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## AIL Centre for Research in Constitutional Law and Policy


*This Newsletter is published with the objective to promote research and discourse in Constitutional Law and Policy.*

## *Labor Omnia Vincit*

*It is a Latin phrase meaning "Work conquers all"**

## Highlights of the issue:



*(The phrase is adapted from Virgil's Georgics, Book I)

# PROTECTING INDIA'S CULTURAL HERITAGE IN CASE OF AN ARMED CONFLICT -A LEGAL ANALYSIS

**Lakshita Mehta (2069)**

**3rd Year**

About 163 cultural sites in Ukraine were destructed since Russia's invasion on February 24, as corroborated by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) experts. It has led to full or partial destruction of 152 cultural and historic heritage sites in Ukraine with many more under threat of destruction,[1] which includes religious sites, a dozen museums, 30 historic buildings, 17 monuments, and seven libraries. Nonetheless, dozens of sites have been damaged since the Russian invasion that began on February 24, 2022 with three-quarters of them in the eastern regions of Kharkiv and Donetsk. It has raised a pertinent question, whether Indian laws are substantial in protecting cultural sites or not.[2] The Indian cultural heritage is on the threshold of many risks, threats, and perils that the cultural annals of the country and mankind have ever seen.

Cultural heritage is an umbrella term that includes, irrespective of origin or ownership[3], *"movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture art or history, whether religious or secular; archaeological sites; groups of buildings which[4], as well as scientific collections and important books or archives or of reproductions of the property defined above"*.[5] Therefore, it comprises both tangible forms like monuments, scriptures, coins, etc., and intangible forms like art, music and language.[6]

There are 46 recognized World Heritage Sites by UNESCO, out of which 32 are in

[1] AFP, *Ukraine crisis - Over 150 heritage sites destroyed since Russian invasion: U.N. report*, THE HINDU, June 23, 2022.

[2] Margaret Besheer, *Ukraine's Cultural Heritage Under Attack,* VOA, July 15, 2022.

[3] P. Ishwara Bhat, *Protection of Cultural Property Under International Humanitarian Law: Some Emerging Trend,* Article 16, 2001, https://heritage.sense-agency.com/assets/home/sg-7-03b-bhat-protection.pdf.

[4] L.C. Green, *The Contemporary Law of Armed Conflict,* (Manchester University Press, 1993) p. 145, APV Rogers, R.O'Keefe, *The Meaning of 'Cultural Property' under the 1954 Hague Convention*, Netherlands International Law Review,vol. XLVI(1999), pp. 26-29.

[5] Art. 1, Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954.

[6] Lixinski, Lucas, 'Definitions: From Cultural Property to Cultural Heritage (and Back?)', International Heritage Law for Communities: Exclusion and Re-Imagination, Cultural Heritage Law and Policy (Oxford, 2019; online edn, Oxford Academic, 18 July 2019), https://doi.org/10.1093/oso/9780198843306.003.0002, accessed 19 Nov. 2022.

India.[7] The nationally protected monuments numbering around 3,650 are looked after by the Archaeological Survey of India (ASI), functioning under the Ministry of Culture, and state-protected monuments are administered by the directorates of state archaeology.[8] Together, they protect about 10,000 structures, which form a minuscule fraction, though the most significant, of the country's total heritage.[9]

To ensure the safety and security of cultural heritage and obviate the dangers and threats, there are some constitutional and statutory provisions. Under Articles 49[10] and 51A(f) of the Constitution[11], India is under obligation to create awareness about the need to protect cultural heritage.[12] The Indian Constitution casts a responsibility on the State to protect and conserve heritage. Article 49 states, "*It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, (declared by or under law made by Parliament) to be of national importance, from spoilation, disfigurement, destruction, removal, disposal or export, as the case may be*."[13]

Article 51A(f) widens the responsibility and directs every citizen to contribute to heritage preservation. It states: "*It shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture; and (g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.*"[14]

By the above constitutional provisions, and for providing better and more effective preservation of the archaeological wealth of the country[15], the Ancient Monuments and Archaeological Sites and Remains Act 1958 was enacted.[16] The Ancient Monuments and Archaeological Sites and Remains Act 1958 provides for the preservation of ancient and historical monuments, archaeological sites, and remains of national importance.[17] It

[7] UNESCO and UN Sponsored World Commission on Culture and Development, Our Creative Diversity: Report of the World Commission on Culture and Development, (eds.) 2nd. (UNESCO, 1996) p. 29, Comment by Claude Levi-Strauss.ORF.
[8] Shiv Sahay Singh, *ASI declared 6 monuments of national importance in 2018,* THE HINDU, Dec. 31, 2018.
[9] Ramanath Jha, *City heritage and flawed strategies*, OBSERVER RESEARCH FOUNDATION, Mar 01, 2022.
[10] INDIA CONST. art. 49.
[11] INDIA CONST. art. 51 A (f).
[12] Deshpande Supriya, *Conservation of Indian Historical Monuments under Lord Curzon*, M.Phil Dissertation (2008).
[13] *Id.*
[14] *Id.*
[15] Dr. Swapna Samel, *Conservation and Preservation of Ancient Monuments in British India: A Study*, Vol. 6, JETIR, Issue 5 (2019).
[16] Monuments and Archaeological Sites and Remains Act 1958, No. 24, Acts of Parliament, 1958 (India).
[17] Ramanath Jha, *City heritage and flawed strategies*, Observer Research Foundation, (last visited 22 December, 2022, 10:00 pm), https://staging.orfonline.org/expert-speak/city-heritage-and-flawed-strategies/.

stipulates the regulation of archaeological excavations, and the protection of sculptures, carvings, and other like objects. The Prevention of Damage of Public Property Act was enacted in 1984 to protect such monuments and remains from mischief causing damage to them.[18]

Then came the AMASR (Amendment and Validation) Act, which was passed in March 2010[19], under which the National Monuments Authority (NMA) has been constituted to protect the ancient monuments and the surrounding restricted areas.[20] The Antiquities and Art Treasures Act of 1972 was enacted to protect the artworks of the country as well.[21] It was meant to give the government effective control over the movable cultural property consisting of antiquities, which refers to any manuscript, record, or other documents which have been in existence for over 75 years.[22] But this Act is insufficient to protect India's precious and rich cultural heritage from many cultural damages like idol theft and smuggling in times of peace and war. India has also fought for her culture and pride outside the country. In the case of Her Majesty v. Lord Shiva which is the British High Court case that led to the return of the Nataraja idol of Lord Shiva, which was seized by the British.[23]

In the International arena, there are treaties and conventions that lay the obligations to protect cultural heritage. The destruction of cultural heritage is a potential war crime and a grave violation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict to which India is a party.[24] UNESCO in particular, has brought out an array of documents of Conventions and recommendations containing useful Guidelines for safeguarding the invaluable heritage available throughout the world like the Hague Convention 1954[25], Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural

