



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

सत्यमेव जयते

S.B. Civil Writ Petition No. 11124/2025

Victim

-----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Department of Medical and Health, Government of Rajasthan, Government Secretariat, Jaipur.
2. Station House Officer, Police Station Mahila Thana (Bhiwadi) District Khairthal-Tijara.
3. Investigation Officer, Police Station Mahila Thana (Bhiwadi) District Khairathal-Tijara.
4. Superintendent, Public Health Center, Police Station Mahila Thana (Bhiwadi) District Khairthal-Tijara.
5. J.B. District Hospital, Bhiwadi District Khairthal Tijara through its Medical In-Charge.

-----Respondents

For Petitioner(s) : Mr. Rajesh Kumar Sharma with
Ms. Kamini Pareek,
Mr. Sarthak Chobey and
Mr. Gaurav Sharma

For Respondent(s) : Mr. Bhunesh Sharma, AAG with
Mr. Vishnu Dutt Sharma
Mr. Yash Joshi and
Ms. Tanvisha Pant for
Mr. Vigyan Shah, AAG

JUSTICE ANOOP KUMAR DHAND

Order

31/07/2025

Reportable

1. A child is a priceless gift of God. The life indeed begins at the moment of conception, making it sacred and invaluable. Hence, life is precious and must be cherished, encouraged and preserved at every stage.



2. The law recognizes a woman's autonomy to decide whether to continue with the pregnancy or not. The right of autonomy of a woman/girl, permits her to either continue with the pregnancy and give birth to a child or opt for its termination and it is the solitary choice of the female in any given case. No law or coercive force can compel her to terminate the pregnancy against her wishes. The Right to Life under Article 21 of the Constitution of India encompasses not only right to beget a life and the right to dignity and autonomy and bodily integrity and the fetus cannot be ordered to be aborted without the consent of the woman.

3. The fully developed fetus is also recognized under Article 21 of the Constitution of India to have the Right to Life, which includes the right to be born and live a healthy life free from abnormalities. The right to life is a broad and fundamental concept recognized under the Indian Constitution. While a person's legal life begins at birth and ends at death, the stages before birth and after death are not considered to have legal existence.

4. An unborn child has a life of its own and rights of its own and the rights of unborn are recognized by law. No doubt, only if the unborn can be treated as a person, the right to life of the unborn can be equated with the fundamental right of the mother guaranteed under Article 21 of the Constitution. True, an unborn is not a natural person, but it is well known that after six weeks, life is infused into the embryo, thus converting embryo into fetus and once an embryo evolves into a fetus,



the heartbeat starts. In other words, the unborn has life from the stage it transforms into fetus. If the unborn has life, though it is not a natural person, it can certainly be considered as a person within the meaning of Article 21 of the Constitution, for there is absolutely no reason to treat an unborn child differently from a born child. In other words, the right to life of an unborn shall also be considered as one falling within the scope of Article 21 of the Constitution.

5. Reverting back to the facts of the case, the father of the victim "K" has submitted the instant petition seeking permission to terminate the pregnancy of his minor daughter i.e. victim, who is 17 years old.

6. Learned counsel for the petitioner submits that three FIRs have been registered against the accused for committing rape upon his minor daughter. Counsel further submits that on account of said rape, the victim is now pregnant. Counsel submits that the victim is a minor and unable to make decisions about her future, hence, her father has approached this Court seeking permission to terminate her pregnancy. Counsel submits that when the matter was listed before this Court on 27.07.2025, this Court directed counsel for the State to medically examine the victim.

7. In pursuance of the aforesaid order passed by this Court, the victim was medically examined by four Doctors, who confirmed the pregnancy of 22 weeks and 4 days. As per the opinion of the Doctors, termination of pregnancy below the period of 24 weeks is permissible under Section 3 and 5 of the



Medical Termination of Pregnancy Act, 1971 (for short 'MTP Act'), when performed by the registered medical practitioner.

8. This Court has received a letter dated 30.07.2025 from the Secretary, Rajasthan Legal Services Authority, Jaipur addressed to the Registrar (Judicial) along with a letter from the President of Child Welfare Society, Alwar dated 30.07.2025. Enclosed with these letters was a letter of the victim, wherein she has expressed her desire to deliver the child and stated that she does not wish to terminate her pregnancy. It has also been stated in the letter that the instant petition has been submitted before this Court without her consent.

9. Along with the letter, the statement of the girl has also been enclosed, recorded by the Counsellor and bearing signatures of the victim, wherein, her age is mentioned as 16 years. She has stated in the said statement that her parents' behaviour towards her has been harsh and abusive, which led her to leave home of her own wish and free will. She knows one Kanhaiya for last more than four years, as he resides at Kannauj and she is in love with him. She stayed with him for a period of 26 days before her parents filed the petition before this Court. She further stated that her mother has been demanding money from her and Kanhaiya and at present, she is more than five months pregnant and she wishes to deliver the child. She has also expressed her desire to stay at the Child Welfare Committee at Kanpur until she attains the age of 18 years. She does not want her medical examination to be





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done and does not want to return to her home and upon attaining the age of 18 years, she intends to go with Kanhaiya.

10. Considering the aforesaid statement given by the victim, as recorded by the Counsellor at the Child Welfare Committee, Alwar, the permission sought by her parents for termination of her pregnancy cannot be granted by this Court. Once the victim has clearly expressed her unwillingness to abort the fetus and her desire to deliver the child and reside with the child at her own in the Child Welfare Committee, until she attains the age of majority, it reflects that she has a reasonable understanding of the social and economic implications associating with raising a child.

