

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

242

CWP-4885-2024 (O&M).
Reserved on: 07.03.2024.
Date of pronouncement: 11.03.2024.

‘X’

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by

Mr. Gaurav Chopra, Sr. Advocate, with
Mr. Shehbaz Thind, Advocate,
Mr. Gagandeep Singh, Advocate,
Mr. Jagraj Singh, Advocate,
Mr. Buta Singh, Advocate,
Mr. Rishabh Bajaj, Advocate and
Ms. Sanjana Makkar, Advocate,
for the petitioner.

Mr. Vivek Saini, Advocate, (Amicus Curiae).

Mr. Saurav Verma, Addl. A.G. Punjab with
Mr. Aditya Sharda, DAG, Punjab.

VINOD S. BHARDWAJ. J.

Considering the nature of the case and the future prospects in the life of the young girl who is the petitioner before this Court, Registry is directed to conceal the identity of the petitioner and carry out appropriate steps to hide the details that would disclose or reveal her identity. For the facility of reference, the petitioner shall be referred to as 'X' and the case title be recorded as 'X' Vs. State of Punjab and others.

2 The present writ petition had been filed on 29.02.2024 for seeking directions to the doctors at Rajindra Hospital, Patiala, to carry out termination of pregnancy of the petitioner by constituting a Medical Board.

3 Briefly, the facts of the case are that the petitioner whose date of birth is (dd/mm/yy) and aged about 18 years 7 months, met a boy around an year ago and they fell in love with each other. As a result of their growing proximity, they entered into physical relations with each other but both of them parted ways later. Petitioner is a student of 12th Standard and during her ongoing Board examinations, she felt pain in her abdomen for which she was diagnosed by the doctors of Rajindra Hospital, Patiala to be pregnant. Petitioner is under immense pressure for having conceived a child when she herself is of tender age and is a student appearing in her 10+2 Board Examinations. She is apprehensive that her entire career and future prospects shall suffer a huge set back in case the pregnancy is not permitted to be terminated at this stage. She is herself of a tender age and is not mentally prepared to give birth. The unwanted pregnancy shall subject her to enhanced social stigma and

incarceration. A prayer is thus made for being granted permission for termination of the pregnancy by relying on the judgment of the Hon'ble Supreme Court in the matter of **Suchita Srivastava and another Vs. Chandigarh Administration, reported as (2009) 9 SCC 1.** The relevant part of the judgment is extracted as under:-

“There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.”

4 Considering that a legal issue is involved as to whether the permission for termination of the pregnancy can be granted at this juncture or not, counsel for the respondent-State made a statement that there is no need to file reply and that they shall advance arguments on the petition itself. Additionally, Sh. Vivek Saini, Advocate was also appointed as Amicus by this Court to assist in the matter.

5 When the matter came up for preliminary hearing, vide order dated 29.02.2024, the respondent-State of Punjab was directed to constitute a Medical Board to carry out physical examination of the petitioner and submit its report as regards the mental, physical and psychological status of the petitioner.

6 The petitioner appeared before the said Medical Board and a report was received from the Centre Administrator. The same is extracted as under:-

“Counseling Report- *On Dated 04-03-2024, the girl (name concealed) and the girl's father (name concealed) came to the Sakhi one stop Centre, Patiala for counseling as per the order case No.CWP-4885-2024 of the Hon'ble Punjab and High Court, Chandigarh.*

In the Sakhi One Stop Centre, the girl was counseled in a comfortable environment away from her father in the counseling room and was asked about food and drink.

During counseling session, the girl said that "My name is (x) and father's name is (y), Mother's name is (z) address House No. (address concealed), Punjab. My age is 18 years and 7 months, I am doing twelfth class with Commerce group in School (name concealed) and the girl was asked about her hobbies in which she said that I like reading and cooking. In cooking she likes making Rajmah and Chole Chawal.

During Counseling Session, the girl told that a few months ago she met a boy and they became friends and

came into a relationship with each other but now the girl neither calls the boy nor wants to have a relationship with him.

During the counseling session, the girl told that some time ago the girl started having pain in her stomach due to which she met the doctor and came to know about the girl's pregnancy and the girl is now six months pregnant.

During counseling session the girl told that she wants to have an abortion and does not want to have a child.

During counseling session, the girl told that she wants to have this abortion of her own free will, there is no family and social pressure on her.

During the counseling session the support of the girl's parents was asked, in which the girl told that her parents are giving her full support and there is no pressure on her to get an abortion.

This Counseling report is presented to you for further action and kind information.

*Para legal Personnel-Cum-Centre Administrator,
Sakhi one stop Centre, Patiala.*

4/3/2024."

7 A report was also submitted by the Medical Board of Rajindra Hospital, Patiala, which is extracted as under:-

“On Examination-

General Condition good, well built, well nourished, well oriented to time, place and person.

Temperature- Normal
Pulse- 84/min
BP- 110/70 mm of Hg
Per Abdomen- 30 weeks
Fetal Movements- +ve
Uterus- Relaxed

Psychiatric Evaluation-

No History of any persistent pervasive sadness, anxiety, stress or any other mental Illness.