[18] The Prevention of Damage of Public Property Act, No. 3, Acts of Parliament, 1984 (India).
[19] Ancient Monuments and Archaeological Sites and Short title and Remains (Amendment and Validation) Act, No. 10, Acts of Parliament, 2010 (India).
[20] Ancient Monuments and Archaeological Sites and Short title and Remains (Amendment and Validation) Act, § 20A, No. 10, Acts of Parliament, 2010 (India).
[21] The Antiquities and Art Treasures Act, No. 52, Acts of Parliament, 1972 (India).
[22] *Comments of NHRC India on Consultation of Special Rapporteur in the field of cultural rights,* NHRC, 42.
[23] Ramesh Chandran, *Indian Government wins stolen Nataraja idol case in British court*, INDIA TODAY, March 15, 1998, https://www.indiatoday.in/magazine/international/story/19880315-indian-government-wins-stolen-nataraja-idol-case-in-british-court-797028-1988-03-15.
[24] Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954.
[25] *Id.*

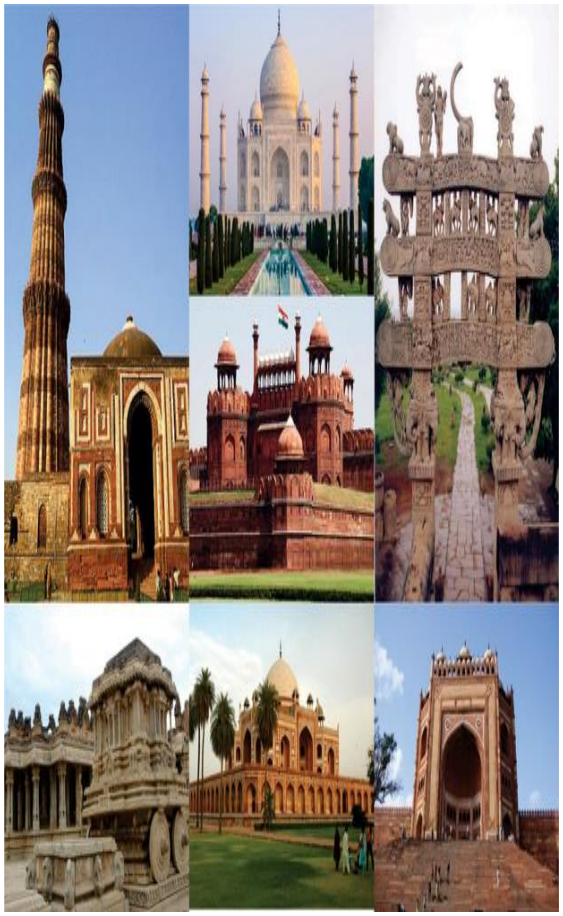
Property (1964),[26] Convention Concerning Protection of the World Cultural and Natural Heritage (1972)[27] to name a few.

Article 2 and 4 of the Hague convention 1954 provides that the states are obliged to protect cultural property by safeguarding and having respect for such property[28] and states that the parties should not only respect cultural property situated in their territory but also in the territory of other party[29] and should not use the property or its immediate surroundings for its protection that will cause damage in case of an armed conflict.[30] Article 16 of the 1977 Protocol II to Geneva Convention 1949[31], states, *"it is prohibited to commit any acts of hostility against historic monuments[32], works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and use them in support of the military effort."*[33]

There needs to be more active participation on the part of the government to protect cultural heritage[34] and there is an urgent need for a comprehensive legislation that provides for the protection of cultural sites in peace and wartime and provides penalties for its violation.[35] This will corroborate the international Treaties and Conventions that India has ratified. Moreover, it is pertinent to have a distinction between peacetime and wartime laws for the protection of cultural heritage. Even though Article 49 elaborates upon the need to protect the cultural heritage, it needs to be supported by parliamentary legislation when it comes to protection of these monuments in times of war and armed conflicts. Additionally, not only the Government but also other institutions like the Archaeological Survey of India, etc. should work assiduously to protect and promote the cultural and natural heritage of the country.[36]

[26] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, No. 11806 UNTC, 1970 (India).
[27] Convention Concerning Protection of the World Cultural and Natural Heritage, No. 1037 UNTS, 1972 (India).
[28] Art. 2, Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954.
[29] R.O'Keefe, *The Meaning of 'Cultural Property' under the 1954 Hague Convention*, Netherlands International Law Review,vol. XLVI(1999), pp. 26-29.
[30] *Supra*, Art. 4.
[31] Additional Protocol II, Art. 16, Protocol Additional to the Geneva Conventions of 12 august 1949.
[32] P. Ishwara Bhat, *Protection of Cultural Property Under International Humanitarian Law: Some Emerging Trend,* Article 16, ISILYBIHRL 4 (2001).
[33] *Id.*
[34] Section 10A & 13 of the Act, Andhra Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Acts 1960, Mysore Ancient and Historical Monuments and Archaeological Sites and Remains Act 1962, Madhya Pradesh AHMASR Act 1964, Punjab AHMASR Act 1964, Gujarat AHMASR Act 1967.
[35] *Id,* Section 16 & 17.
[36] S.S Biswas, *Protection of Cultural Property Vis-À-Vis Indian Antiquarian Legislation and Global Concern,* ICOMOS.

Eventually, taking into consideration the current situation, the preservation, protection, and promotion of India's cultural heritage requires a multifaceted approach in which each accomplishment complements the others.[37] The active engagement of the general public is critical in protecting cultural property. People can be educated about the importance of antiquarian legislation so that legal obligations imposed by legislative measures are met.[38] All these coordinated efforts will strengthen the government, the Archaeological Survey of India, and institutions, as well as international communities, in their efforts to protect, preserve and promote India's cultural and natural heritage.



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[37] *Id.*

[38] Andrea Cunning, The Safeguarding of Cultural Property in Times of War and Peace, 11 TULSA J. COMP. & INT'L L. 211, 227 (2003).

[39] https://www.re-thinkingthefuture.com/designing-for-typologies/a4564-conservation-and-protection-of-heritage-monuments-in-india/

# EXTRATERRITORIAL APPLICATION OF LAWS UNDER THE AEGIS OF THE INDIAN CONSTITUTION -THE QUESTION OF VALIDITY

**Gaurang Takkar (2178)**

**2ND Year**

*"Federalism isn't about States' rights. It's about dividing States to better protect individual liberty"*[1]

Indian Constitution is divided into 25 parts and part XI provides for the Constitutional division of powers. *"The basic principle of federations is that the legislative and executive authority is partitioned between the centre and the States not by any law to be made by the centre, but by the Constitution itself... The States are in no way dependent upon the centre for their legislature or executive authority. The States and the centre are coequal in this matter"* said Dr B.R. Ambedkar.[2] Federalism is an intrinsic part of the Constitutional setup of our country. The makers of our Constitution viewed the idea of federalism as an indispensable part of the nation. Federalism in layman's language is the separation of powers and responsibilities between the Centre and the State so that there is no overlap of powers. Although there are few instances where the centre impinges upon the jurisdiction of the State, in some matters, India still, by its structure and the virtue of Constitutional provisions, is a federal country to a great extent. The country's law-making, administrative and pecuniary authority is distributed between the centre and the State.[3]The concept of "territorial jurisdiction" derives its authority from Article 245 of the Indian Constitution. It provides for the extent of legislation made by the Parliament and the State legislature. Article 245(1) states that Parliament may create legislation for a whole or a portion of the country's territory. Article 245(2) of part XI of the Constitution states that no legislation made by the law-making authority of India shall be declared invalid on the ground that it has extra-territorial operations. It signifies that Parliament can make laws on extra-territorial operations**.** This also indicates the fact that not only the people and property within the territory of India but also the world over can be subject to Parliamentary legislation. Clause 2 of Article 245 does not mention the State legislature but only the Parliament. The Parliament while making laws that have extra-territorial operation

