

# XYZ vs Govt. Of Nct Of Delhi And Others & Ors on 29 January, 2025

**Author: Sachin Datta**

**Bench: Sachin Datta**

\$-81

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 1073/2025  
XYZ

Through: Mr. Rahul Sharma, Mr.  
Sharma and Ms. Anchal  
(through v/c)

versus

GOVT. OF NCT OF DELHI AND OTHERS & ORS..

Through: Ms. Nikita Bhutan  
/GNCTD.

Mr. V.S.R. Kris  
Shashank Kumar,  
/AIIMS.

Ms. Pratima N.  
Chandan Prajapa  
G. Baweja, Adv  
v/c)

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA  
ORDER

% 29.01.2025

1. The present petition has been filed by the petitioner seeking appropriate directions for medical termination of pregnancy of the petitioner.

2. It is submitted that the petitioner got pregnant in the year 2024 pursuant to a relationship with one, Mr. Amardeep since March, 2024. The relationship between the petitioner and Mr. Amardeep is subject matter of an FIR dated 09.10.2024 bearing No.512/2024 under Sections 376 and 313 of the Indian Penal Code. The said Mr. Amardeep was taken into custody on 09.10.2024. It is submitted that the petitioner was raped on the pretext of marriage.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:12

3. In the above background, the petitioner has decided to medically terminate her pregnancy. However, since the petitioner is already in her 22nd week of pregnancy, the attendant doctors at the respondent no.2 / hospital have sought a "court order" to enable them to proceed with Medical Termination of Pregnancy (MTP).

4. It is noticed that Section 3(2) of the Medical Termination of Pregnancy Act, 1971 provides as under:

"In section 3 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:--

(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 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."

5. Further, Rule 3-B of Medical Termination of Pregnancy Rules, 2003 provides as under:

"3-B. 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--

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:12

- (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 4[women with intellectual disability];
- (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.]"

6. The said rules have been subject matter of consideration by the Supreme Court in the case of X vs. Principal Secretary, Health and Family Welfare Department and Another, (2023) 14 SCC 615, in which, it has been, inter-alia, held as under:

"11. The High Court held [X v. State (NCT of Delhi), 2022 SCC OnLine Del 2171] that since the petitioner is an unmarried woman whose pregnancy arose out of a consensual relationship, her case is "clearly not covered" by any of the above clauses of Rule 3-B and, as a consequence, Section 3(2)(b) is not applicable.

12. On the submission that Rule 3-B, insofar as it excludes an unmarried woman, is violative of Article 14 of the Constitution, the High Court has issued notice on the writ petition. However, it held that as of the date of its order, it was not open to it to traverse beyond the provisions of Rule 3-B in the exercise of the jurisdiction under Article 226 of the Constitution.

13. 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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:12 Rule 3-B. 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.

14. 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 1 of Section 3(2) of the Act.

15. Explanation 1 expressly contemplates a situation involving an unwanted pregnancy caused as a result of the failure of any device or method used by a woman or her partner for the purpose of limiting the number of children or preventing pregnancy. Parliamentary intent, therefore, is clearly not to confine the beneficial provisions of the MTP Act only to a situation involving a matrimonial relationship. On the contrary, a reference to the expression "any woman or her partner"

would indicate that a broad meaning and intent has been intended to be ascribed by Parliament. The statute has recognised the reproductive choice of a woman and her bodily integrity and autonomy. Both these rights embody the notion that a choice must inhere in a woman on whether or not to bear a child. In recognising the right the legislature has not intended to make a distinction between a married and unmarried woman, in her ability to make a decision on whether or not to bear the child. These rights, it must be underscored, are in consonance with the provisions of Article 21 of the Constitution.

16. In this case, the petitioner submits that she was deserted by her partner at the last stage in June 2022 causing her immense mental agony, trauma, and physical suffering. Excluding unmarried women and single women from the ambit of the statute goes against the purpose of the legislation. The Statement of Objects and Reasons of the MTP Act seeks to "liberalise certain existing provisions relating to termination of pregnancy ... (1) as a health measure-- when there is danger to the life or risk to physical or mental health of the woman".

17. A comparison between the two provisions before and after the 2021 Amendment is tabulated below:

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:13 "MTP Act, 1971 MTP Amendment 2021 Explanation II.-Where any Explanation 1.-For the purposes of pregnancy occurs as a

result of clause (a), where any pregnancy failure of any device or method occurs as a result of failure of any used by any married woman or device or method used by any her husband for the purpose of woman or her partner for the limiting the number of children, purpose of limiting the number of the anguish caused by such children or preventing pregnancy, unwanted pregnancy may be the anguish caused by such presumed to constitute a grave pregnancy may be presumed to injury to the mental health of the constitute a grave injury to the pregnant woman. mental health of the pregnant woman."

