**CASE ANALYSIS**

**OF**

**PRITI MAHENDRA SINGH RAWAL V. UNION OF INDIA**

**By: -**

**Parameswaran Chidamparam**

**1st Year,**

**National University of Advanced LegalStudies, Kochi**

**Mob:-9108156603**

**Email:-pcwaran@gmail.com**



www.probono-india.com

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**Background of the case**

Priti Mahendra Singh Rawal’s case involved a familiar question of law that courts in India have grappled with. The petitioner, Priti Rawal filed a writ petition before the High Court of Bombay seeking formation of a committee by the Bombay High Court to facilitate the production of a report regarding her pregnancy and the possibility of the petitioner getting her foetus medically terminated. The medical committee found that there were several abnormalities in the foetus, which could result in morbidity as well as a higher chance of mortality. The petitioner was explained the consequences of the pregnancy and was mentally sound to take her own decision regarding the termination of the foetus.The issue in this particular case was that the period of twenty weeks for termination of pregnancy had been exceeded.Section 3(2) of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as “**the MTPA**”) restricts the termination of pregnancy.[[1]](#footnote-2) It does not allow abortions after a period of twenty weeks of pregnancy. In this particular writ petition before the Bombay High Court, the petitioner was 25 weeks and 6 days into pregnancy and, the court had to take into consideration the report of the committee as well as the period of the pregnancy before passing a judgment in the case of *Priti Mahendra Singh Rawal v. Union of India*.[[2]](#footnote-3)

**International Law Pertaining To Medical Termination Of Pregnancy**

There is no generally accepted right to abortion in international law.[[3]](#footnote-4)In fact, none of the international instruments of the United Nations barring the Protocol to The Charter on Human and People’s Rights on The Rights of Women in Africa, explicitly recognize the right to abortion as a right. Article 14 of the Protocol lays down the position with regard to health and reproductive rights. It authorises medical abortion in cases where there is sexual assault, rape, incest or, where the continuation of the pregnancy would result in serious mental harm or physical danger to either the mother or the foetus.[[4]](#footnote-5)This is the position that most jurisdictions around the world follow.

**Facts In Issue**

In this particular case, the issue was that the period of pregnancy had exceeded twenty weeks. The MTPA does not allow the termination of pregnancy after a period of 20 weeks has elapsed since the start of the pregnancy. The mother in this case had been pregnant for a period of 25 weeks and 6 days. She could not have lawfully terminated her foetus. She approached the Bombay High Court through a writ petition under Article 226 of the Constitution of India.[[5]](#footnote-6)She prayed that a committee be constituted to examine her pregnancy and, give its opinion on the possible termination of the foetus considering the serious health issues it was facing.

**The Clash Between Bodily Autonomy AndThe Right To Life**

Reproduction, is an activity that is dependent on the surroundings of a woman and can never be equated exclusively, with natural science. Social forces often define the process of reproduction. They may influence the nature of the consent in the sexual intercourse for example, or, they might determine the capability of the woman to raise a child. These factors are often the reason that women want abortions. However, the law aims to protect both, the mother and the foetus and therefore, has enactments which place restrictions on abortions because, sometimes the life of both, the mother and the foetus may be at risk.[[6]](#footnote-7)

The Supreme Court of India has identified the right to privacy to come within the ambit of the right to life under Article 21 of the Constitution.[[7]](#footnote-8)This decision gives great strength to the arguments of those who are against abortion regulations and intervention by the State in the perennial debate of bodily autonomy which is, essentially the right to privacy, versus the duty of the State to protect life. There are fundamentally two plausible reasons that justified the need for the State to regulate abortions and enact laws for its regulation all those decades ago.*Firstly*, abortion itself was an extremely hazardous process. Abortion mortality rates were alarmingly high, which was the reason the State had laws to regulate abortion and protect women. *Secondly*, the view that the State was compelled to protect the life of a foetus. The crux of this argument has its basis in the argument that there is a life in the womb from the moment the first cell of the unborn, is created. Both of these arguments seem to have been neutralized to a great extent in the contemporary context.[[8]](#footnote-9)

There is historical evidence to show that abortion laws existed to protect the mother and not the embryo and it is present in the laws of today as well. The abortion laws, drawing from the ratio laid down in *R v. Bourne[[9]](#footnote-10)*allow medical practitioners who in good faith, believe that the pregnancy could cause risk to the life of the woman, to carry out the process of medical termination of pregnancy. This in itself is sufficient evidence to show us that, the abortion laws exist for the protection of the woman rather than the pre-natal life. Further, there has never been an agreement in the medical fraternity regarding when the mother can be considered to be carrying another life, however the primary beneficiaries of the abortion laws have been women. As far as the argument regarding abortion mortality rate goes, the rapid improvements in technology have mitigated the risk factor involved in pregnancy terminations happening even twenty-seven weeks into the gestation period. Therefore, we should ideally, be looking at making medical termination of pregnancy a strictly private affair in which the State should not be involved, unless of course there is a risk to the life of the woman.[[10]](#footnote-11)The Supreme Court of India has recognized the right of a woman to bodily autonomy as a part of the right to privacy[[11]](#footnote-12), however considering the position the Supreme Court has taken regarding the right to privacy in the *Puttaswamy* decision, it is necessary for the legislature to revisit enactments like the MTPA and, probably take a progressive stance, considering the unimaginable improvements in technology since the U.S. Supreme Court came out with the landmark decision of *Roe v. Wade*.