No History of any substance abuse.

On mental status examination, patient is conscious and co-operative. No abnormality detected in her mood, speech, thought, perception and cognitive function.

Ultrasound- 23/02/2024

Single alive Intrauterine fetus with normal cardiac and somatic activity corresponding to 24 weeks 6 days seen at the time of examination.

Fetal Heart rate- 127/min
Placenta - Posterior upper
Liquor- Adequate
No fetal congenital anamoly

On Counselling by Counsellor from the department of Social Security Women and child Development Ms. 'X', wants to terminate her pregnancy out of her on free will and consent without any social pressure.

Medical Board has examined the patient and is of the opinion that 'X' D/O 'Y' aged 18 years 7 month does not have any mental, psychological or physical abnormality at time of examination. Her Ultrasound report dated on 23/02/2024, shows she is 24 weeks 6 days pregnant without any fetal congenital abnormality.

*Mrs. Rajmeet Kaur
Centre Administrator
Social Security WCD.*

*Dr. Rajesh Kumar
Assistant Professor
Radiodiagnosis Deptt.*

*Dr. Surinder Kaur
Assistant Professor
Paediatrics Deptt.*

*Dr. Jasmine Garg
Assistant Professor
Psychiatry Department*

*Dr. Preetinder Singh
Assistant Professor
Forensic Department*

*Dr. Shelly Khilan
Assistant Professor
Obst. & Gynae Deptt."*

8 It was, however, noticed from a perusal of the above said medical report that the said Board merely reiterated the report of the ultrasound conducted earlier on 23.02.2024 without any recommendation of its own. In view of incomplete report and recommendation of the Medical Board, petitioner was referred for

medical examination by the Medical Board of the Post Graduate Institute of Medical Education and Research, (PGIMER), Chandigarh, to make a recommendation as to whether it would be safe for her to undergo medical termination of pregnancy or not. In compliance of the said order dated 05.03.2024, petitioner was medically examined by the Board of Doctors of the PGIMER, Chandigarh and its report is extracted as under:-

“Subject. Regarding orders from court of Justice Vinod S Bhardwaj, Judge, Punjab & Haryana High Court, Chandigarh / UID No CWP-4885-2024 dated 05.03.2024 wherein Medical Superintendent, PGI has been requested to constitute a Medical Board immediately. The Medical Board to submit report about the medical condition of the patient and to give its opinion about the stage of her pregnancy and to report if it is safe for her to undergo the medical termination of her pregnancy or not.

Details of patient

(X)

18 yrs female

CR No (xxx xxx xxx)

The patient was evaluated by the Permanent Medical Board in its meeting held on 06/03/2024

Following observations were made:

1. As per the ultrasound done on 06/03/202, at PGIMER, the period of gestation is 25 weeks+5 days with single live healthy intrauterine fetus with estimated fetal weight 763 113gms. No gross congenital malformation seen.

2. The patient is medically and physically fit to undergo a procedure

3. The detailed psychiatric evaluation done is suggestive of psychological distress due to her current situation. She is expressing suicidal ideation in case of continuation of pregnancy. Hence, she will require further psychological assessments, monitoring and support.

4. Keeping in view the current gestation of pregnancy, termination carries more than the usual risks for the patient.

5. At this gestational age and condition of fetus, it is likely to be born alive. There is a likely neonatal survival of around 60-65%. The newborn will be very preterm and likely to have several complications related to prematurity and will require NICU admission and ventilation for prolonged period. All these will lead to significant morbidity including neurodevelopmental handicap in the long run.

6. Hence, in view of the above, the Permanent Medical Board suggests that the pregnancy may be continued as per the natural course. The Board also recommends hospital admission of the patient for further psychiatric evaluation, psychological support and treatment. In the event of continuation of her pregnancy, she may be advised regular obstetric check-ups and institutional delivery.

Prof. Y.S. Bansal (Member)

Dr Shalim Naik (Member)

Prof Rashy Bagga (Chairperson)

Prof. KanyaMukhopadhyay (Member)
Prof Shefali Sharma (Member)
Nidhikabhoker br Or Nidhi Prabhakar (Member)
Dr Navin Pandey (Convener)”

9 The above said report was shown to the counsel representing the respective parties as well as the learned *Amicus* along with suggestions/recommendations of the Permanent Medical Board of the PGIMER, who opined that pregnancy be continued as per natural course.

10 Learned Senior counsel appearing on behalf of the petitioner has placed reliance on the judgment of the Hon’ble Supreme Court in the matter of *X Vs. Principal Secretary Health and Family Welfare Department and another’ reported as (2023) 9 SCC 433*, where termination of pregnancy beyond a period of 24 weeks was allowed by the Hon’ble Supreme Court. It was held that a woman’s right to reproductive choice is an inseparable part of her personal liberty under Article 21 of the Constitution of India. She has a sacrosanct right to bodily integrity and a woman’s right to reproductive autonomy is a dimension of Article 21 of the Constitution of India, which such right already stands recognized in the case of *Suchitra Srivastava Vs. Chandigarh Administration (supra)* and reiterated in the matter of *Justice K.C. Puttaswamy (Retd.) and another Vs. Union of India and others, reported as (2017) 10 SCC 1*. It was held in the judgment of *Justice K.C. Puttaswamy (Retd.)* that privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The

intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. It was noticed that the petitioner had moved the High Court before she had completed 24 weeks of pregnancy and that delay in judicial process cannot work to her prejudice. An interim order was accordingly passed for carrying out abortion of the foetus without danger to the life of the petitioner.