(emphasis supplied) The above table shows that the phrase "married woman" was replaced by "any woman" and the word "husband" was replaced by "partner". But evidently, there is a gap in the law : while Section 3 travels beyond conventional relationships based on marriage, Rule 3-B of the MTP Rules does not envisage a situation involving unmarried women, but recognises other categories of women such as divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape. There is no basis to deny unmarried women the right to medically terminate the pregnancy, when the same choice is available to other categories of women.

18. A woman's right to reproductive choice is an inseparable part of her personal liberty under Article 21 of the Constitution. She has a sacrosanct right to bodily integrity. In *Suchita Srivastava v. State (UT of Chandigarh)* [*Suchita Srivastava v. State (UT of Chandigarh)*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] , this Court has recognised that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution : (SCC p. 15, para 22) "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 Constitution of India. It is important to recognise 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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:13 refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods."

19. In *K.S. Puttaswamy (Privacy-9 J.) v. Union of India* [*K.S. Puttaswamy (Privacy-9 J.) v. Union of India*, (2017) 10 SCC 1] the decision of a woman to procreate or abstain from procreating has been recognised as a facet of her right to lead a life with dignity and the right to privacy under Article 21 of the Constitution : (SCC pp. 498-99, para

298) "298. ... [p]rivacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination.

When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised."

20. The Bombay High Court in Medical Termination of Pregnancy of Woman Prisoner in Byculla District Prison, In re [Medical Termination of Pregnancy of Woman Prisoner in Byculla District Prison, In re, 2016 SCC OnLine Bom 8426 : 2017 Cri LJ 218] observed as follows : (SCC OnLine Bom para 14) "14. A woman's decision to terminate a pregnancy is not a frivolous one. Abortion is often the only way out of a very difficult situation for a woman. An abortion is a carefully considered decision taken by a woman who fears that the welfare of the child she already has, and of other members of the household that she is obliged to care for with limited financial and other resources, may be compromised by the birth of another child. These are decisions taken by responsible women who have few other options. They are women who would ideally have preferred to prevent an unwanted pregnancy, but were unable to do so. If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health."

(emphasis supplied)

21. Denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom. Live-in relationships have been This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:13 recognised by this Court. In *S. Khushboo v. Kanniammal* [*S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299] , this Court observed that criminal law should not be weaponised to interfere with the domain of personal autonomy. It was observed : (SCC pp. 619-20, para 46) "46. ... While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive."

(emphasis supplied)

22. On the above premises, we are inclined to entertain the special leave petition. In the meantime, we are of the view that allowing the petitioner to suffer an unwanted pregnancy would be contrary to the intent of the law enacted by Parliament. Moreover, allowing the petitioner to terminate her pregnancy, on a proper interpretation of the statute, *prima facie*, falls within the ambit of the statute and the petitioner should not be denied the benefit on the ground that she is an unmarried woman.

The distinction between a married and unmarried woman does not bear a nexus to the basic purpose and object which is sought to be achieved by Parliament which is conveyed specifically by the provisions of Explanation 1 to Section 3 of the Act. The petitioner had moved the High Court before she had completed 24 weeks of pregnancy. The delay in the judicial process cannot work to her prejudice."

(emphasis supplied)

7. In light of the dicta laid down by the Supreme Court in the said judgment, it is no longer res integra, and is also not disputed by respective counsel, that the petitioner being an unmarried woman, has the right to seek MTP.

8. In the circumstances, this Court is inclined to accede to the prayer that she be allowed to proceed with MTP. It is directed accordingly.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:13

9. Learned counsel for the respondent no.2 submits that the petitioner can approach the Medical Superintendent, M.S. Office, AIIMS, upon which requisite steps shall be taken to get the petitioner examined through a medical board tomorrow itself i.e. 30.01.2025.

10. Let the report of the medical board be produced before this Court on 31.01.2025. Let requisite arrangement be made by the respondent no.2 to carry out the necessary procedure on the same day itself (31.01.2025), subject to directions of this Court.

11. List in Court on 31.01.2025 at the 'top of the board'.

12. Copy of this order be given dasti under the signatures of Court Master.

SACHIN DATTA, J JANUARY 29, 2025/cl This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:40:13