

INDIA

Supreme Court axes 51-year-old curb, single women get equal abortion rights

Krishnadas Rajagopal

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Bench says prohibiting single women with pregnancies up to 24 weeks from accessing abortion while allowing married women with the same term to get the care amounted to discrimination; artificial distinction is not constitutionally sustainable



In a historic judgment, the Supreme Court on Thursday allowed unmarried and single women whose pregnancies are between 20 and 24 weeks to access safe and legal abortion care on par with their married counterparts.

A Bench led by Justice D.Y. Chandrachud pried open the restrictive grip of a 51-year-old abortion law which bars unmarried women from terminating pregnancies which are up to 24-weeks old. The **Medical Termination of Pregnancy Act of 1971 and its Rules of 2003** prohibit unmarried women who are between 20 weeks to 24 weeks pregnant to abort with the help of registered medical practitioners.

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“The rights of reproductive autonomy, dignity and privacy under **Article 21 of the Constitution** gives an unmarried woman the right of choice as to whether or not to bear a child on a similar footing as that of a married woman,” Justice Chandrachud held.

The court declared that prohibiting single or unmarried pregnant women with pregnancies between 20 and 24 weeks from accessing abortion while allowing married women with the same term of pregnancy to access the care was **violative of the right to equality before law and equal protection (Article 14)**.

The court said a single woman may have suffered the same “change in material circumstances” as a married pregnant woman. She may have been abandoned or without a job or been a victim of violence during her pregnancy.

Her life could be in danger due to foetal abnormalities. She may have been a victim of sexual exploitation leading to the pregnancy. There would be cases in which she could have got pregnant due to contraceptive failure, leaving her in a state of mental anguish.

“The law should not decide the beneficiaries of a statute based on narrow patriarchal principles about what constitutes permissible sex. This would create invidious classifications,” Justice Chandrachud said in the judgment which coincided with the International Safe Abortion Day.

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The source of her pregnancy may also be the same vulnerability that applies to other women. **There is a need to have a forward-looking interpretation of the law**, the court said.

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The court said the **Medical Termination of Pregnancy (Amendment) Act of 2021** has addressed the “continuing crisis” of unsafe abortions. Close to eight women die everyday in India due to unsafe abortions. Sixty-seven per cent of the abortions carried out in the country between

2007-2011 were classified unsafe by studies. One of the reasons, the Parliament was aware, was that women outside marriages and in poor families were left with no choice but use unsafe or illegal ways to abort unwanted pregnancies. Hence, to address this issue, the 2021 amendments had included the word 'partner', showing that the law was not just concerned about women who undergo pregnancy within marriage, but outside marriage too. After all, the medical risk was the same for both married and unmarried women.

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The court said the artificial distinction between married and unmarried women was not constitutionally sustainable. "The benefits of law extend equally to single and married women... If women with unwanted pregnancies are forced to carry them out to term, the state would be stripping of their right to determine the immediate and long-term paths their lives would take and deprive women of autonomy not only over their bodies but also over their lives. This will be an affront to their dignity," Justice Chandrachud observed in the verdict.

The court held that reproductive autonomy required every pregnant women to have the intrinsic right to choose to have or not have to undergo abortion without any consent or authorisation from a third party.

"The decision to carry a pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy," Justice Chandrachud observed, linking reproductive rights of women to their bodily autonomy.

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The judgment expanded the ambit of the term "reproductive rights". It was not restricted to have or not children. 'Reproductive rights' of women included a "constellation of rights, entitlements and freedoms for women".

"Reproductive rights include the right to access education and information about contraception and sexual health. The right to decide whether or what type of contraceptives to use. The right to choose whether or when to have children. The right to choose the number of children. The right to choose safe and legal abortion. The right to reproductive health care... Women must also have the autonomy to make decisions on these rights, free from coercion or violence," Justice Chandrachud underscored.

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