[1] Elizabeth Price Foley

[2] Centre-State Relation, 1, *available at* https://www.iilsindia.com/study-material/153138_1633322792.pdf

[3] M.P. Jain, Indian Constitutional Law, 6th Edition, Volume 2 (2010)

must ensure that only those laws, which have a proportionate relation to India and have the potential to affect the interest of India and its citizens can be legally effective and acceptable. In the *Raleigh Investment case*[4], two essentials were laid down for the law with foreign applicability to be accepted which are that the link must be real and not illusive and that the liability that needs to be levied must be pertinent to the link. The landmark case of *G.V.K Industries v. Income-tax officer*[5] is pertinent to note here where the apex court declared that any law with an extra-territorial operation with no legitimate nexus or impact on India would be considered a law made for a foreign country and thus ultra vires.[6]

Article 245 of the Constitution and the doctrine of territorial nexus are closely knitted. According to this Article, only the laws made by Parliament and not the State can have extra-territorial operations. The State legislature may also make extra-territorial operational laws in certain specific cases. There are 2 conditions to creating laws that have authority outside the State's territory: there should be a nexus between the State and the scope of the law and that the nexus therewith should be legitimate. There is a probability that the object to which the law made by the State applies may not be noticeably present inside the State per se but that is not a bar on its validity till the time there is a legitimate and reasonable nexus between the two. History is a blend of both pre-Constitutional and post-Constitutional laws created on territorial nexus. Raleigh case(1944)[7] and the Wadia case(1949)[8] were dealt with by Federal courts and the Wallace case of 1948 by the Privy council. In the case of *Wallace Bros and Co. Ltd v. The commissioner of Income*[9], a company registered in some country carried out business in India as well through some mediator. The company made a staggering profit that year and the income tax authorities of India levied a tax upon the company. This Act by the authority was challenged, but it was decided that there is a reasonable nexus as major profit came from the British Indian territory itself. In the *RMD Chamarbhaugwalla case*[10] of 1957, the respondent was a resident of Bangalore but he used to organize competitions through his newspaper in

[4] *Raleigh Investment Co., Ltd. v. Governor-General In Council*, 1943 11 ITR 393 Cal.
[5] *G.V.K Industries v. Income-tax officer*, 1997 228 ITR 564 AP.
[6] M.P. Jain, Indian Constitutional Law, 6th Edition, Volume 2 (2010)
[7] *Raleigh Investment Co., Ltd. v. Governor-General In Council*, 1943 11 ITR 393 Cal.
[8] *A.H. Wadia v. Income Tax Commissioner*, AIR 1949 SC 18.
[9] *Wallace Bros and Co. Ltd v. The commissioner of Income*, (1948) 50 BOMLR 482.
[10] *R. M. D. Chamarbaugwalla v. The Union Of India*, 1957 AIR 628.

Bombay and his newspaper was widely circulated in that State. It was held that he could be legitimately taxed under the law of the State of Bombay as there was an apparent and unambiguous territorial nexus between the State and the law imposed. In the case of *Shrikant Bhalchandra Karulkar v. State of Gujarat and Anr.*[11] , Gujarat legislature came up with an 'Agricultural Land Ceiling Act' which included the land owned by an individual both in and out of the State. This law was challenged for being extra-territorial but the Supreme Court[12] held that the legislature is empowered to make such a law that limits the aggregate amount of land a person can hold.[13]

The Supreme Court through a Constitutional bench of five judges held that Parliament has ample authority to create a law concerning territorial aspects in the interest of the well-being and security of its residents. The bench held that "*any laws enacted by Parliament concerning extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires.*"[14] Article 13 of the Indian Constitution ponders over the concept of Judicial Review and states that any law in contravention of the essential rights of the people shall be made unconstitutional and hence will be declared void. In the case of *Minerva Mills v. Union of India*[15], Judicial review was included in the basic structure's list of elements already there. As the power of the Parliament to make extra-territorial laws is limited, the validity of those legislations cannot be challenged in a court of law. Concerning these laws, the court is bound to enforce these laws and thus, the formulated legislation cannot be invalidated.

**SOME LEGAL PROVISIONS HAVING EXTRA-TERRITORIAL OPERATION**

1. *SEBI Act, 1992* – Sections 11, 11B, 11C, 12, and 12A of SEBI Act of 1992[16] along with SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations of 2003[17], when read together, gave SEBI the authority to use its extraterritorial activity to safeguard investors' interests.
2. *Indian Penal Code and Criminal Procedure Code* - Section 3 of the IPC

[11] *Shrikant Bhalchandra Karulkar v. State of Gujarat and Anr.*, (1994) 5 SCC 459.
[12] *See* also, State of AP v National Thermal Power Corporation Ltd, AIR 2002 SC 1895
[13] M.P. Jain, Indian Constitutional Law, 6th Edition, Volume 2 (2010)
[14] *G.V.K Industries v. Income-tax officer*, 1997 228 ITR 564 AP
[15] *Minerva Mills v. Union of India*, AIR 1980 SC 1789.
[16] *See* SEBI Act of 1992, Section 30
[17] Regulation 2, Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003.

deals with punishment for crimes committed outside of India's borders that can legitimately be tried there. According to Section 4, the Act also applies to any Indian person who has committed crimes outside India's national borders. Sections 3 and 4 of the Code indicate that the extraterritorial application of the law is an exception to Section 1. Section 188 of CrPC[18] is also along the same lines.

3. *Income Tax Act, 1961* - The Act is applicable to non-resident assesses, even though it only intends to tax that portion of their income that has a nexus in India, according to Section 9(1) of the Act, which invokes the Act's extra-territorial nature.
4. *The Competitions Act, 2002* - The Competition Commission of India (CCI) in the case of *Sh. Dhanraj Pillay and Others v. M/s. Hockey India*[19] has ruled that Hockey India and the International Hockey Federation (FIH) fall under the definition of enterprise as stated in Section 2(h) of the Act. The CCI concluded by stating that the Commission has jurisdiction over an enterprise if its action has an impact on competition in India.

Through this article, it can be fairly deduced that law-making powers are distributed between the centre and the State under the provisions of the Constitution. Article 245 mentions that while the Parliament can formulate legislation having extra-territorial operations, the State legislature falls short of this power. However, the doctrine of territorial nexus grants an exception for the State legislature to create laws having an extra-territorial operation if there is a legitimate nexus between the object of the legislation and the State itself. Various case laws have advanced this very idea which is ever-evolving.[20] Keeping in pace with the growing nexus of technology with the socio-economic-political scenario which is pan-global, a balance between the object and the practical application of Article 245 needs to be maintained.

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[18] Code of Criminal Procedure, 1973.
[19] *Sh. Dhanraj Pillay and Others v. M/s. Hockey India*, MANU/CO/0033/2013.