11 Reliance is also placed on the judgment of Bombay High Court in **ABC Vs. State of Maharashtra, Writ Petition (ST) No.1357 of 2023 decided on 20.01.2023** wherein it was held that the decision to continue with the termination or not has to be that of the petitioner and the same is not to be substituted by an opinion of the Medical Board.

12 Further, reliance was also placed on the judgment of the Hon'ble Supreme Court in the matter of **Sarmishtha Chakraborty and another Vs. Union of India Secretary and others, reported as 2018 (13) SCC 339**, wherein a 26 week pregnancy was allowed to be terminated by recognizing the right of a woman to have reproductive choice as an insegregable part of personal liberty.

13 Reliance was also made on certain other single bench and Division Bench Judgments of the High Court of Punjab and Haryana, Rajasthan as well as Madhya Pradesh High Court which reiterated the said principles, however, the same are not being extracted since they are not applicable to the facts of the present case and even otherwise, the right of a woman to make reproductive choices is not even disputed.

14 Emphatic reliance was placed on the judgment in the matter of ***Shaikh Ayesha Khatoon Vs. Union of India, reported as 2018 SCC Online Bom. 3034***, wherein a 27 week pregnancy was permitted to be terminated considering freedom of a pregnant woman of making choice of reproduction is an integral part of personal liberty.

15 Relying on the aforesaid judgments and the position in law espoused through the same, learned Senior counsel appearing for the petitioner emphatically argues that the law and the Courts have recognized the right of a woman to make a reproductive choice and to determine whether she would want to give birth to a child or not and that the said decision of the woman cannot be overruled by an opinion of a Medical Board. He further submits that the report of the Medical Board of PGIMER, Chandigarh suggests that the petitioner has expressed suicidal ideation in case of continuation of pregnancy and as such, denial of permission of medical termination of pregnancy to the petitioner would set in motion a severe psychological impact on the petitioner. He further contends that the petitioner herself being of tender age at 18 years is not in a position to bring up a child on her own. Besides this, she is yet to appear in her 10+2 Board Examination and that her entire

future, career and matrimonial prospects shall be gravely hampered if termination of pregnancy is denied. He laid emphasis that the permission for medical termination should not be denied solely because the petitioner was in a consensual relationship and has become pregnant due to un-protected sex. A woman cannot be discriminated with respect to her reproductive choices and determination which are integral and insegregable part of Article 21 of the Constitution of India under the Medical Termination of Pregnancy Act and the rules framed thereunder. Giving birth to an unwanted child would not only be harmful for physical and psychological well-being of the mother but is also not in the well-being of an unwanted child who is likely to suffer social stigma, desertion and unacceptability. The feeling of a void of such a child cannot be filled up. Thus, it would be in the larger welfare of the mother as well as the unborn child that permission for medical termination be granted.

16 A specific query was also put to the learned Senior counsel representing the petitioner as to whether in an eventuality where the Court may not agree to the grant of permission for medical termination of pregnancy, the petitioner would be willing to bring up the child or she would like to surrender the child to the State with no objection to the child being given in adoption. Counsel for the petitioner, on instructions, submits that the petitioner does not intend to and is not willing to keep the child and in such an eventuality, would rather surrender the child to the Care and protection of the State and would have no objection for the said child being given in adoption.

17 Learned counsel for the respondent-State of Punjab has, on the other hand, contended that the provisions of the Medical Termination of Pregnancy Act and the rules framed thereunder stipulate termination of pregnancy for a period upto 24 weeks and that such right has been made available to the women who are survivors of sexual assault or rape or incest; minors; change of marital status during pregnancy; women with physical disability; or women suffering from mental challenges; or on account of fetal malformation which has substantial risk of being incompatible with life or due to severe physical or mental abnormalities/handicap or in situations where due to disaster, emergency or humanitarian setting, the Government may so declare. The case of the petitioner does not fall under any of the said categories.

18 He relies upon the report submitted by the Medical Board of the PGIMER as per which the foetus is of 26 weeks and there is no congenital malformation and that the patient as well as the child were both healthy. It was also contended by the Medical Board that chances of neo-natal survival are around 60 to 65 % and that the foetus is likely to be born alive and a pre-mature forced delivery is likely to cause severe neuro-development handicap in the long run rendering the child dependent for the rest of his life. He further submits that such a forced medical termination of the pregnancy at such advance stage would thus disregard the well-being of the child who is likely to be delivered, pursuant to an order passed by this Court. He further contends that the petitioner did not approach the Court for seeking termination of the pregnancy at any time prior to 24 weeks and that she has in fact

