

**2005 SCC OnLine Raj 90 : AIR 2006 Raj 166 : (2006) 5 All LJ (NOC 977) 33 :
(2006) 3 AIR Jhar R (NOC 848) 48**

BEFORE S.N. JHA, C.J. AND RAJESH BALIA, J.

Nand Kishore Sharma & Ors.

Versus

Union of India & Anr.

Civil Writ Petn. No. 2903 of 1998

Decided on October 22, 2005

S.N. JHA, C.J.:— The petitioner who claims to be a social activist has filed this writ petition as a Public Interest Litigation questioning the vires of the Medical Termination of Pregnancy Act, 1971 (in short, the Act) particularly Section 3(2)(a) and (b) and Explanations I and II to Section 3 of the Act as being unethical and violative of Article 21 of the Constitution of India.

2. In response to the notice, the respondents have filed affidavits in reply.

3. We heard learned counsel for the parties at length.

4. The issues relating to medical termination of pregnancy in common parlance known as 'abortion' are indeed of public importance. Counsel for the parties attempted to go into the length and breadth of the issue. In our opinion, however, the point for consideration lies in a narrow compass. This Court is not supposed to enter upon a debate as to when foetus comes to life or the larger question touching upon the ethics of abortion. We are merely concerned with the validity of the relevant provisions of the Act. At the outset, it may be mentioned that the petition was sought to be argued as if the Act has been enacted to legalise abortions but from a bare reading of the relevant provision it would appear that Act aims at termination of pregnancy in the interest of the woman or the to-be-born child. Section 3 may be quoted in extenso as under:

"3. When pregnancies may be terminated by registered medical practitioners:—

(1) Notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(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 twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of 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 such physical or mental abnormalities as to be seriously handicapped.

Explanation I— Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II— Where any pregnancy



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

- (3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.
- (4)(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.
- (b) Save as otherwise provided in Clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

5. On a plain reading, it is manifest that Section 3 permits termination of pregnancy by registered medical practitioner(s) on being satisfied, in good faith, that the continuance of pregnancy would involve a risk to the life of the pregnant woman or cause grave injury to her physical and mental health; or that if the child were born, it would suffer from such physical or mental abnormalities as would render it seriously handicapped. As per the Explanation, where pregnancy is caused by rape, the anguish of pregnancy is regarded as 'grave injury to the mental health' of the pregnant woman. If the pregnancy occurs as a result of failure of any device or method used by the woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy is also treated as constituting 'grave injury to the mental health' of the pregnant woman.

6. It would appear that dominant object to achieve which the law has been enacted is to save the life of the pregnant woman or to relieve her of any injury toward physical and mental health or prevent the possible deformities in the child — to be born. We find support from the Statement of Objects and Reasons of the Act, the relevant portion of which reads as under:

"There is thus avoidable wastage of the mother's health, strength and, sometimes, life. The proposed measure which seeks to liberalize certain existing provisions relating to termination of pregnancy has been conceived (1) as a health measure — When there is danger to the life or risk to physical or mental health of the woman; (2) on humanitarian grounds — Such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc.; (3) eugenic grounds — Where there is substantial risk that the child, if born, would suffer from deformities and diseases.

7. The object of the Act being to save the life of the pregnant woman or relieve her of any injury to her physical and mental health, and no other thing, it would appear the Act is gathered in consonance with Article 21 of the Constitution of India than in conflict with it. While it may be debatable as to when the foetus comes to life so as to attract Article 21 of the Constitution of India, there cannot be two opinions that where continuance of pregnancy is likely to involve risk to the life of the pregnant woman or cause grave injury to her physical and mental health, it would be in her interest to terminate the pregnancy.

8. The perusal of Section 3 also makes it clear that the Act does not give a carte blanche to any person, even a medical practitioner, to cause termination of pregnancy. The Act provides in express terms that the pregnancy can be terminated upto twenty weeks and only by registered medical practitioner. If the length of pregnancy exceeds

twelve weeks upto twenty weeks, it can be terminated only if a Board of at least two registered medical practitioners is of the opinion, in good faith, that the continuance of pregnancy involves risk to the life of the pregnant woman or cause grave injury to her physical and mental health.

9. An important aspect of the case is that the termination of pregnancy is not something which is provided for the first time by the Medical Termination of Pregnancy Act. Section 312 of the Indian Penal Code too protects termination of pregnancy described as miscarriage; if it is done "in good faith for the purpose of saving the life of the woman". Similarly Section 315 of the Indian Penal Code protects any act done with intent to prevent child from being born alive or causing it to die after its birth "if such act has been done in good faith for the purpose of saving the life of the mother". To bring home



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the point, it would be useful to quote Sections 312 and 315 as under:—

"Section 312. Causing miscarriage,— Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 315. Act done with intent to prevent child being born alive or to cause it to die after birth.— Whoever before the birth of any child does any act with the intention of thereby preventing the child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

10. It would not be out of place to mention that the deficiency in the Indian Penal Code as regards termination of pregnancy or abortion was noticed in the Statement of Objects and Reasons in the following words:

"The provisions regarding the termination of pregnancy in the Indian Penal Code which were enacted about a century ago were drawn up in keeping with the then British Law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. It has been stated that this very strict law has been observed in the breach in a very large number of cases all over the country. Furthermore, most of these mothers are married women, and are under no particular necessity to conceal their pregnancy.

11. Read in the context of Sections 312 and 315, IPC, it would appear that the object of the Act was to make the provisions relating to termination of pregnancy stringent and effective rather than to permit blatant termination of pregnancy. Section 312 of the IPC made causing miscarriage an offence except in good faith for the purpose of saving the life of the woman without laying down the manner in which pregnancy could be medically terminated. Section 3 of the Act provides the guidelines or limitation within which the pregnancy could be terminated.

12. In the above premises, we are satisfied that the Act or the provisions particularly complained of, cannot be said to be invalid, and no case thus is made out

for interference by the Court.

13. In the result, the writ petition is dismissed.

Petition dismissed.

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