[20] Shaanya Shukla and Yash Dewan, *Doctrine of Territorial Nexus in the Contemporary Legal Era,* Intl. Journal of Law Management and Humanities, Vol. 4, Issue 4 (2021)
[21] https://globalnaps.org/issue/extraterritorial-jurisdiction/

# CONSTITUTIONALITY OF DEMONETIZATION

**Pratham Kadian (2253)**
**1st Year**

On 8th November 2016, in a sudden television telecast, the Prime Minister of India announced that currency notes of denominations of Rs 500 and Rs 1000 would cease to be legal tender. The public had the option to surrender the invalid notes within the next 50 days (till December 31, 2016) or visit any bank branch in the country and exchange the now illegal tenders for valid currency notes of similar value. In a country with the world's largest population, this led to long queues, panic and chaos; the decision was hailed and also criticized.

Six years after demonetization, the hon'ble Supreme Court in the case of Vivek Narayan Sharma v. Union of India[1] or popularly known as the demonetization case, upheld the validity of the decision in a majority 4:1 judgement. The petitioners had contended largely on six issues, namely:

*"**(1)** Whether the power available to Central Government under Section 26(2) of Reserve Bank of India ('RBI') Act, 1934 can be restricted to mean that, it can be exercise for only one or some series of bank notes and not for all, because the word "any" appearing before the series in the sub- section, specifically so in the earlier two occasions the demonetisation exercise was done through the plenary legislations?*

***(2)** In the event it is held that the power under Section 26(2)of the RBI Act is constituted to mean that it can be done in all series of bank notes, whether the power vested with Central Government will amount to conferring excessive delegation and hence needs be struck down?*

***(3)** Whether the impugned notification dated 08-11-2016 is liable to be struck down on the ground of that the decision-making process is fraud in law?*

***(4)** Whether the impugned notification dated 08-11-2016 is liable to be struck down applying the test of proportionality?*

***(5)** Whether the period provided for the exchange of notes by the impugned notification can be said to be unreasonable?*

***(6)** Whether RBI has independent power under Section 4(2)of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 ('2017 Act') in isolation of provision of Section 3 and Section 4 (1) thereof, to accept the demonitisation of*

[1] Vivek Narayan Sharma v. Union of India, 2023 SCC OnLine SC 1

*notes beyond the period specified in notification issued under Section 4(1)?"*[2]

Section 26(2) of the RBI Act, 1934, reads *"On recommendation of the Central Board the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender."*[3]

Here the expression *'any'* mentioned in the subclause became the cause of contention. The petitioners contended that the expression *'any'* in section 26(2) of the Reserve Bank of India Act, 1934, cannot be interpreted to mean *'all'* so as to give the Centre the power to demonetize currency notes of all series of any denomination[4]. The Court noted that if the claim that sub-section (2) of Section 26 of the RBI Act must be interpreted narrowly is accepted, it may occasionally result in an anomalous scenario.[5]

Explaining by way of an example, the Court said: *"If the Central Government finds that fake notes of a particular denomination are widely in circulation or that they are being used to promote terrorism, can it be said, for instance, that out of 20 series of bank notes of a particular denomination, it can demonetize only 19 series of bank notes but not all 20 series? In our view, this will result in nothing else but absurdity and the very purpose for which the power is vested shall stand frustrated."*[6]

Hence the court upheld the authority of the centre to make decisions pertaining to *'all'* denominations of currency notes and emphasized that the interpretation of a statute needs to *"be a pragmatic one"* and *"not a pedantic one"*. However, the lone dissenting judge, Justice Nagarathna observed: *"The Central Government possesses the power to initiate and carry out the process of demonetization of all series of bank notes, of all denominations. However, all series of bank notes, of all denominations could not be recommended to be demonetised, by the Central Board of the Bank under Section 26 (2) of the Act."*[7]

While the majority judges accepted that the power conferred under 26(2) of the Reserve Bank of India Act, 1934 *"can be*

[2]https://www.scconline.com/blog/post/2023/01/03/demonetization-note-ban-supreme-court-nagarathna-gavai-constitution-bench-reserve-bank-india-fake-currency-balck-money-terror-financing-proportionality-legal-research-updates-news-law-explainer/

[3] https://indiankanoon.org/doc/1400251/

[4] https://indianexpress.com/article/india/sc-upholds-demonetization-says-there-was-consultation-between-centre-rbi-for-six-months-8356225/

[5]https://www.scconline.com/blog/post/2023/01/03/demonetization-note-ban-supreme-court-nagarathna-gavai-constitution-bench-reserve-bank-india-fake-currency-balck-money-terror-financing-proportionality-legal-research-updates-news-law-explainer/

[6] Vivek Narayan Sharma v. Union of India, 2023 SCC OnLine SC 1

[7] Vivek Narayan Sharma v. Union of India, 2023 SCC OnLine SC 1

*exercised for all series of bank notes"*[8] ; Justice Nagarathna did not agree with this.

The petitioners had also alleged that the central board meeting that convened on 8th of November 2016 and had recommended demonetization was invalid due to the absence of sufficient quorum. The court rejected this argument and held that *"the requisite quorum for the meeting to convene was 4 directors, however as the minutes of the meeting show, 8 directors were present"*, thereby, the assembly was valid. Furthermore, the doctrine of proportionality was found to be completely applicable. The court employed a four-pronged test to ascertain this. Firstly, the court explored the purpose of the decision, it was observed that the decision was taken to achieve three objectives, namely, elimination of: fake currency, black money and terror financing. Given that possessing bank notes is presumed to be a right under Article 300-A of the Indian Constitution, the restriction imposed serves its intended function. The court observed that *"by no means is it possible to say that the three aforementioned purposes are improper ones."* Therefore, the decision to demonetize currency notes of denominations of Rs. 500/- and Rs. 1000/- had an acceptable nexus with the three objectives that were sought after.

[9]

On the question of an alternative measure or way that could have been explored, the court reserved its comments and stated that it is beyond the scope of judicial review to dwell into such matters. Lastly, the rights attached to the currency were not taken away by demonetization.[10] The sole limitations related to exchanging old notes for new ones, which were periodically gradually reduced. As a result, the ownership of money was not taken away, on the other hand up until a specific date, the whole value of legal tender might be placed in the bank account.[11] Therefore, the court held *"Even though there were reasonable limitations on the aforementioned right, those limitations were necessary for the public good in order to stop the evils of money*

[8] Vivek Narayan Sharma v. Union of India, 2023 SCC OnLine SC 1

[9] https://www.business-standard.com/article/economy-policy/demonetisation-saga-how-much-of-scrapped-currency-came-back-to-rbi-117083001330_1.html

[10] https://www.orfonline.org/expert-speak/dissecting-the-demonetisation-verdict/#:~:text=The%20majority%20judgement%20by%20four,for%20a%20recommendation%20were%20followed

[11] https://www.barandbench.com/news/litigation/breaking-supreme-court-dismisses-pleas-challenging-2016-demonetisation

*laundering, drug trafficking, counterfeiting, and terrorism financing."*

On the issue of period of exchange of notes, the Court noted that the 1978 Act stipulated a three-day window for exchanging the demonetized notes. If a person was unable to use the aforementioned window of time, a five-day grace period was made available, during which the money might be exchanged if the RBI was satisfied that the reasons for missing the three-day deadline were valid. On the contrary, during the 2016 Demonetization, any amount of SBNs could be exchanged and deposited into a bank account that complied with KYC requirements for 52 days without any restrictions or obstacles. Therefore, the Court held that the 52-day period could not be interpreted as being unreasonable, unjust, or a violation of the petitioners' fundamental rights![12]