approached this Court on 29.02.2024 when she was already pregnant for 26 weeks. He submits that the benefit of the time lapse during the process of Court could be extended only when a patient has approached the Court prior to 24 weeks of pregnancy but where the statutorily prescribed period for termination of pregnancy had already expired, such benefit cannot be extended. Adverting to the judgments relied upon by the learned Senior counsel appearing for the petitioner, he submits that after the judgment in the matter of *X Vs. Principal Secretary, Health and Family Welfare Department, reported as (2023) 9 SCC 433*, a similar issue came up before the Hon'ble Supreme Court in the matter of *X Vs. Union of India, reported as 2023 INSC 919*, where a married woman had approached the Court for seeking the termination of pregnancy after 24 weeks and that when the matter came up for hearing before the Hon'ble Supreme Court, she had been pregnant for 26 weeks, it was recommended by the Medical Board that considering the duration of the pregnancy, it will not be a case of medical termination of pregnancy and would rather be a pre-term delivery and that a directive would rather be required for carrying out a feticide (stopping the fetal heart) before the termination. Such feticide is although recognized, where a foetus has abnormal development, but the same is usually not resorted to for a normal foetus. The said matter was put up before a medical board of 09 doctors of AIIMS and its report was received, which reported that there was no abnormality in the foetus and that the medical complications faced by the mother could be tackled and taken care of by proper medication. After consideration of the scenario and also the judgments relied upon by the petitioner as extracted above, the Hon'ble

Supreme Court denied the medical termination of the pregnancy. The operative part of the said judgment reads thus:-

“24. As noticed above, the length of the pregnancy has crossed twenty-four weeks. It is now approximately twenty-six weeks and five days. A medical termination of the pregnancy cannot be permitted for the following reasons:

a. Having crossed the statutory limit of twenty-four weeks, the requirements in either of Section 3(2B) or Section 5 must be met;

b. There are no "substantial foetal abnormalities" diagnosed by a Medical Board in this case. in terms of Section 3(2B). This Court called for a second medical report from AllMS to ensure that the facts of the case were accurately placed before it and no foetal abnormality was detected; and

c. Neither of the two reports submitted by the Medical Boards indicates that a termination is immediately necessary to save the life of the petitioner, in terms of Section 5.

25. Under Article 142 of the Constitution, this Court has the power to do complete justice. However, this power may not be attracted in every case. If a medical termination were to be conducted at this stage, the doctors would be faced with a viable foetus. One of the options before this Court, which the email from AIIMS has flagged, is for it to direct the doctors to stop the heartbeat. This Court is averse to issuing a direction of this nature for the reasons recorded in the preceding paragraph. The petitioner, too, did not wish for this Court to issue such a direction. This was communicated by her to the court during the course of the hearing. In the absence of a direction to stop the heartbeat, the viable

foetus would be faced with a significant risk of lifelong physical and mental disabilities. The reports submitted by the Medical Board speak for themselves.

26. For these reasons, we do not accede to the prayer for the medical termination of the pregnancy.

27. The delivery will be conducted by AIIMS at the appropriate time. The Union Government has undertaken to pay all the medical costs for the delivery and incidental to it.

28. Should the petitioner be inclined to give the child up for adoption, the Union Government has stated through the submission of the ASG that they shall ensure that this process takes place at the earliest, and in a smooth fashion. Needless to say, the decision of whether to give the child up for adoption is entirely that of the parents.”

19 He further submits that in so far as the reliance by the learned Senior counsel for the petitioner on the Division Bench judgment of the Bombay High Court in the matter of **Shaikh Ayesha Khatoon Vs. Union of India, reported as 2018 SCC Online Bom. 3034**, is concerned, the said judgment is not applicable to the facts of the present case since the petitioner therein established by making a reference to the sonology examination that the foetus suffered from several fetal anomalies including a congenital malformation. As many as 07 different anomalies were reported by the Sonologist, on examination, and the chances of the independent intact neo-natal survival appeared to be less. It was under the said circumstances that the Division Bench of

the Bombay High Court gave precedence to the preference of the mother vis-à-vis medical report since the child was to suffer serious physical and mental abnormalities and had to be brought up as a dependent for the rest of his life. The said circumstances do not exist in the case in hand.

20 While referring to the judgment in the matter of **ABC Vs. State of Maharashtra, Writ Petition (ST) No.1357 (supra)**, it is again reiterated that there were serious substantial fetal abnormalities noticed in the said case as well. Even though the pregnancy was of 32 weeks and foetal condition was assessed among the anomalies in relation to their microcephaly and lissencephaly along with mild uteroplacental which added the possibility of intellectual disability though not life threatening. It was also noticed that the petitioner therein belonged to a humble background with severe financial constraints and that the additional financial resources required to meet the expenses of an infant born with such conditions were not available with them. Hence, medical termination of pregnancy was allowed in peculiar facts of the said case. Further, while responding to the judgment of the Hon'ble Supreme Court in the matter of **Sarmishtha Chakraborty and another (supra)**, 36 weeks pregnancy was permitted to be terminated again on the basis of the medical report, which revealed that there was danger to life of both the woman and the baby to be born, if the pregnancy was not terminated. He thus contends that reliance on the said judgment is misconceived as the judgments have to be seen on the basis of the facts brought before the Court and the said facts are not applicable or attracted in the present case. Termination of pregnancy beyond 24 weeks in all these cases has

been allowed only in such exceptional circumstances where the child was suffering from severe mental and physical abnormalities or where giving birth to the child was dangerous to the life of both the mother and the child. None of the said circumstances exist in the current circumstances. Hence, there is no justification for allowing termination of the pregnancy.

