

Case Report

MTP Beyond 20th Week of Gestation: A Rare Case of Anencephaly

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ABSTRACT

Various rights of woman have been recognised under Indian Constitution and case laws pronounced by the Hon'ble Supreme Court of India from time to time. The Hon'ble Supreme Court of India observed that a woman's right to make reproductive choices is also a dimension of '**personal liberty**' as understood under Article 21 of the Constitution of India in the case of Suchita Srivastava and Anr. vs. Chandigarh Administration (2009). The crucial consideration is that a woman's **right to privacy, dignity and bodily integrity** should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. A rare case of anencephaly was filed before the Supreme Court [SC] in which pregnancy crossed beyond the 20th week of gestation, permissible limit under the Medical Termination of Pregnancy (MTP) Act, 1971. Various facets of woman's rights, like consent, right to privacy, bodily integrity and so on, have been discussed by the Division Bench of the SC. This is a first case of anencephaly from India where MTP was allowed by the Apex Court of India where pregnancy crossed 20 weeks of gestation.

Keywords: Anencephaly, Consent, Medical board, Mental health, MTP, Physical health, Reproductive autonomy

INTRODUCTION

Various rights of woman have been recognised under Indian Constitution and case laws pronounced by the Hon'ble Supreme Court of India from time to time. Article 21 of the Indian Constitution dealing with life and liberty has been interpreted in wider perspective on many occasions.

Amendment in the medical termination of pregnancy (MTP) is pending before the both houses of the Indian Parliament since long. Demand for raising the limit of 20th week of gestation had been raised on many occasions on various medical grounds. In the absence of amendment

to raise the limit for MTP, cases were filed in the Supreme Court of India to seek remedy in appropriate cases. A rare case of anencephaly come before the SC in which pregnancy reached beyond the 20th week of gestation, permissible limit under the MTP Act, 1971. Various facets of woman's rights, like consent, right to privacy, bodily integrity and so on, have been discussed by the Division Bench of the SC.

This is a first case of anencephaly from India where MTP was allowed by the Apex Court of India where pregnancy crossed 20 weeks of gestation. This is perhaps the first case of anencephaly in India where MTP was allowed by the SC beyond 20 weeks of gestation^[1].

BRIEF FACTS OF THE CASE

Petitioner no. 1 – Meera Santosh Pal, is 22 years old, has approached the Supreme Court under Article 32 of the Constitution of India seeking directions to allow her to undergo medical termination of her pregnancy^[1].

She apprehended danger to her life, having discovered that her foetus was diagnosed with **anencephaly**, a defect that leaves foetal skull bones unformed and is both untreatable and certain to cause the infant's death during or shortly after birth. This condition is also known to endanger the mother's life^[1].

CONSTITUTION OF MEDICAL BOARD^[2]

By order dated 11.1.2017, while issuing notice to the respondents, the Court gave a direction for examination of petitioner no. 1 by a medical board consisting of the following seven doctors:

1. Dr. Avinash N. Supe, Director (Medical Education & Major Hospitals) and Dean (G&K) – Chairman
2. Dr. Shubhangi Parkar, Professor and HOD, Psychiatry, KEM Hospital
3. Dr. Amar Pazare, Professor and HOD, Medicine, KEM Hospital
4. Dr. Indrani Hemantkumar Chincholi, Professor and HOD, Anaesthesia, KEM Hospital
5. Dr. Y.S. Nandanwar, Professor and HOD, Obstetrics, KEM Hospitals
6. Dr. Anahita Chauhan, Professor and Unit Head, Obstetrics & Gynaecology, LTMMC and LTMG Hospitals
7. Dr. Hemangini Thakkar, Addl. Professor, Radiology, KEM Hospital.

PREGNANCY BEYOND PERMISSIBLE LIMIT

As on 12.1.2017, she was into her 24th week of pregnancy. This is also borne by the report dated 12.1.2017, received from the Director (ME & MH)'s Office, Seth G.S. Medical College & KEM Hospital, Mumbai.