It was alleged that the goal of the impugned Notification, which was to combat fake currency, black money, and parallel finance, has completely failed because currency notes from new series had already been confiscated after demonetization.[13]

However, the Court pointed out that in any case, minor mistakes in judgement made by the government that are discovered after the fact are not amenable to judicial review. Legislative and quasi-legislative authorities are entitled to a free hand in such cases, and the Court should exercise caution before interfering unless the action is obviously unlawful or shows clear, perceptible arbitrariness.[14] The Court noted that the Central Government had instructed the Central Board to draw a plan to implement demonetization in a non-disruptive manner with as little inconvenience to the public and business as possible.[15] Demonetization undoubtedly caused the residents to experience a variety of problems, but if the challenged Notification was related to the goals to be met, then the fact that some individuals experienced hardships would not be sufficient to declare the impugned Notification to be unlawful.[16] The Court further noted that the *'hasty'* argument would defeat the primary intent behind demonetization.[17] Such actions must

[12]https://www.barandbench.com/news/litigation/breaking-supreme-court-dismisses-pleas-challenging-2016-demonetisation

[13] https://indianexpress.com/article/india/supreme-court-demonetisation-noteban-case-verdict-live-updates-8355842/

[14]https://www.barandbench.com/news/litigation/breaking-supreme-court-dismisses-pleas-challenging-2016-demonetisation

[15] https://www.drishtiias.com/daily-updates/daily-news-analysis/supreme-court-s-verdict-on-demonetisation

[16] https://indianexpress.com/article/india/supreme-court-demonetisation-noteban-case-verdict-live-updates-8355842/

[17]https://www.barandbench.com/news/litigation/breaking-supreme-court-dismisses-pleas-challenging-2016-demonetisation

unquestionably be performed quickly and with the utmost secrecy.[18] It is difficult to fathom how terrible the effects would be if word of such a move seeped out.[19]Where did the decision to pursue the policy of demonetization emanate became another issue of contention. The petitioners said that the proposal for demonetization must emanate from the central board of the RBI and not the centre, the court rejected this argument and held that in practical matters the court does not make any distinction between the RBI and the Centre.[20] According to the Reserve Bank of India Act, 1934; the court clarified the legislative policy underlying the provisions of Section 26 of the RBI Act "*is with regard to management and regulation of currency. Demonetization of notes would certainly be a part of management and regulation of currency"*[21]. However, Justice Nagarathna, again dissented and observed that, *"After perusing the documents and records submitted by Centre and RBI, phrases like "as desired by Centre government" shows there was no independent application of mind by RBI".* Justice Nagarathna clearly laid emphasis on the importance of due process, that once laid down needs to be followed. Hence, she observed that the decision should have emanated and flowed from the central board of RBI to the union government, failing which the decision becomes unlawful as it contradicts and is in contravention of the relevant statue, namely the Reserve Bank of India Act, 1934. She concluded by saying that *"demonetization was an initiative of the Central Government, targeted to address disparate evils, plaguing the nation's economy, including, practices of hoarding "black' money, counterfeiting, which in turn enable even greater evils, including terror funding, drug trafficking, emergence of a parallel economy, money laundering including Havala transactions"*[22] .

Without a shadow of a doubt, the stated policy, which attempted to end these illegal practices, had good intentions. The execution of such a drastic change in such a huge country cannot be without qualms. Every major move has its pros and cons; however, the purposive intention of the move is what is relevant, which has been endorsed by the hon'ble Supreme Court by upholding its constitutionality.

[18] *Id.*
[19] https://www.drishtiias.com/daily-updates/daily-news-analysis/supreme-court-s-verdict-on-demonetisation
[20]https://www.barandbench.com/news/litigation/breaking-supreme-court-dismisses-pleas-challenging-2016-demonetisation
[21] https://indianexpress.com/article/india/sc-upholds-demonetisation-says-there-was-consultation-between-centre-rbi-for-six-months-8356225/
[22] Vivek Narayan Sharma v. Union of India, 2023 SCC OnLine SC 1

# AIL INTRA-INSTITUTE JUDGEMENT ANALYSIS COMPETITION 2022

Centre for Research in Constitutional Law and Policy organized the AIL Intra-Institute Judgement Analysis Competition in December, 2022. The Judgement to be analysed was X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., AIR 2022 SC 4917. This Competition aimed towards tapping the skills of the students of Army Institute of Law, Mohali towards the practice of critically analysing Judgements from the perspective of the Constitution of India, which is often referred to as the "grund norm". The Competition saw a good response from the students, with 20 submissions being received. The winner of the competition was Aman Singh (2144) of the 2nd Year and the runner-up of the competition was Neelam (2021) of the 3rd Year. The winner and runner-up won cash prizes of Rs. 2000/- and Rs. 1000/- respectively along with a certificate of merit each.

# WINNING ENTRY OF AIL INTRA-INSTITUTE JUDGEMENT ANALYSIS COMPETITION 2022 ORGANIZED BY CRCLP

**By Aman Singh (2144)**

**2nd Year**

## *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr. – Judgement Analysis*

### INTRODUCTION

*Abortion is inherently different from other medical procedures because no other procedure involves the purposeful termination of potential life.*

❒ Potter Stewart

The legislations that are formulated the world over have constantly troubled the legal fraternity about whether it is the mother's life that is on an upper footing or that of an unborn fetus. The activists advocating the Anti-Abortion theory have done so majorly on theological grounds. The arguments usually put forth include the quest for the unborn child's right to live and the stigma attached to the concept of abortion which is perceived as akin to homicide. For some time, it has been considered an immoral act, and owing to the taboo around the same, women are forced into going through an unsafe method of avoiding pregnancy. This, in most probability, make them fall prey to serious health issues which may be life-threatening. Thus, the need for relaxed abortion laws is necessary for any country to grant women the right to choose whether they are willing to raise a child or not. *"If men could get pregnant, abortion would be a sacrament."* This statement by Florynce Kennedy presents the patriarchal mindset prevalent in society. Contemporary western society as mentioned by radical feminists is subjugated by men. Women, on the other hand, are dealt with as subordinate beings. The institutions and legislations created by men for men impinge on the way of living and their free choice. It would be an outright infringement of the principles of gender equality if women are held from exercising their will to execute a pregnancy or not. Thus, the present laws must strive to intrude with the orthodoxical mindset of the masses.