11. The Hon'ble Apex Court in the case of **A (Mother of X vs. State of Maharashtra)**, while deciding **Civil Appeal No.5194/2024**, has dealt with the identical situation in para Nos.32 and 35, which reads as under:

"32.The MTP Act does not allow any interference with the personal choice of a pregnant person in terms of proceeding with the termination. The Act or indeed the jurisprudence around abortion developed by the courts leave no scope for interference by the family or the partner of a pregnant person in matters of reproductive choice.

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35. In the present case the view of 'X' and her parents to take the pregnancy to term are in tandem. The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution. Therefore, where the opinion of a minor pregnant person differs from the guardian, the court must regard the view of the pregnant person as an important factor





while deciding the termination of the pregnancy.”

12. Section 3 of the MTP Act lays down the provisions relating to the termination of pregnancy. A perusal of the Section 3(4) (a) of the MTP Act reveals that the consent of the natural guardian is required for termination of pregnancy in the case of a minor. However, the Act does not shed light on a situation where there is a conflict between the views of the minor and her guardian, therefore, this leaves plethora of gates open for judicial interpretation, allowing the Court to decide based on the facts and circumstances of the case.

13. This Court is of the considered opinion that a minor has the right to beget and create a life, which is one of the facets of Right to Life guaranteed under Article 21 of the Constitution of India.

14. After considering the age of the victim, who is more than 17 years and taking note of the statements of the victim reflecting her level of maturity and her capacity to take decisions for her, this Court finds that she is capable to understand the consequences of her decision. Taking into account her unwillingness to terminate the pregnancy coupled with the medical opinion confirming that she is in an advanced stage of pregnancy exceeding 22 weeks and she is medically fit and is not suffering from any ailment or any complication that would endanger her health or the pregnancy, it is evident that she has every right to beget a child and even the fetus in the womb/the child has every right to enter into the world.





Granting the permission, as sought for by the parents of the victim for termination of her pregnancy, would not only violate the victim's Right to Life but also infringe the right to life of the fetus/unborn child in the womb of the victim, as guaranteed under Article 21 of the Constitution of India.



15. Hon'ble Apex Court in the case of **Suchita Srivastava v. Chandigarh Administration** while deciding **Civil Appeal No.5845/2009**, has declined to permit termination of pregnancy, where the minor was unwillingness to undergo the procedure. Therefore, this Court is of the considered opinion that since the petitioner's daughter has clearly expressed her unwillingness to terminate the pregnancy and abort the child, her consent must take precedence over the consent given by her guardians before this Court and the consent given by her guardians before this Court cannot override the autonomy and decision of the pregnant victim.

16. The perusal of the opinion given by the Medical Board reveals that the victim girl's stage of pregnancy is such that it may result in the birth of a live baby and the foetal abnormalities diagnosed are not lethal. In the absence of any threat to the life or health of the mother, this Court is of the opinion that the reproductive choice of the mother "K", which is a facet of the fundamental right guaranteed under Article 21 of the Constitution, will have to give way to the right of the unborn child to be born. Accordingly, this Court will not go against the expressed wishes of the girl "K" regarding her decision to continue with the pregnancy and give birth to a



child. Hence, the relief sought for by her parents for forceful termination of her pregnancy cannot be granted by this Court.

17. In the light of the statement made by the minor victim and for the above mentioned reasons, this Court deems it just and proper to dispose of the instant writ petition with the following directions:



- (i) The State shall ensure that all medical facilities related to child birth process are provided to the minor victim.
- (ii) The Doctors shall ensure that the minor victim receives all the requisite care and appropriate precautions are taken pre-delivery and post-delivery stages.
- (iii) The respondents are directed to provide the minor victim all necessary care, nutritious food and medical attention before and after delivery. The Superintendent, Child Welfare Committee, Alwar is also directed to allow the victim to reside there until she attains the age of majority.
- (iv) The Principal Secretary, Department of Medical and Health and The Secretary, Department of Women and Child Development are directed to provide a female nursing attendant at Child Welfare Committee, Alwar for taking care of the victim until her safe delivery.
- (v) The Superintendent, Child Welfare Committee, Alwar is further directed to ensure that all medical facilities are provided to the minor victim before and after the delivery, free of any fees, charges, expenses of any nature and to further ensure that the delivery takes place in a safe and secure environment.



(vi) The privacy of the victim and the child shall be strictly maintained at all stages and their identities should not be disclosed during hospitalization and admission.

(vii) The State is further directed to admit the minor victim to any School, in case she wishes to study and provide her all facilities including admission in the School, books and all study material.

(viii) The Rajasthan State Legal Services Authority (RSLSA) and District Legal Services Authority, Alwar are directed to instruct the Child Welfare Officer, Alwar to visit Child Welfare Committee and submit quarterly reports to this Court confirming that the victim and the newly born child are receiving proper care and are not facing any inconvenience.

(ix) The Superintendent of Police, Alwar is directed to monitor entire process and make all possible efforts for compliance of the order passed by this Court and submit his report to this Court at the end of each quarter.

18. Office is directed to send a copy of this order to all the respective authorities mentioned in the order for compliance of this order.

19. With the aforesaid observations/directions, the instant writ petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J