

Her body, her choice: Why a woman's right to terminate her pregnancy must be upheld

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A 27-year-old married woman, mother of a four-year-old and a one-year-old, filed a petition with the **Supreme Court to terminate an unplanned** and unwanted pregnancy. Her husband was the sole earning member of the family, supporting the family, his sister and his mother. The petitioner discovered her pregnancy late due to Lactational Amenorrhea, a condition where breastfeeding suppresses menstruation. She was dealing with postpartum depression and was not mentally prepared to have a third child, which led to a suicide attempt. She approached several healthcare providers to **terminate her pregnancy**, but most doctors declined as she was 20 weeks pregnant. On October 4, 2023, she approached the Supreme Court seeking permission for abortion under the Medical Termination of Pregnancy Act along with the associated Rules.

The case was presented before a two-judge bench on October 5, 2023. After a conversation with the petitioner, the Court noted her unwillingness to continue the pregnancy and granted permission for abortion to be performed on October 10, 2023. Following this, one Medical Board member expressed concerns on grounds of the **foetus' viability**. The Union of India requested the order's recall and subsequently, the case was referred back to the Medical Board by a three-judge bench of the Supreme Court now tasked with hearing the matter.

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For abortions within 24 weeks of gestation, conducted as per the law, there is no legal requirement for pregnant persons to approach courts for permission. The petitioner's case falls within this definition. She was still forced to approach the Supreme Court, as healthcare providers disregarded her decisional autonomy to terminate her pregnancy. The court proceedings further disregarded her autonomy by relying on medical board authorisation for the abortion. Authorisation requirements by courts and medical boards could lead to delays and complications in accessing abortion services. Courts in the past have emphasised the need to avoid unnecessary delays when a person faces an unwanted pregnancy.

It is important to recognise that the decision to terminate a pregnancy should be in the hands of the pregnant woman. In one case, in 2022, the [Delhi](#) Court approved a request for termination during the 33rd week of gestation, based on the decisional autonomy of a 26-year-old married woman. The Court underscored the need to consider various factors, including the physical and mental well-being of the pregnant woman when making such decisions. The Court articulated the need to go beyond the letter of the law to protect Constitutional rights when the case is under Article 226. However, such jurisprudence is not the norm, with court decisions around abortion permission being highly inconsistent.

The inconsistency around abortion jurisprudence comes from a clear distinction in the perception of what constitutes a "good" or "bad" abortion among healthcare professionals and judges. Some abortions are considered justifiable in cases of non-consensual conception, foetal anomalies, or when the person involved is a minor. On the other hand, abortions from pregnancies resulting from consensual marital relationships or mutual agreement for pleasure are typically categorised as elective in nature. Disability exceptionalism in the law manifests in the law assuming that pregnancies with "significant foetal abnormalities" can be terminated, even in later stages. Indian courts have frequently considered requests for termination of pregnancies beyond 24 weeks, with High Courts in Kerala, West Bengal, Maharashtra, and Delhi granting permission for late-stage pregnancy termination, even in the ninth month due to substantial foetal anomalies.

This case prompts a question: If it is deemed safe to end a pregnancy due to a foetal anomaly after 24 weeks, why can't an unwanted pregnancy be terminated at 26 weeks, particularly when it affects the mental health of the pregnant person? Gestation period in pregnancy as a basis to allow or deny abortion is an artificial construct. The 2022 WHO Abortion Care Guidelines recommend against laws that prohibit abortion based on

gestational age limit. Courts in India have established that a pregnant woman's right to decisional autonomy takes precedence over foetal rights and foetal personhood is not conferred by the courts. However, the State establishes a contentious dynamic between a pregnant person and the foetus, equipping itself with a potent tool for regulating pregnant persons' decisional autonomy, controlling their sexuality and allied physical, emotional and mental health.

Forcing a pregnant individual to carry an unwanted pregnancy to full term can result in severe psychological trauma and may be seen as a form of torture, infringing upon various rights, including mental health. Courts have acknowledged this, with a 2023 judgment of the Supreme Court granting permission for abortion primarily based on the "risk to mental health" of the pregnant person. Recently, in 2022, the Kerala High Court allowed a later-term termination on grounds of mental health. In light of the significant increase in recent requests for later-term abortion services, many of which are motivated by the foetal anomaly, physical and mental health issues, and decisional autonomy and constitutional morality, it is imperative to ensure that abortion remains safe, legal, affordable and accessible in a timely manner, without causing additional hardship to pregnant persons.

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