TYPES OF EVALUATION

By its report dated 12.1.2017, the Medical Board has examined petitioner no. 1 with specific reference to **their**

special expertise for general, medical, radiological, psychiatric and anaesthetic evaluation.

An **obstetric evaluation** was done by two obstetricians. Ultrasonography was performed at KEM Hospital on 12.1.2017. The said board has further reported that obstetric examination shows 24-week pregnancy, external ballottement present, foetal parts not well felt with mild polyhydramnios. On internal examination, the cervix is posterior and OS is closed. **Ultrasonography diagnosis has revealed a single live foetus with anencephaly with mild polyhydramnios with hypotelorism.**

Division Bench of the SC have been informed by the Medical Board that the foetus is without a skull and would, therefore, not be in a position to survive.

It was also submitted that petitioner no. 1 has undergone **psychiatric evaluation**. She is reported to be coherent, has average intelligence and with good comprehension. She understands that her foetus is abnormal, and the risk of foetal mortality is high. She also has the support of her husband in her decision-making.

OPINION OF SEVEN-MEMBER MEDICAL BOARD

Upon evaluation of petitioner no. 1, the Medical Board has concluded that her current pregnancy is of about 24 weeks. The condition of the foetus is not compatible with extra-uterine life. In other words, the foetus would not be able to survive outside the uterus.

Importantly, it is reported that the continuation of pregnancy can gravely endanger the physical and mental health of petitioner no. 1 and the risk of her termination of pregnancy is within acceptable limits with institutional back up.

ISSUE OF MEDICO-LEGAL ASPECT OF THE IDENTITY OF FOETUS

The Supreme Court, as at present being advised, would not enter into **the medico-legal aspect of the identity of the foetus** but consider it appropriate **to decide the matter from the standpoint of the right of petitioner to preserve her life in view of the foreseeable danger to it, in case she allows the current pregnancy to run its full course.**

The medical evidence clearly suggests that there is no point, in allowing the pregnancy to run its full course as the foetus would not be able to survive outside the uterus without a skull.

CASE LAW ON REPRODUCTIVE RIGHTS OF WOMAN AND ISSUE OF CONSENT

In *Suchita Srivastava and Anr. vs. Chandigarh Administration (2009)*^[3], a bench of three judges held ‘**a woman’s right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution**’. The Court there dealt with the importance of the consent of the pregnant woman as an essential requirement for proceeding with the termination of pregnancy. The Court observed as follows:

There is no doubt that a woman’s right to make reproductive choices is also a dimension of “**personal liberty**” as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected.

This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman’s right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilization procedures. Taken to their logical conclusion, reproductive rights include a woman’s entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children....

Question for Consideration before the SC?

The crucial consideration in the present case is **whether the right to bodily integrity calls for a permission to allow her to terminate her pregnancy.**

The **report of the Medical Board** clearly warrants that the continuance of the pregnancy involves the risk to the life of the pregnant woman and a possible grave injury to her physical or mental health as required by Section 3 (2) (i) of the MTP Act, 1971.

Though the pregnancy is into the 24th week, having regard to the danger to the life and the certain inability of the foetus to survive extra-uterine life, we consider it appropriate to permit the petitioner to terminate the pregnancy. The overriding consideration is that she has a right to take all such steps as necessary to preserve her own life against the avoidable danger to it.

In these circumstances given the danger to her life, there is no doubt that she has a **right to protect and preserve her life** and particularly as she has made an informed choice. The exercise of her right seems to be within the limits of **reproductive autonomy**.

In the circumstances, Division Bench of the SC considered it appropriate in the interests of justice and, particularly, to permit petitioner to undergo medical termination of her pregnancy under the provisions of MTP Act, 1971^[4].