**Section 3 of the Medical Termination of Pregnancy Act, 1971**

The MTPA has been shaped on the basis of the English statute, namely The Abortion Act of 1967.[[12]](#footnote-13)One will find that the wordings of both these enactments are quite similar. However, there is one major difference between the two statutes and that is the time period before which pregnancy can be terminated in the two countries. In England, the Abortion Act allows pregnancies to be terminated up until the twenty-fourth week of pregnancy is completed while India, does not allow medical termination of pregnancy after the twentieth week.

However, the Supreme Court of India and various High Courts have departed from this law whenever the situation demands and have allowed the termination of pregnancy after the twentieth week of pregnancy based on the exception to the rule laid down in s.3(2) which is enshrined in s.5 of the MTPA. In *Ayesha Khatoon v. Union of India*[[13]](#footnote-14), the High Court of Bombay allowed a twenty-seven-week pregnant woman to terminate her pregnancy because of the serious health complications that the foetus had. The Court relied on the proposed Amendment Bill, while doing so. The Apex Court has more or less, done the same when required and this can be seen in the cases of *X v. Union of India*[[14]](#footnote-15)and *A v. Union of India*[[15]](#footnote-16)the Supreme Court has allowed the termination of pregnancy after the gestation period of twenty weeks.

The legislature has reacted to the growing number of writ petitions before the judicial organs by introducing the Medical Termination of Pregnancy (Amendment) Bill, 2020.[[16]](#footnote-17)This Bill seeks to give India more progressive abortion laws. In the Statement of Objects and Reasons for the Bill, the legislature has made it clear that the change in the period of gestation after which pregnancy cannot be terminated will be increased to twenty-four weeks because of the improvements in technology. The legislature also acknowledged the fact that some people would not be able to detect abnormalities in the foetus until a late stage in pregnancy and, increased the period of gestation for this purpose as well. Section 3(2B) of the Amendment Bill, allows the termination of the foetus even after the prescribed period if a Medical Board constituted under the Act opines that it is necessary for such an abortion.If this Bill is passed, there would be a certain degree of uniformity in the way the judiciary operates with regard to abortions after the prescribed period.

The Bill however, fails to implement the scenario that arose in the case of *Ms. Z v. State of Bihar* where a woman was not allowed to terminate her pregnancy after being raped, despite being only seventeen weeks pregnant when she first consented to the abortion. There was a delay on the part of the State. This resulted in the woman being unable to terminate her pregnancy at a later stage as it would be dangerous to do so. She was given compensation but, the Bill does not allow women who are raped to terminate pregnancy after the twenty-four-week period, indicating that we as a society still have a long way to go to recognize the bodily autonomy of a woman. The Bill merely diluted the State’s capacity to intervene in matters of medical termination of pregnancy.

**The United States and Medical Termination of Pregnancy**

The United States of America have taken a different approach to their abortion laws and their approach has sparked a lot of controversy with regard to how the common law systems should be approaching the subject of medical termination of pregnancy in their jurisdictions. The United States in its Constitution has recognized the right to privacy as an integral part to liberty long before the Indian Courts did so.[[17]](#footnote-18)

In the landmark case of *Roe v. Wade*[[18]](#footnote-19), the Supreme Court of the United States of America ruled that the Texas abortion laws were unconstitutional and, tried to create a balance between the right to privacy and bodily autonomy of a woman and, the duty of the State to protect lives. The Court reached the conclusion that it would legalize abortion and make it a private affair, however, it recognized that the interest of the State would come into play if the life of the mother was under threat. The abortion law was placed for consideration again before the U.S. Court of Appeals for the Third Circuit, in the case of *Planned Parenthood of South-Eastern Pennsylvania v. Casey*.[[19]](#footnote-20) The U.S. Court of Appeals for the Third Circuit in that case, re-affirmed the ratio laid down in *Roe*. The Court stated that the right of a woman to terminate her pregnancy would be protected by the Fourteenth Amendment which guaranteed the right to liberty, unless it is taken away by the due process of law.[[20]](#footnote-21)The courts created the concept of the trimesters in pregnancy, which is based on the principle that abortion regulation by the State is compelled by their duty to protect women. If the abortion is in the later stages, there would be a risk involved in carrying out the process which is why, the, various common law jurisdictions, based on this very principle do not allow abortions when a certain period of pregnancy has elapsed. This time period is determined by the ability of the foetus to come out into the world and survive with medical aid. If it is past that point, then abortion, is generally not allowed unless, there is an imminent threat to the life of the mother.