**THE ABORTION LAWS IN INDIA**

Morality as conceived by the British people has been a driving force for the current perception of morality in the modern world. The criminal law of the country deemed abortion as an offense under Section 312 which talks about the voluntary act of causing a miscarriage of a woman. It was followed by a stringent punishment for those women who sought abortions out of their own will. A foetus has always been perceived as a legal person which embarks on various facets of law, be it contracts, torts, or criminal law. The status of an unborn child was on a higher pedestal than that of the woman giving birth to the same. With the advent of time, there has been a slight shift in that outlook toward abortions. Humanitarian worries about women's health and their inescapable link to abortions sparked a discussion in India's legal community. The Parliament formed the Shantilal Shah Committee to study the subject in detail and present its recommendations on the legality of abortion.[1] The committee proposed to have abortion legislation which was the need of the hour. The recommendations were framed after an extensive analysis of the legal, medical and socio-cultural aspects of abortion.[2] Finally, the law-making authority came up with significant and revolutionary legislation, which was the Medical Termination of Pregnancy Act, of 1971. Under this act, the woman was given the autonomy to get their pregnancy terminated within 20 weeks of conceiving on certain grounds. These grounds include the risk to the mother's mental or physical health, abnormality of the fetus or failure of contraceptive devices, etc. The latter one was however available only to a married woman and their partners. The requirement of explicit permission from the court for termination of pregnancy beyond 20 weeks augmented the hurdles for the already susceptible women. In 2002, the MTP was amended[3] and the definition of a mentally ill person was changed.[4] The surprising fact was that the act that dealt with abortion didn't define the term itself in the first place. Judicial activism has not been quite successful in its aim of granting complete reproductive autonomy to a woman. With time, decentralization started taking place in the arena of abortions and private players made their way. According to the Abortion Assessment Project of 2002, around 15.6 million abortions happened in India every year. 56% of abortions are unsafe in

[1] Ishani Mishra, "STUDY OF ABORTION LAWS THROUGH THE LENS OF WOMEN'S RIGHTS" available at < file:///C:/Users/DELL/Downloads/460_Ishani%20Mishra.pdf> (Visited on 8th December 2022)
[2] Sreya B., 'How Right is the Right to Abortion' (2013) SSRN <https://ssrn.com/abstract=2290869> (Visited on 8th December 2022).
[3] The Medical Termination of Pregnancy (Amendment) Act 2002
[4] Mary Philip Sebastian, M.E. Khan, Daliya Sebastian, 'Unintended Pregnancy and Abortion in India: Country Profile Report' (Population Council, March 2014)

India and 10 women die every day due to unsafe abortions.[5] The Rules and Regulations[6] that were made in 2003 outline some duties and strengths of bodies engaged in the process of abortions. Sex-selective abortion has been common in Indian villages, especially in the north, and the Pre-Conception and Pre-Natal Diagnostic Techniques Act was passed to address the problem. With a lack of understanding, medical providers confuse themselves between the legal implications of the two Acts and hesitate to perform consensual abortions, for the fear of being prosecuted under the PCPNDT Act.[7] With passing years, the court has dwelled on the concept of divorce even more and come up with a 2021 amendment to the MTP Act[8]. The earlier cap of 12 and 20 weeks has been increased to 20 and 24 weeks respectively. There is a requirement of 1 Registered Medical Practitioner (RMP) for up to 20 weeks and 2 RMPs for up to 24 weeks. The confidentiality of a woman need not be breached as it would invite a fine along with/or imprisonment of 1 year. The amendment is a way through increasing the accessibility of safe abortion services to women though it rests a huge chunk of responsibility and discretion on the shoulders of medical practitioners.

**FACTUAL MATRIX – BACKGROUND OF THE CASE**

The present matter before the supreme court was the result of a judgment of the Delhi High Court's divisional bench. The appellant was a citizen residing in Delhi currently. She was twenty-five years old, and the pregnancy was a result of a consensual relationship. She sought permission for an abortion in her twenty-second week as her partner refused to marry her. The pregnancy would cause serious social stigmatism and harassment of hers owing to her being a single parent, especially a female. Another reason was the dearth of financial resources necessary for the upbringing of the child. The provisions that were invoked by the appellant were Section 3(2)(b) of the Medical Termination of Pregnancy Act 1971 and Rule 3B(c) of the Rules of 2003. While the former deals with pregnancy being terminated beyond 20 weeks on the opinion of two medical practitioners on certain conditions being fulfilled, the latter provision talks about termination of pregnancy by women up to 24 weeks if there has been a change of marital status during an ongoing pregnancy. Out of many reliefs sought from the court, the court only agreed to deal with the prayer asking for the inclusion of

[5] Meena Armo, Kavita Babbar, Hemlata Thakur, Sachin Pandey, 'Maternal morbidity due to unsafe medical abortion in rural practice is just the tip of the iceberg: is it really preventable?' (2015) 4(1) IRCOG https://www.ijrcog.org/index.php/ijrcog/article/view/1808 (Visited on 8th December 2022)
[6] The Medical Termination of Pregnancy (Rules and Regulations) 2003
[7] Asit K. Bose, 'Abortion in India: A Legal Study' (1974) 16 Journal of the Indian Law Institute 535-548
[8] The Medical Termination of Pregnancy (Amendment) Act, 2021

unmarried women under the ambit of Rule 3B for termination of pregnancy. The court held that the pertinent matter does not invite the application of the said provision of the Medical Termination of Pregnancy Rules, 2003 (amended in 2021). The learned counsel held his argument on the ground that the provision was violative of the right to equality enshrined under Article 14 of the Constitution of India, 1950 but the court didn't falter from its interpretation and denied an abortion. This became a ground for the appeal made by the appellant in the apex court against the order of the court on 15th July 2022. A petition for Special Leave on 21st July 2022 was issued and the apex court modified the high court's order.

**THE ISSUE BEFORE THE COURT**

The Issue That Was There In Front Of The Court For Deliberation Was:

1. Whether abortion can be carried out in the pertinent matter?
2. Whether unmarried women come under the provision of Section 3b(c) of the Medical Termination Of Pregnancy Rules, 2003?

**JUDGMENT DELIVERED**

The apex court while pronouncing its judgment asked for the constitution of a medical board by the All-India Institute of Medical Sciences, Delhi by the provisions of this Act.[9] The doctors at the All-India Institute of Medical Sciences shall conduct the abortion process if the Medical Board affirms that the same can be done without any danger to the life of the woman. The consent of the petitioner will be required again for confirmation and all the orders need to be complied with thoroughly, the report of which will be furnished to the court after compliance.

**ANALYSIS OF THE ORDER**

- *Highlighted the gap that exists between MTP Act and MTP Rules*

The hon'ble apex court in its Judgement highlighted the gap that exists between the MTP Act and MTP Rules. While Section 3 of the MTP act travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules does not envisage a situation involving

[9] Section 3(2D), The Medical Termination of Pregnancy Act, 1971

unmarried women but recognizes other categories of women such as divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape. In the MTP act of 1971, it was stated that *"where any pregnancy occurs as a result of the failure of any device or method used by any married woman or her husband 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 women."* Whereas it was later changed in the MTP (Amendment) Act of 2021 as *"of clause (a), where any pregnancy occurs as a result of the failure of any device or method used by any woman or her partner to limit 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 women."* This development in the act was seriously noted and interpreted by the hon'ble apex court and it was adjudged that the fundamental principle of statutory interpretation is that the words of a statute must be read in their entire context and their grammatical and ordinary sense harmoniously with the scheme of the act and the intent of the legislature. Parliament by amending the MTP Act 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, thus not confining the beneficial provisions of the act only to the matrimonial relations.

The High court earlier, in this case, ruled that since the petitioner is an unmarried woman whose pregnancy arose out of a consensual relationship, her case is not covered by any of the clauses of Rule 3B and, as a result, section 3(2)(b) is not applicable. But the Apex court observed that the High court has taken a regressive view of the provisions of clause (c) of Rule 3B. Clause (c) of a change of marital status during ongoing pregnancy 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.

- *Safeguards the women's right to reproductive choice*

A woman's right to reproductive choice is an inseparable part of her personal liberty under article 21 of the Indian constitution. She has a right to enjoy her bodily integrity. In *Suchita Srivastava v Chandigarh Administration*[10], the apex court has recognized that a woman's right to reproductive autonomy is a dimension of article 21 of the constitution. In *Justice K.S.*

[10] (2009) 9 SCC 1.