21 Learned *Amicus* has also taken this Court through the judgments of the this Court in **R Vs. State of Haryana and others, CWP No.13256-2023 decided on 19.7.2023** wherein when the Medical Board of the PGIMER did not recommend termination of pregnancy, but certain directions were issued by this Court which are extracted as under:-

“8. Accordingly, the prayer of the petitioner for termination of pregnancy is thus dismissed as not pressed at this stage However, in the larger interest of the petitioner as well as the minor unborn child, it is directed as are under:-

i) The Civil Surgeon/Chief Medical Officer, Rewari is directed to ensure that all necessary medical facilities are made available to the petitioner, without the payment of fee, charges or expenses of any nature and to ensure that the delivery takes place in a safe environment.

ii) The privacy of the petitioner shall be maintained at all stages and identity of the petitioner be not divulged in the course of hospitalization and treatment.

iii) The child, on birth, may be handed over to the Child Welfare Committee of District Rewari and the petitioner shall fulfill all such necessary documentation and

formalities as may be so required in law for handing over custody of the said child to the Child Welfare Committee.

iv) The said Child Welfare Committee, Rewari shall take care of all needs and facilities of the child.

v) The petitioner has no objection to the said child to be given in adoption by the State agency to the willing parents in accordance with law. Permission is thus granted for giving the child in adoption to the willing prospective parents, in accordance with law.

vi) The above said directions are without prejudice to any other rights and entitlement of the petitioner under applicable policies/guidelines for financial assistance/rehabilitation.

The petition is accordingly disposed of.”

22 No other argument has been raised.

23 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

24 The twin issues which arise for consideration are firstly, as to whether an unmarried girl/woman or a single mother is entitled to seek termination of pregnancy when such pregnancy is a result of consensual sexual relationship and the child does not suffer from any physical, mental or psychological deformity and poses no danger to the mother as well. The second aspect is whether the petitioner should be granted permission for seeking termination of medical pregnancy under the current peculiar circumstances noticed above. For the purposes of

consideration of the said aspect, it is necessary to extract the relevant statutory provisions of the Medical Termination of Pregnancy Act, 1971 and the MTP Rules of 2003 (hereinafter referred to as the Act of 1971 and the Rules of 2003 (as amended on 12.10.2021). The same are extracted as under:-

Section 3 of the Medical Termination of Pregnancy Act, 1971

“3. When pregnancies may be terminated by registered medical practitioners.

(1)Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,--

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the opinion, formed in good faith, that--

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1.--For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.--For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.]

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is a ²[mentally ill person], shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

xxx xxx xxx

MTP Rules of 2003.

“3. Composition and tenure of district level Committee.-

(1) One member of the district level Committee shall be the Gynaecologist/Surgeon/Anaesthetist and other members from the local medical profession, non-governmental organisations, and Panchayati Raj Institution of the district Provided that one of the members of the Committee shall be a woman.

(2) Tenure of the Committee shall be for two calendar years and the tenure of the non-government members shall not be more than two terms.

3-A. Powers and functions of Medical Board.-For the purposes of Section 3,-

(a) the powers of the Medical Board shall be the following, namely-

(i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2-B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;

(ii) co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on the termination of pregnancy;

(b) the functions of the Medical Board shall be the following, namely –

(i) to examine the woman and her reports, who may approach for medical termination of pregnancy under sub-section (2-B) of Section 3;

(ii) provide the opinion of Medical Board in Form D with regard to the termination of pregnancy or rejection of request for termination within three days of receiving the request for medical termination of pregnancy under sub-section (2-B) of Section 3;

(iii) to ensure that the termination procedure, when advised by the Medical Board, is carried out with all safety

precautions along with appropriate counselling within five days of the receipt of the request for medical termination of pregnancy under sub-section (2-B) of Section 3.

3-B. Women eligible for termination of pregnancy up to twenty-four weeks. *The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely-*

- (a) survivors of sexual assault or rape or incest;*
- (b) minors;*
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);*
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];*
- (e) mentally ill women including mental retardation;*
- (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and*
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”*

25 A perusal of the same shows that the pregnancy may be terminated by a registered medical practitioner subject to the provisions contained under the Act and the rules framed thereunder after obtaining opinion from the medical practitioners/medical board. Section 3 (2) entitles termination of the pregnancy where continuance thereof involves

risk to the life of the pregnant woman or grave injury to her physical or mental health or that the child suffers from substantial risk of physical or mental abnormality. It further recognizes right of a woman to exercise a discretion where the pregnancy is an outcome of failure of contraceptive devices adopted or where such pregnancy is an outcome of rape or physical assault or under circumstances as elaborated in Rule 3 B of the Rules of 2003 as amended.