It is actually quite surprising that the U.S. Court of Appeals for the Third Circuit chose to follow the *stare decisis*. *Roe v. Wade* was decided nineteen years before *Planned Parenthood* which means, there would have been multiple technological advancements in the period between the two decisions, hence, one could argue that the Court could have departed from the precedent and taken the bold step of not having any State interference in pregnancy regardless of the trimester the pregnancy is in. [[21]](#footnote-22)

**Judgment At A Glance**

* Priti Mahendra Singh Rawal, the petitioner is a woman who is more than twenty-five weeks into her pregnancy. The foetus had severe health complications.
* She filed a writ petition before the High Court of Judicature at Bombay under Article 226 and Article 21 of the Constitution of India, seeking a medical report on her pregnancy and the permission to undergo medical termination of pregnancy on the basis of the medical report
* The medical report made it clear that the child had several health issues of neurological nature and was unlikely to survive.
* The Bombay High Court ruled that the child was unlikely to survive and, did not want the woman to be deprived of her right to life and liberty by having a child with such a complex health situation which required expensive treatment.
* The court allowed the writ petition, informing the petitioner of the possible consequences of the pregnancy and allowed her to undergo medical termination of pregnancy, using the exception carved out in s.5 of the MTPA.

**OVERVIEW OF THE JUDGEMENT**

The High Court of Bombay, just like the Supreme Court had done numerous times before it, allowed the petitioner, Priti Rawal to terminate her pregnancy because there was a substantial threat to the life of the foetus due to thenumber of neurological complications it had. The court ruled that it would be unjust for it not to recognize the right to life and liberty guaranteed to the petitioner under Article 21 of the Constitution.[[22]](#footnote-23)

The High Court went into the details of the medical complications that the foetus suffered from and simply allowed the writ petition. The judgment does not speak of the reasoning that the court adopted to arrive at such a conclusion or, delve into the reasoning behind laws like the MTPA. In this case, the medical conditions may have been the very foundation of the *ratio decidendi*of the case, however it was necessary for the court to elaborate on the provisions of the MTPA it was relying on and, refer to the changing position with regard to abortion laws in India.

**References**

* Justice K.S. Puttaswamy (Retd.) v. Union of India.
* R v. Bourne.
* Suchita Srivastava v. Chandigarh Administration.
* Ayesha Khatoon v. Union of India.
* X v. Union of India.
* A v. Union of India.
* Mayer v. Nebraska.
* Planned Parenthood of South Eastern Pennsylvania v. Casey.
* Roe v. Wade.
* Doe v. Bolton.
* Ms. Z v. State of Bihar.

**ABOUT THE AUTHOR**

Parameswaran Chidamparam is a first year B.A. LL.B. (Hons.) student at the National University of Advanced Legal Studies, Kochi. He has an ardent interest in criminal law, constitutional law, environmental law and legal research. He aims to bring about a change in society by creating legal awareness and, is very passionate about his work.

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2. 2018 (1) RCR (Criminal) 142. [↑](#footnote-ref-3)
3. TozziPiero, ‘International Law and the Right to Abortion’ (2010), International Organizations Law Group Legal Studies Series - No. 1. Available at SSRN: https://ssrn.com/abstract=1567128. [↑](#footnote-ref-4)
4. Protocol to The Charter on Human and People’s Rights on The Rights of Women in Africa (adopted 1st July, 2003, entered into force 25th November 2005) art 14. [↑](#footnote-ref-5)
5. The Constitution of India, Art. 226. [↑](#footnote-ref-6)
6. Reva Siegel, ‘Reasoning from The Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection’ (1992) 42 Stanford Law Review 261, 381 [↑](#footnote-ref-7)
7. Justice K.S. Puttaswamy (Retd.) v. Union of India, A.I.R. 2017 S.C. 4161. [↑](#footnote-ref-8)
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9. [1938] 3 All E.R. 635. [↑](#footnote-ref-10)
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12. Abortion Act, 1967. [↑](#footnote-ref-13)
13. Ayesha Khatoon v. Union of India, 2018 (3) Mh L.J. 486. [↑](#footnote-ref-14)
14. A.I.R. 2016 S.C.3525 [↑](#footnote-ref-15)
15. A.I.R. 2017 S.C. 4027 [↑](#footnote-ref-16)
16. Medical Termination of Pregnancy (Amendment) Bill (2020-21) Lok Sabha, Bill No. 55 of 2020. [↑](#footnote-ref-17)
17. Meyer v. Nebraska, 262 U. S. 390, 399 (1923). [↑](#footnote-ref-18)
18. 410 U.S. 113 (1973). [↑](#footnote-ref-19)
19. 503 U.S. 833 (1992). [↑](#footnote-ref-20)
20. U.S. Constitution, 14th Amendment. [↑](#footnote-ref-21)
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22. The Constitution of India, Art. 21. [↑](#footnote-ref-23)