

Moot court problem no. 3

The Fernandez couple's joy knew no bounds when the doctor confirmed the pregnancy of Anna Fernandez. Alex, a government servant and Anna, an upcoming legal practitioner were married for seven years now. They had almost lost all hopes of getting a child of their own and had started thinking of adopting a child. On hearing about her pregnancy from the doctor, both of them were overjoyed and thanked God for the blessing. Since Anna was in her late thirties the doctor advised her to take total rest and avoid any kind of physical or mental stress. Anna too was apprehensive about the health of the baby. However she did not wish to give up her practice as she knew very well that to give up her practice would mean an end to her career. There was some disagreement between the couple regarding Anna continuing her profession. Anna was optimistic enough and she carried on her pregnancy as well as her profession fairly well.

She was doing her regular medical checkups and sonography as per the doctor's prescription. In the 22nd week of gestation, sonography revealed that the foetus has a congenital heart ailment that would require a permanent pacemaker. The treatment for the disease is expensive. The pacemaker would cost Rs. 1 lakh and would require to be changed in every 5 years. Doctors opined that it might be difficult for the baby to survive without serious handicap.

After serious thinking, Alex and Maria decided to go for medical termination of pregnancy. However the doctors refused to heed to their request as they found it to be illegal to terminate pregnancy after the 20th week of gestation. Moreover the continuation of pregnancy did not endanger the mother's health or life.

Thereafter the couple filed a writ petition before the High Court of Bombay challenging the validity of section 3(2) of Medical Termination of Pregnancy Act, 1971.

Meanwhile the Catholic Church issued a reprimand against the claim put forward by the couple. 'Hruday Rehka', a well known cardiac speciality centre volunteered free post natal medical treatment to the foetus. 'Mathruchhaya', a Non Governmental organization came forward to adopt the child if the parents don't desire to keep an unhealthy child.

The High Court dismissed the petition on the ground that the MTP Act does not permit termination of pregnancy beyond 20 weeks of gestation and refused to strike down the impugned provisions of the same.

The High Court granted leave to appeal and immediately appeal was filed before the Supreme Court. Meanwhile Anna had a pregnancy loss followed by serious complications. Fortunately she outlived the danger and recovered.

The appeal has come up for hearing before the Supreme Court. The points for consideration before the Supreme Court are:

1. Whether a woman has a fundamental right to abort the fetus, at any stage of her pregnancy
2. Is a defect in the fetus a sufficient ground to terminate the pregnancy irrespective of the gestation period
3. Whether S. 3(2) of the Medical termination of Pregnancy Act is violative of the appellants' fundamental freedoms under Articles 14 and 21 of the Constitution of India

The counsels may add further issues.