*Puttaswamy (Retd.) and Anr. V. UOI and Ors*[11] the decision of a woman to procreate or abstain from procreating has been recognized as a facet of her right to lead a life with dignity and the right to privacy under Article 21 of the Constitution. The Apex court also talked about its previous judgment of *S Khusboo v. Kanniammal*[12] where the court recognized live-in relationships and observed that criminal law should not be weaponized to interfere with the domain of personal autonomy. Hence, denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom. In addition to all the previous judgments of the Apex court related to a woman's right to reproductive autonomy, this judgment also tends to safeguard the reproductive interest of a woman and protect her from any societal or family pressure to change her reproductive choice.

- *Effect of the judgment on the society*

The judgment would further the rights of unmarried women to terminate or escalate the unwanted pregnancy which arose from a consensual relationship other than marriage. As it is the ultimate choice of a woman to procreate or abstain from it, no one can force or pressurize her to conceive or give birth to a child. Through this judgment, doors of the apex court have been opened for any mishap related to pregnancy termination. Regular review of the period favorable for termination of pregnancy will take place through new cases. In addition, it has also brought the issue concerning the mental health of women into the limelight which earlier was overlooked. The apex court in this case followed the recommendations of the Medical Board stating that this was a 'Special Case' and would cause Mental Injury to the mother in case the MTP was not carried out. Hence, it has formed an idea that from now onwards, due consideration will be given to the women's health of body and mind.

**CONCLUSION**

The judgment of the Hon'ble Supreme Court of India in the pertinent matter is another feather in its cap. If women were prevented from making their own decisions about whether to continue their pregnancies or not, it would be a flagrant violation of the principles of gender equality. From discussing the lacunas that are there in the prevalent laws, it went on to deal with women's reproductive privacy and personal autonomy. It has been acknowledged that a woman's choice to have children or not is an aspect of her freedom to live in dignity.

[11] (2017) 10 SCC 1.
[12] (2010) 5 SCC 600.

# RUNNER-UP ENTRY OF AIL INTRA-INSTITUTE JUDGEMENT ANALYSIS COMPETITION 2022 ORGANIZED BY CRCLP

**By Neelam (2021)**

**3rd Year**

## *Judgment Analysis: X v. Principal Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi & Anr.*

### INTRODUCTION

Before the MTP Act was enacted, the IPC governed the medical termination of pregnancies. Abortion is criminalized under Section 312 of the IPC. Prior to 1971, criminalization of abortion frequently forced women to seek out risky, unsanitary, and unrestricted abortions, which increased maternal morbidity and death. The Medical Termination Pregnancy Act was introduced against this backdrop. The MTP Act's overall goal is to give women access to safe and 22ractice22s medical abortions. The MTP Act of 1971 focused mostly on "married women." However, with the coming in of the MTP Amendment Act 2021, All women, including single and unmarried women, were expected to be eligible for the benefits of the act. The MTP Amendment Act 2021 significantly altered Section 3 of the MTP Act by raising the maximum time for a pregnancy to be terminated from twenty to twenty-four weeks. The MTP Amendment Act 2021 also made all women—not just married women—eligible for the legal presumption that the failure of contraception has seriously harmed a woman's mental health.

Therefore, the MTP Amendment Act 2021 aimed to liberalise some of the restrictive elements of the original MTP Act in order to increase the accessibility and calibre of legal abortion care for women.

### FACTS OF THE CASE

The appellant, an Indian citizen of 25 years old living in Manipur, had a consensual relationship that led to her becoming pregnant. As "her partner had refused to marry her at the last stage," the appellant wished to terminate her pregnancy. She said that she was apprehensive of the "social shame and persecution" affecting unmarried single parents, particularly women, and that she did not want to carry the pregnancy to term. Moreover, the

appellant stated that in the lack of a source of sustenance, she was not mentally equipped to "raise and nurture the kid as an unmarried mother." The appellant claimed that continuing the unintended pregnancy would put her mental health at serious and significant risk.

The Delhi High Court declined to grant her relief and highlighted that the MTPR, 2003 did not apply to unmarried women who became pregnant as a consequence of a consensual relationship.

The order of the High Court gave rise to a appeal before the Supreme Court. In response to the woman's petition, the Supreme Court issued an interim order permitting her to terminate the pregnancy, subject to the judgement of the medical board established by AIIMS Delhi.

The Supreme Court panel composed of Justices D.Y. Chandrachud, A.S. Bopanna, and J.B. Pardiwala opined that the Delhi High court's interpretation of the laws was too narrow and restrictive in nature.

**CHALLENGING THE ABORTION LAW**

Abortion has been legal in India since 1971, in accordance with the Medical Termination Pregnancy Act. In 2021, the legislation was altered to permit abortions up to 24 weeks, an increase from the prior 20 weeks.

The group of women whose pregnancy can be terminated up to 24 weeks are outlined in Rule 3B of the Medical Termination of Pregnancy. According to the MTP Act's regulations, only rape survivors, minors, women whose marital status changed during their pregnancies, people with mental illnesses, and women who have foetal malformations are permitted to terminate their pregnancy. Unmarried women are not included in this, though.

Rule 3B of the Medical Termination of Pregnancy Rules, 2003, according to petitioner X, "is in violation of Article 14 of the Constitution of India (Right to Equality), because it excludes an unmarried woman."

**BARRIERS TO ACCESSING SAFE AND LEGAL ABORTIONS**

Despite the enactment of the MTP Act, a number of barriers still stand in the way of women having complete access to secure and legal abortions, driving them to seek out hazardous, covert procedures. These obstacles include a lack of understanding, social stigma, inadequate infrastructure, and a failure to protect confidentiality in care. Due to gender preconceptions about women's sexual liberty outside of marriage, unmarried women can encounter

additional challenges. These obstacles are a substantial deterrent for single women seeking safe and 24ractice24s abortions. These obstacles may cause access to abortion services to be delayed or denied entirely, which would negate women's right to reproductive autonomy. Access to safe abortion is hampered not only by the aforementioned issues but also by concern over possible legal repercussions. The MTP Act essentially specifies exceptions to the Sections 312 to 318 of the Indian Penal Code criminalizing abortion under the current legal system.

**ANALYSIS**

1. **Road to Safe Abortions**

   With this ruling, we can anticipate a decrease in the morbidity and death linked to unsafe abortion procedure, which has been a concern in our nation. The decision, given coincidentally on World Safe Abortion Day, 24ractice24s the independence of women in accessing abortion.

   The future generations would be impacted if women with unintended pregnancies were obliged to carry them due to legislative restrictions. A woman should have the freedom to choose whether or not to carry her pregnancy, regardless of her marital status. Legalizing abortions may also deter the unlawful 24ractice of untrained, unlicensed paramedics performing abortions, which is harmful to the mother's health and potential fertility in the future.

   The bench also drew support for its argument from data presented in the legislative discussion on hazardous abortions and from a global health study by the British Medical Journal, which found that 67% of abortions were unsafe. As a result, it was determined that restricting access to safe abortion will lead to an increase in the number of unsafe abortions.

2. **Rules of Purposive interpretation**

   The issue that emerges is whether Rule 3B covers single women, unmarried women, or women without a partner. Giving Rule 3B a purposeful interpretation will reveal the solution.

