

Moot Problem*

Me, My Body, My Decision!

Kindiya is a democratic republic. She got her independence from British rule in 1947. The Constitution of Kindiya was adopted in the year 1949. The Kindiyan Constitution assures several rights to her citizens. Fundamental rights like right to equality, freedom of expression, freedom of speech, freedom to form peaceful assembly, *etc.* are assured to all the citizens of the country. Right to life and personal liberty is one of the most important right enjoyed by the Kindiyan citizens. Under the horizons of Article 21 of the Kindiyan Constitution, the Supreme Court of Kindiya has included a variety of rights and the court has been a crusader in protection of human rights.

Shakuntala Devi is a bright politician from the State of Dihar. She has great prospect to become Chief Minister of Dihar. Shakuntala Devi is married to Pratap Yadav for last 10 years and is blessed with two daughters, Pooja and Aarti. In 2021, Shakuntala Devi was pregnant with their third child. In the mean while, Dihar general elections were announced. One of the conditions set by Election Commission was that, the candidature of candidates with more than two children shall be rejected. As Shakuntala's 18 weeks pregnancy affected her election candidature, she started persuading her husband that she wishes to terminate her pregnancy. But her in-laws and her own parents requested her not to terminate her pregnancy and to give up her political career. However, Shakuntala expressed her desire to Dr. Sheetal Raj to discontinue the pregnancy and told how her family was pressurizing her to retain it. Dr. Sheetal assured her that no one could pressurize her to retain the pregnancy and her legal position was secure as husband's consent was not necessary for termination of the pregnancy. Pratap Yadav filed an Injunction Petition to stop his wife, Shakuntala Devi from going ahead with the termination of pregnancy before the Civil Judge. The Civil Judge issued interim order of injunction stopping Shakuntala Devi from terminating the pregnancy. In meanwhile, Pratap Yadav filed a Writ Petition before Supreme Court of Kindiya challenging the constitutional validity of the Medical Termination of Pregnancy Act and questioning his right as a father to retain the unborn child.

* This Moot Problem is prepared by Ms. Ashwini Parab, Assistant Professor, R. L. Law College, Belagavi.

Radha Rani is an ambitious young lady. She got married to Rohit Kaushik in the year 2018. Rohit and Radha were both software engineers working in Inloysis Co. Ltd. In 2021, Radha was pregnant with their first child and the couple was happy and excited about it. However, in 2021, Radha received a wonderful job opportunity from LBN and got a chance to work abroad in Switzerland. But due to her 25 weeks' pregnancy her family asked her to refuse the offer. But Radha being an ambitious lady thought that this opportunity may not strike again and decided to terminate her pregnancy and take up the job. She approached Dr. Gupta for termination of her pregnancy. But as she had completed 25 weeks Dr. Gupta refused to terminate her pregnancy as it violated the Medical Termination Pregnancy Act.

Preeti a 21-year-old girl got pregnant within 2 years of her marriage. Her husband and in-laws were extremely happy about it. But Preeti thought it was too early for her to become a mother and felt that it would be end of freedom and enjoyment for her. So, she decided to terminate the pregnancy. Preeti went to a gynecologist and informed the doctor that she was unmarried and got pregnant and so to save her family from humiliation she wanted to terminate the pregnancy. The pregnancy was terminated, but subsequently her husband and in-laws charged Preeti and the doctor for the offence under Section 312 Kindiyen Penal Code. The aggrieved doctor filed a Petition before the Supreme Court challenging the Constitutional validity of Section 312 of the Kindiyen Penal Code.

In meanwhile, 'SHE' an exclusive women's weekly newspaper published an article that even in 21st century for the Kindiyen women's right to personal liberty is a myth. Already angry and frustrated Radha Rani became even more angry after reading the article published in 'SHE'. She could not accept the idea of losing such job opportunity and giving up her liberty. Therefore, she filed a Writ Petition before the Supreme Court of Kindiya, challenging the Constitutional validity of The Medical Termination of Pregnancy Act as well as relevant provisions of Kindiyen Penal Code, as they violate their fundamental rights under the Kindiyen Constitution.

Bachapan an NGO working in the field of child protection, filed a petition before the Supreme Court to join them as party to the Writ Petition filed by Radha Rani as the case involves protection of the rights of the unborn.

In meantime, Preeti also filed Writ Petition before the Supreme Court of Kindiya challenging the Constitutional validity of the Medical Termination of

Pregnancy Act and emphasizing that, to give birth or not to give birth to a child is an exclusive right of the mother and is in rightful exercise of right to life and personal liberty guaranteed to her by the Kindiyan Constitution.

Looking into the large number of petitions relating to Women's Right to give Birth or not to give Birth, the Supreme court decided to finally settle the legal position on the subject. Therefore, the Supreme Court has decided to hear all the Petitions together on following points:

1. Does woman have Constitutional right to retain or terminate her pregnancy?
2. Does the Medical Termination of Pregnancy Act and other Kindiyan laws are violative of women's right to terminate pregnancy?
3. Does the Medical Termination of Pregnancy Act violate the Father's right to retain the unborn child?
4. Does the Medical Termination of Pregnancy Act violate the right to life of unborn child?

Note: 1. The jurisdiction of Supreme Court need not be raised by the teams.

2. Laws in force in Kindiya are same as the laws of India.