26 The Medical Termination of Pregnancy Act, 1971, was enacted to expand access of safe and legal abortion services to all women. It was perceived as an important step towards safety and well being of women. Prior to enunciation of the above said Act, there were numerous hurdles that stood in the way of women securing full access to safe and legal abortions thereby pushing women to avail discreet and unsafe abortions under deficient infrastructure facilities propelled by fear of social stigma. The problems compounded for pregnancies contracted on account of exercise of sexual autonomy outside or without marriage. The fear of social reprimand and harassment compelled the women to make choices which were violative of their right to reproductive autonomy. The law recognizes the exercise of sexual autonomy by an individual as an integral part of an inviolate right conferred under Article 21 of the Constitution of India and is embodied in her right to life and for protection of her bodily integrity. Women who engage in pre-marital sexual relations were forced to suffer social stigma, even though pregnancy may have had occasioned on account of insufficient or inadequate knowledge about their own bodies escalated by lack of

proper sexual health education, safe sex education, lack of easy access to contraceptives or lack of proper advise and consultation. The lack of family and parental support further aggravated the agony and subjected the woman to seek discreet and unsafe abortions from unqualified persons and expose themselves to greater harm thereby and/or may also compel the woman to resort to seek registration of cases under sexual offences so as to claim benefit of seeking medical termination of pregnancies under the applicable statutory provisions. The Act of 1971, takes into consideration the pregnancies which are either a result of sexual assault/incest or on the basis of sexual activity between married adults. The same is silent with respect to the pregnancies as a result of consensual sexual relationship between consenting adults, who may not intend to get married and/or enter into a long lasting relationship but are in the process of exploring and exercising their sexual autonomy. A Court of law is required to fill the gap by judicial intervention and interpretation, without legislating, till such time that the legislation makes an appropriate arrangement or takes a conscious decision for such a situation.

27 The Hon'ble Supreme Court interpreted the provisions of the Act of 1971 and the Rules framed thereunder i.e. the Rules of 2003 in **Civil Appeal No.5802 of 2022 decided on 29.9.2022 in the matter of X Vs Principal Secretary (supra)** and also noticed that marriage as a pre-condition to the rights of an individual vis-a-vis, the objects and purposes of the Act needs to be interpreted taking into consideration the social and societal demands. Turning a blind eye to a social reality only

acts as a bedrock for the illegality and subjects individuals to hardships neither contemplated nor desired by the Statute. The perception of an age old society has to evolve with the changed social context mandating readjustment of the laws. Law cannot live in the past and remain static or act as an impediment which blocks the changing social requirements and fails to advance the cause of social justice. An unmarried girl or a woman, who exercises her right to sexual autonomy, cannot be put to prejudice and be denied her consideration for seeking medical termination of pregnancy which such right is recognized for a married woman. The Court cannot be indifferent to the plight of single woman/mother's exercising a right recognized in law and to force them to live with the consequences of exercises of such right with no respite. The statutory provisions are thus required to come to the aid of such women without doing violence to the statute as well as the statutory objectives. It could not have been the intent of law that a woman should be compelled to foist or to register a criminal case under Section 376 of the Indian Penal Code or any other sexual offences which she would not resort to if the law recognises her entitlement to seek termination of pregnancy. An interpretation that would compel the people to resort to an illegality for avoiding a relief would even otherwise be not desirable either by the Statute or by a Court of law.

28 The right of a woman and the constitutional values emanating from the interpretation of the Act of 1971 and the Rules of 2003 were extensively gone through by the Hon'ble Supreme Court in the matter of **Civil Appeal No.5802 of 2022 decided on 29.09.2022 in**

the matter of X Vs. Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi and another. Some of the significant excerpts thereof are reproduced hereinafter below.

“33. In Principles of Statutory Interpretation by Justice G.P. Singh, it is stated that a statute must be read in its context when attempting to interpret its purpose. [37] Context includes reading the statute as a whole, referring to the previous state of law, the general scope of the statute, surrounding circumstances and the mischief that it was intended to remedy. [38] The treatise explains that:

37 JUSTICE G.P SINGH, G.P. SINGH: PRINCIPLES OF STATUTORY INTERPRETATION, (LexisNexis, 2016), at page 35

[38 Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193. Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd, (1987) 1 SCC 424]

"For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of 'intention'. Without intending to lay down a precise and exhaustive list of external aids, Lord Somervell has stated: "The mischief against which the statute is directed and, perhaps though to an undefined extent the surrounding circumstances can be considered. Other statutes in pari materia and the state of the law at the time are admissible." These external aids are also brought in by widening the concept of "context" "as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the

mischief which the statute was intended to remedy." In the words of Chinappa Reddy, J.: "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted."

34. The rule of purposive interpretation was first articulated in Heydon's case (1584) 3 Co Rep 7a in the following terms:

"for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth.

And,

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico"

35. In Bengal Immunity Co. v. State of Bihar, (1955) 2 SCR 603 the Constitution Bench applied the mischief rule in Heydon's case in the construction of Article 286 of the

Constitution. In Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609 a three-judge Bench of this Court held:

"231. During the last several years, the "golden rule" has been given a go-by. We now look for the "intention" of the legislature or the "purpose" of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one- to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

233. For this purpose, we call in external and internal aids:

"External aids are: the Statement of Objects and Reasons when the Bill was presented to Parliament, the reports of the Committee, if any, preceding the Bill, legislative history, other statutes in pari materia and legislation in other States which pertain to the same subject matter, persons, things or relations.

