hospitals and Grant Government Medical College, Mumbai, and pursuant to the said report, the petitioner was permitted to terminate the pregnancy at a Government recognized center, however, as regards the challenge to the validity of the provision, notice was issued to the respondents.

2. The petition being filed by a 26 years old unmarried woman and her pregnancy having advanced to 22 weeks, raise a challenge to Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 (as amended in 2021), by contending that she was carrying an unwanted pregnancy arising out of failure of contraceptive device and being an unwed mother, she apprehended that she may face social stigma and will not receive the support of her family, and, therefore, she is desirous of seeking termination of the pregnancy.

In the wake of the amendment under Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 in the year 2021, as regards the gestational period and also introduction of Rule 3-B in the year 2021, specifying the categories of woman who were considered eligible for termination of pregnancy, the petitioner apprehended that she would stand excluded, as there was exclusion of unmarried women and only the following were included:-

- (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 emergency situations as may be declared by the Government."

3. Since the aforesaid provision did not include an unmarried and single woman, the petitioner raise the challenge to the said provision, and according to her not permitting unwed/single woman to undergo termination of the pregnancy upto 24 weeks under the Medical Termination of Pregnancy Act, 1971 (as amended in 2021) was violative of Articles 14 and 21 of the Constitution of India.

Pitching her case on the right conferred on her by the Constitution i.e. her right to live with dignity and free from cruel, inhuman or degrading treatment, according to her was violated because of the exclusion, the Act itself would make the petitioner suffer physical pain, where she run the risk of pregnancy by compromising her mental health due to severe trauma of giving birth to an infant, unwanted to the society.

4. With this challenge being raised, we requested for assistance of the Assistant Solicitor General as the Rules were framed by the Union of India, and we do not have any affidavit on record opposing the said petition.

However, during the pendency of the petition before us, the learned counsel representing Union of India has placed before us the decision of the Apex Court in the case of *X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Anr.*¹, where this very Rule i.e. Rule 3(2)(b) of the Medical Termination of Pregnancy Rules, 2003 received consideration from the three Judge Bench of the Apex Court as the appellant while carrying a single intrauterine pregnancy corresponding to a gestational age of 22 weeks, filed a writ petition before the High Court seeking permission to terminate her pregnancy in terms of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 and Rule 3-B(c) of the Medical Termination of Pregnancy Rules, 2003, as she was wary of the “social stigma and harassment” pertaining to an unmarried single parent, especially women. The appellant also pleaded that this unwanted pregnancy would involve a risk of grave and immense injury to her mental health. She also sought a direction to the respondent to include unmarried woman within the ambit of Section 3-B of the amended Rules for terminating the pregnancy under the Act of 1971 for a period of upto twenty four weeks.

However, the High Court dismissed the Writ Petition by holding that Section 3(2)(b) of the Act of 1971 was inapplicable

1 (2023) 9 SCC 433

to the facts of the case since the appellant was an unmarried woman and her pregnancy arising out of a consensual relationship was not covered within any of the clauses of Rule 3-B of the Rules of 2003.

Since a substantial question of law arose, the Apex Court took a decision of transferring the Writ Petition from the High Court to the Supreme Court as it involved interpretation of Rule 3-B of the Medical Termination of Pregnancy Rules, 2003.

5. While deciding upon the validity of the said Rule, the foremost factor which received consideration by the Apex Court, was that interpretation of a subordinate legislation should be consistent with the Enabling Act and that subordinate legislation must be reasonable and in consonance with the legislative policy and interpreted in a meaningful manner, so as to give effect to the purpose and object of the Parent Act and an approach of being in consonance to the statutory scheme must be adopted.

Considering that by introduction of Rule 3-B, the legislature intended to remove the mischief, so as to cover women, being unable to access abortions when their lives underwent significant changes, impacting their physical and mental health, and their decision to have a child was restricted after the length of the pregnancy exceeded twenty weeks, it was noted that the common thread running through each category of women in Rule 3-B, being that the woman is in a unique and often difficult circumstances with respect to her physical, mental, social, or financial state, and all the different categories of women seek an abortion after twenty

weeks either due to delay in recognizing the pregnancy, or some other change in their environment.

6. By reproducing the observations made by the Apex Court in the case of ***Suchita Srivastava & Anr. Vs. Chandigarh Administration²***, about a woman's right to make reproductive choices being considered as a dimension of “personal liberty” as understood under Article 21 of the Constitution of India, the Court emphasised upon the woman’s right to privacy, dignity and bodily integrity.

With due consideration of the intention of the legislature in enacting the statute and by giving a purposive interpretation to Rule 3-B read with Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971, the Apex Court in case of ***X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Anr. (Supra)*** observed thus:

“127. The object of Section 3(2)(b) of the MTP Act read with Rule 3-B is to provide for abortions between twenty and twenty-four weeks, rendered unwanted due to a change in the material circumstances of women. In view of the object, there is no rationale for excluding unmarried or single women (who face a change in their material circumstances) from the ambit of Rule 3-B. A narrow interpretation of Rule 3-B, 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

2 (2009) 9 SCC Page 1

allowing married women to access them during the same period would fall foul of the spirit guiding Article 14. The law should not decide the beneficiaries of a statute based on narrow patriarchal principles about what constitutes "permissible sex", which create 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 a similar footing of a married woman.

128. In view of the purposive interpretation accorded to Rule 3-B, we are not required to adjudicate upon its constitutional validity."

7. In our considered view, upon reading of the aforesaid law report and the authoritative pronouncement of three Judge Bench of the Apex Court, according to us the issue raised in the petition is put to rest. The counsel for the petitioner, however, insist that this decision ought to receive a wide circulation and there should not be a situation where a woman similarly situated as the petitioner, is required to knock the doors of the Court, but to be told that she is entitled to have pregnancy terminated despite the fact that she is not specifically included in Rule 3-B of the Medical Termination of Pregnancy Rules, 2003. We would only point out that by virtue of Article 144 of the Constitution of India that, every authority including civil and judicial, in the territory of India is duty bound to act in aid of the Supreme Court, and, therefore, needless to state that all those are involved in implementation of the provisions of the Medical Termination of Pregnancy Act, 1971 and the Rules are duty bound by the said authoritative pronouncement.

However, we request the Public Health Department of the State of Maharashtra to have wide circulation of the said decision of the Apex Court to all those functionaries who are involved in implementation of the Medical Termination of Pregnancy Act, 1971 and the Rules. In the wake of the aforesaid, since the issue has been put to rest and the provision in form of Rule 3-B has received a purposive interpretation by the Apex Court, the Writ Petition stands disposed of.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)