   Finding the legislature's intent and the enactment's genuine legal significance is the fundamental tenet of statute construction. The intention of the legislature is determined by taking into account the definitions of the words employed in the statute

in order to comprehend the goal or aim of the enactment, the wrong that is intended to be done, and the accompanying remedy.[1]

### 3. Transcending the institution of marriage as a source of rights

While many of the advantages of law were (and still are) based on the institution of marriage, modern law is moving away from the idea that marriage is a requirement for individual rights (alone or in relation to one another). When interpreting an enactment's provisions to achieve its intent and purpose, it is important to keep in mind the evolving societal mores. In this particular case, the court acknowledged that societal changes have brought about considerable changes in family structures. Domestic partnerships, unmarried unions, and LGBTQ unions are all examples of familial connections.

These examples of family and love may not be the norm, but they are just as genuine as the ones that are.

Such unusual family unit manifestations are equally entitled of legal protection as well as the benefits provided by social welfare legislation. It is not acceptable to discriminate against non-traditional families using the black letter of the law. The same unquestionably applies to women who adopt motherhood roles in ways that may not fit into the mainstream perception.

### 4. Mental and physical health of pregnant woman

Injury to mental health of a woman is one the grounds on which pregnancy may be terminated. The term "mental health" has a broad meaning and encompasses much more than the lack of a mental disorder or impairment.

A pregnancy under Section 3 may be terminated if the health practitioner (or, not less than two registered medical practitioners in a situation where the pregnancy is ranging from twenty to twenty-four weeks) believes, in good faith, that the woman's mental and physical health would be seriously jeopardised if the pregnancy were to continue.

In order to decide whether continuing the pregnancy would pose a grave risk to the pregnant woman's bodily or mental health, her actual environment should be taken into consideration. A substantial amount of emphasis should be laid on giving each

[1] Justice G.P Singh, G.P. Singh: Principles of Statutory Interpretation, (Lexis Nexis, 2016), at page 12; *State of Himachal Pradesh* v. *Kailash Chand Mahajan*, 1992 Supp (2) SCC 351; *Union of India* v. *Elphinstone Spinning and Weaving Co. Ltd.*, (2001) 4 SCC 139

woman an opportunity to assess her ability to continue and bring her pregnancy to term.

The High Court of Bombay correctly held in ***High Court on its Own Motion v. State of Maharashtra***[2] that forcing a woman to carry an unintended pregnancy violates her bodily autonomy and integrity, exacerbates her mental situation, and has a negative impact on her mental health due to the immediate socio-economic consequences that result from the pregnancy.

**5. Rape means sexual assault without consent**

Sexual intercourse without consent is termed as rape. In such a situation, a woman may become pregnant against her will. According to the Court, wives who became pregnant as a result of their husbands forcing them into sexual activity will also fall under the definition of "survivors of sexual assault or rape or incest" as stated in Rule 3B(a) of the Medical Termination of Pregnancy Rules. In order to provide context, Rule 3B(a) lists the types of women who may request pregnancy termination between 20 and 24 weeks.

Domestic violence is a brutal reality and that it is regrettable that people have the idea that sex- and gender-based violence is primarily or virtually exclusively the fault of strangers. Women have long experienced sexism and gender-based violence in many forms within the setting of the family.

The bench emphasised that certain forms of familial abuse were already recognised by current Indian law.

The bench noted, however, that putting marital rape under the definition of rape was solely for the purpose of MTP Act.

The court ruled that in order to request a pregnancy termination under the MTP Act, a woman does not need to demonstrate that a rape or sexual assault occurred.

Furthermore, there is no necessity that the case be filed or that the rape accusation be proven in court or in another venue before it can be taken seriously for the purposes of the MTP Act. A provision like that would go against the MTP Act's intent.

Exception to Section 375 of the Indian Penal Code, which exempts marital rape from the crime of rape, is currently being challenged in petitions before the Supreme Court.

[2] High Court on its own Motion v. State of Maharashtra, 2016 SCC OnLine Bom 8426.

The court further ruled that the MTP Act and the Protection of Children from Sexual Offenses (Pocso) Act must be read harmoniously and that the MTP Act does not require the identification of minors to be revealed.

## 6. The Right to Reproductive Autonomy

The scope of reproductive rights extends beyond a woman's choice to have or not have children. It also encompasses the collection of rights and liberties that give women the opportunity to make their own decisions about all issues pertaining to their sexual and reproductive health. Reproductive rights include the right to access healthcare for reproductive issues, the right to seek information and education about contraceptive methods and sexual health, the right to choose whether to use contraceptives and what kind to use, the right to decide whether and when to have children, the right to determine number of children, and the right to choose whether or not to abort. In addition, women must be given the freedom to choose these rights without being subjected to violence or coercion.

The right to bodily autonomy and the right to reproductive autonomy are closely related. Bodily autonomy is the right to make decisions regarding one's own body. The Supreme Court in ***K S Puttaswamy v. Union of India*** determined that the right to privacy allows people to maintain and exercise control over their bodies and minds. "The power to make decisions on critical subjects of importance to life" is the definition of autonomy an individual has.[3]

Therefore, the most notable feature of this order is the jurisprudential advancement it makes regarding the reproductive rights of women.

## 7. The Right to Dignity

The right to be treated as a self-governing, valuable individual is encompassed by the right to dignity. According to Article 21, the right to life and liberty includes the fundamental value of dignity.

The state would be denying women with unintended pregnancies the freedom to choose the short- and long-term course of their lives if they were forced to carry their pregnancies to term. Women's dignity would be violated if they were denied

[3] KS Puttaswamy v. Union of India, (2017) 10 SCC 1.

autonomy over both their lives and their bodies. This right to dignity was under attack until the coming of this judgment by the Supreme Court.

**IMPACT OF THE RULING ON ABORTION**

Advocates for reproductive rights celebrated the decision, saying it made sure that the law was not discriminatory and gave single women the option of safe and legal abortions. This decision has a significant consequence, particularly in light of the Supreme Court of the USA's overturning of the Roe v. Wade decision, which established a constitutional right to abortion.

Judgments tend to have an effect on each other internationally and have a persuasive value over other countries. And despite what authorities and politicians may say, this decision is significant because it upholds a woman's sovereignty over her body and her right to decide whether or not to have children.

**CONCLUSION**

A woman's marital status cannot be used to deny her the right to terminate an unwanted pregnancy, and as a result, all women will now have access to safe and legal abortions, protecting their physical autonomy and dignity. This is an outstanding and laudable decision by the Supreme Court of India. It reflects India's forward-thinking perspective whereas the US has changed its position on this matter. It would have been against the spirit of the amendment to forbid married women from getting an abortion while permitting single and unmarried women to do so. It is significant and appreciable that a woman does not need to report a rape in order to obtain an abortion, even if she claims her husband committed the crime. Additionally, a minor cannot be denied an abortion and a licenced doctor won't expose their identify.

The idea that marriage is not a requirement for individual rights has been rejected by modern law. The court has taken into account the current circumstances without changing the earlier laws. The law has evolved to take into consideration changing societal circumstances. It hasn't chosen the recipients of a law based on constrictive patriarchal notions of what is and isn't acceptable sexual behavior.

# MEET THE TEAM

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