Internal aids are: Preamble, scheme, enacting parts of the statutes, rules of languages and other provisions in the statutes."

Xxx xxx xxx

ii. Transcending the institution of marriage as a source of rights

38. While much of law's benefits were (and indeed are) rooted in the institution of marriage, the law in modern times is shedding the notion that marriage is a precondition to the rights of individuals (alone or in relation to one another). Changing social mores must be borne in mind when interpreting the provisions of an enactment to further its object and purpose. Statutes are considered to be "always speaking." [48"]

148 Dharni Sugars and Chemicals Ltd v. Union of India, (2019) 5 SCC 480

39. In Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 *this Court reaffirmed that the law should be interpreted in terms of the changing needs of the times and circumstances. AK Sikri, J. speaking for a two-judge Bench of this Court, observed that it is the duty of courts to bridge the gap between law and society by advancing a purposive interpretation of statutes:*

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is

even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

(Emphasis supplied)

40. In Navtej Singh Johar (supra), this Court emphasized the transformative nature of our Constitution. Transformative constitutionalism promotes and engenders societal change by ensuring that every individual is capable of enjoying the life and liberties guaranteed under the Constitution. This Court observed that transformative constitutionalism places a duty on the judiciary to "ensure and uphold the supremacy of the Constitution, while at the same time ensuring that a sense of transformation is ushered constantly and endlessly in the society by interpreting and enforcing the Constitution as well as other provisions of law in consonance with the avowed object. [50]"

[50 Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, at paragraph 1221]

a. Modern or atypical forms of familial relationships

41. The law must remain cognizant of the fact that changes in society have ushered in significant changes in family structures. In S. Khusboo v. Kanniammal, (2010) 5 SCC 600 a three-judge Bench of this Court acknowledged that live-in

relationships and pre-marital sex should not be associated with the lens of criminality. The Court observed:

"46. [...] While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive."

42. In Deepika Singh v. Central Administrative Tribunal, 2022 SCC OnLine SC 1088 a two- Judge Bench of this Court (of which one of us, Dr. DY Chandrachud, J. was a part) recognized that family units may manifest in atypical ways:

"26. The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children. This assumption ignores both, the many circumstances which may lead to a change in one's familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or

divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the "mother" and the "father") of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination."

43. Societal reality, as observed by this Court in Deepika Singh (supra), indicates the need to legally recognize non-traditional manifestations of familial relationships. Such legal recognition is necessary to enable individuals in non-traditional family structures to avail of the benefits under beneficial legislation, including the MTP Act.

b. The equal status of married and unmarried or single women

44. Over the years, the Parliament has enacted legislation bringing about a congruence between the rights of married and unmarried women. The Maternity Benefit Act 1961 was enacted to provide maternity benefits to women employed in any establishment. In terms of section 5 of the Maternity Benefit Act 1961, the payment of maternity benefits is extended to all women (including unmarried women) by the use of the phrase "every woman."

Xxx xxx xxx

48. In the evolution of the law towards a gender equal society, the interpretation of the MTP Act and MTP Rules must consider the social realities of today and not be restricted by societal norms of an age which has passed into the archives of history. As society changes and evolves, so must our mores and conventions. A changed social context demands a readjustment of our laws. Law must not remain static and its interpretation should keep in mind the changing social context and advance the cause of social justice.

iii. The object and purpose of the MTP Act

49. The purpose or object of an enactment is the mischief at which the enactment is directed and the remedy which the lawmakers have devised to address the mischief. A number of decisions, such as Chiranjit Lal Chowdhury v. Union of India 1950 SCR 869, A. Thangal Kunju Musaliar v. M. Venkatachalam Potti (1955) 2 SCR 1196, State of Himachal Pradesh v. Kailash Chand Mahajan, 1992 Supp (2) SCC 351 and National Insurance Co. Ltd. v. Swaran Singh (2004) 3 SCC 297 lay down that it is desirable to look into the legislative history and the Statement of Objects and Reasons of an enactment to appreciate the background and state of affairs leading up to the legislation and the circumstances which were prevalent at the time the statute was enacted

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52. The MTP Amendment Act 2021 intended to extend the benefits of the statute to all women, including single and unmarried women. The MTP Amendment Act 2021, which

came into force from 24 September 2021, introduced a major change in Section 3 of the MTP Act by extending the upper limit for permissible termination of pregnancy from twenty weeks to twenty-four weeks. In terms of the unamended MTP Act, a pregnancy could only be terminated under Section 3(2) if it did not exceed twenty weeks. The MTP Amendment Act 2021 extended the upper limit and allowed termination of pregnancy up to twenty-four weeks for specific categories of women based on the opinion of two RMPS.