GROUND FOR OPPOSITION: LEGAL/ MEDICAL GROUND

The learned Solicitor General Mr. Ranjit Kumar who took notice on the last date of hearing has **not opposed the petitioner’s prayer on any ground, legal or medical.**

Who Will Perform MTP?

Division Bench of the SC ordered MTP. **The termination of pregnancy will be performed by the doctors of the hospital where she has undergone medical check-up.**

MTP would be supervised by the above-stated medical board who shall maintain complete record of the procedure which is to be performed on petitioner for termination of her pregnancy.

With the aforesaid directions, **the instant writ petition is allowed by the Division Bench of the SC in terms of prayer seeking direction to allow petitioner no. 1 to undergo medical termination of her pregnancy.**

DISCUSSION

Abortion is an issue overshadowed and shrugged with glaring questions of morality, infanticide (female foeticide), suicide, ethics, religious beliefs and women’s rights.

To what amplitude, abortion should be permitted; encouraged, restricted or repressed is a social issue that has effectively divided theologians, philosophers, legislators and general mass.

How Restrictive Are Abortion Laws?

The petitioner also cited a recent proposal from National Commission for Women for amendment of the MTP Act to provide for abortion where **‘pregnant woman is minor, pregnancy is result of rape or incest, pregnant woman is physically or mentally challenged, continuance of pregnancy would involve risk to the mother, foetus suffering grave abnormalities’** (Table 1).

Table 1: Global scenario on restrictive limit of MTP

Country	Gestational Age Till Abortion is Legal	Exception
USA	Any stage	None
United Kingdom	24 weeks	Depends on risks
Australia	Any stage	States have own law
Canada	24 weeks	Doctor’s advice
France	14 weeks	Depends on risks
Germany	12 weeks	Up to 23 weeks if, doctor’s advice
Japan	Not allowed	Depends on risks
Brazil	Not allowed	Depends on risks

Countries like Albania, Australia, Belgium, Canada, China, Croatia, Denmark, Israel, Nepal, Netherlands, South Africa, the United Kingdom and the United States ‘do not include absolute time limits in their abortion laws, instead these countries consider the woman’s physical and mental health and doctors’ expert opinion in determining whether an MTP can be performed post-20-week period’^[5].

Foetuses with severe anomalies not just have a slim chance of surviving the pregnancy but also a very high mortality rate post-delivery. In cases where it is a brain anomaly, the chances of the baby not surviving even a few hours after birth is extremely high. The woman had moved to the Apex Court seeking permission to abort the foetus, detected with anencephaly, a serious defect where parts of the brain or skull are not adequately developed^[6].

Experts said that foetuses with such severe anomalies not just have a slim chance of surviving the pregnancy but also a very high mortality rate post-delivery.

Gynaecologist and medico-legal expert Dr. Nikhil Datar, who has been at the forefront of the legal battles to amend the MTP Act, said multiple incidents in quick succession show the urgency to get the bill passed. ‘How many more women will have to approach the court to terminate pregnancies?’

It was expected that the Supreme Court can at least pass some guidelines till the time the Act is amended’^[7].

SUMMARY AND CONCLUSIONS

There is urgent need to make amendment in the existing MTP Act to raise the limit from 20th week to 24th week of gestation in exceptional cases with strict supervision and monitoring to avoid any misuse in future.

MTP Act 1971 allows abortion till 20 weeks of pregnancy, but around half dozen cases have, in the recent past, moved to the SC seeking permission to abort beyond this deadline^[8].

We should be proactive in approach rather than reactive. It is right time to expedite the proposed amendments in the MTP Act.

There is also a need to define the Constitution of Medical Board and their roles on specific issue related to mental and physical health of the woman in question.

Plight of many rape survivors, victims of incest who become pregnant but diagnosis comes to notice when gestation crossed permissible limit of 20th week can be addressed in larger public interest. There is a need for political will to pass the pending amendment in the light of cases come before the Supreme Court of India.

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