

reprohealthlaw blog

Research and Developments in Reproductive Health Law

India: Supreme Court holds State responsible for delays preventing legal abortion by rape victim

Many thanks to Hanna Kofman, J.D., a recent graduate from the Faculty of Law, University of Toronto, for abstracting this judgement for Reprohealthlaw Blog readers and subscribers

Indu Devi v the State of Bihar and Others [2017] Petition(s) for Special Leave to Appeal (C) No. 14327/2017, Judgment of May 9, 2017 (Supreme Court of India), [Judgment online](https://drive.google.com/file/d/0BzXilfcxe7yubUliZjdCRlM5dDA/view)
(<https://drive.google.com/file/d/0BzXilfcxe7yubUliZjdCRlM5dDA/view>).

In a decision dated May 9, 2017, the Supreme Court of India refused an abortion to a HIV-positive woman who had become pregnant as a result of rape.

The petitioner had initially requested an abortion in March 2017, while 17 weeks pregnant. India's Medical Termination of Pregnancy Act, 1971, permits pregnancies resulting from rape to be terminated up to 20 weeks. She experienced significant delays at the government hospital, eventually bringing her request to the High Court, which rejected her plea. When the case reached the Supreme Court, the petitioner was 26 weeks pregnant. The barriers the petitioner encountered in terminating her pregnancy—in hospitals and at the High Court—illustrate the need for supporting guidelines for medical providers and courts clarifying this legal entitlement to guarantee women survivors of rape access to abortion.

The Supreme Court based its decision on the opinion of the medical board at All India Institute of Medical Sciences (AIIMS) that at 26 weeks the abortion procedure posed a risk to the life of the petitioner and the fetus. The Court directed the state of Bihar to provide medical treatment to the petitioner pursuant to AIIMS' recommendations to ensure that her health is not further jeopardized and to reduce the risk of HIV-transmission to the child. The Court also held that the petitioner is entitled to 300,000 rupees compensation from the State of Bihar for the delays which ultimately prevented her from accessing an abortion.

Relevant resources:

[Supreme Court judgment of May 9, 2017](https://drive.google.com/file/d/0BzXilfcxe7yubUliZjdCRlM5dDA/view)

(<https://drive.google.com/file/d/0BzXilfcxe7yubUliZjdCRlM5dDA/view>).

[High Court judgment of April 26, 2017](https://indiankanoon.org/doc/134358850/) (<https://indiankanoon.org/doc/134358850/>).

[Medical Termination of Pregnancy Act, 1971 \(India\)](http://tcw.nic.in/Acts/MTP-Act-1971.pdf) (<http://tcw.nic.in/Acts/MTP-Act-1971.pdf>).

Newspaper articles: [Times of India](http://timesofindia.indiatimes.com/india/supreme-court-rejects-plea-of-hiv-rape-survivor-to-abort/articleshow/58602950.cms) (<http://timesofindia.indiatimes.com/india/supreme-court-rejects-plea-of-hiv-rape-survivor-to-abort/articleshow/58602950.cms>). [Live Law India](http://www.livelaw.in/sc-declines-hiv-infected-womans-plea-abort-orders-bihar-govt-pay-3L-compensation/) (<http://www.livelaw.in/sc-declines-hiv-infected-womans-plea-abort-orders-bihar-govt-pay-3L-compensation/>).

Center for Reproductive Rights – [press release \(https://www.reproductiverights.org/India-Supreme-Court-Denies-Abortion-Rape-Survivor-Living-With-Hiv%20\)](https://www.reproductiverights.org/India-Supreme-Court-Denies-Abortion-Rape-Survivor-Living-With-Hiv%20).

Compiled by the Coordinator of the International Reproductive and Sexual Health Law Program, reprohealth*law at utoronto.ca For Program publications and resources, see our website, [online here \(http://www.law.utoronto.ca/programs-centres/programs/irshl-reproductive-and-sexual-health-law\)](http://www.law.utoronto.ca/programs-centres/programs/irshl-reproductive-and-sexual-health-law). **TO JOIN THIS BLOG:** enter your email address in upper right corner of [this webpage \(https://reprohealthlaw.wordpress.com/\)](https://reprohealthlaw.wordpress.com/), then check your email to confirm the subscription.

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