53. The MTP Amendment Act 2021 also extended the benefit of the legal presumption of a grave injury to the mental health of a woman on account of the failure of contraception, to all women and not just married women. In the unamended MTP Act, Explanation II provided that the anguish caused by a pregnancy resulting from a failure of any device or method used by any "married woman or her husband" for the purpose of limiting the number of children may be presumed to constitute a grave injury to the mental health of the woman. After the MTP Amendment Act 2021, Explanation I provides that the anguish caused by a pregnancy (up to twenty weeks) arising from a failure of a contraceptive device used by "any woman or her partner" either for limiting the number of children or for preventing pregnancy can be presumed to constitute a grave injury to a woman's mental health. By eliminating the word "married woman or her husband" from the scheme of the MTP Act, the legislature intended to clarify the scope of Section 3 and bring pregnancies which occur outside the institution of marriage within the protective umbrella of the law.

54. The Statement of Objects and Reasons of the Amendment Act locates the purpose within the framework of reproductive rights:

"With the passage of time and advancement of medical technology for safe abortion, there is a scope for increasing upper gestational limit for terminating pregnancies especially for vulnerable women and for pregnancies with substantial foetal anomalies detected late in pregnancy. Further, there is also a need for increasing access of women to legal and safe abortion service in order to reduce maternal mortality and morbidity caused by unsafe abortion and its complications. Considering the need and demand for increased gestational limit under certain specified conditions and to ensure safety and well-being of women, it is proposed to amend the said Act. The proposed Bill is a step towards safety and well-being of women and will enlarge the ambit and access of women to safe and legal abortion without compromising on safety and quality of care. The proposal will also ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy."

(emphasis supplied)

55. The Statement of Objects and Reasons indicates that the MTP Amendment Act 2021 is primarily concerned with increasing access to safe and legal abortions to reduce maternal mortality and morbidity. The increase in the upper gestational limit for terminating pregnancies under "certain specified conditions" was considered necessary to fulfil the goal of ensuring "dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy."

56. *The unamended MTP Act of 1971 was largely concerned with "married women", as evident from paragraph 1 of its Statement of Objects and Reasons, which stated that most of the women seeking abortions were married, and thus "under no particular necessity to conceal their pregnancy." Significantly, the 2021 Statement of Objects and Reasons does not make a distinction between married and unmarried women. Rather, all women are entitled to the benefit of safe and legal abortions.*

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***iv. The MTP Act as an aid of interpretation:
Understanding "injury to mental health"***

60. *When interpreting a sub-clause or part of a statutory provision, the entire section should be read together with different sub-clauses being a part of an integral whole. [69] In terms of Section 3(2)(b) of the MTP Act, not less than two RMPs must, in good faith, be of the opinion that the continuation of the pregnancy of any woman who falls within the ambit of Rule 3B would involve (i) a risk to her life; (ii) grave injury to her physical health; or (iii) grave injury to her mental health. Alternatively, not less than two RMPs must, in good faith, be of the opinion that there is a substantial risk of the child suffering from a serious physical or mental abnormality, if born. Women who seek to avail of the benefit under Rule 3B of the MTP Rules continue to be subject to the requirements of Section 3(2) of the MTP Act.*

[69 Balasinor Nagrik Co-operative Bank Ltd. v. Bababhai Shankerlal Pandya, (1987) 1 SCC 606, Madanlal Fakirchand v Shree Changdeo Sugar Mills Ltd, 1962 Supp (3) SCR 973]

61. *One of the grounds on the basis of which termination of pregnancy may be carried out is when the continuance of a pregnancy would involve risk of injury to the mental health of the woman. The expression "grave injury to her physical or mental health" used in Section 3(2) is used in an overarching and all-encompassing sense. The two explanations appended to Section 3(2) provide the circumstances under which the anguish caused by a pregnancy may be presumed to constitute a grave injury to the mental health of a woman.*

62. *Courts in the country have permitted women to terminate their pregnancies where the length of the pregnancy exceeded twenty weeks (the outer limit for the termination of the pregnancy in the unamended MTP Act) by expansively interpreting Section 5, which permitted RMPs to terminate pregnancies beyond the twenty week limit when it was necessary to save the life of the woman. In X v. Union of India (2017) 3 SCC 458, Mamta Verma v. Union of India (2018) 14 SCC 289, Meera Santosh Pal v. Union of India (2017) 3 SCC 462, Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339 this Court permitted the termination of post twenty week pregnancies after taking into account the risk of grave injury to the mental health of a pregnant woman by carrying the pregnancy to term.*

63. *The grounds for approaching courts differ and include various reasons such as a change in the circumstances of a woman's environment during an ongoing pregnancy, including risk to life, [74] risk to mental health, [75] discovery of foetal anomalies, [76] late discovery of pregnancy in case of minors and women with disabilities, [77] and pregnancies resulting from sexual assault or*

rape.[78] These are illustrative situations thrown up by cases which travel to the court. Although the rulings in these cases recognized grave physical and mental health harms and the violation of the rights of women caused by the denial of the option to terminate unwanted pregnancies, the relief provided to the individual petitioner significantly varied.

[74 A v. Union of India, (2018) 14 SCC 75, X v. Union of India, (2017) 3 SCC 458. Meera Santosh Pal v. Union of India, (2017) 3 SCC 462. Tapasya Umesh Pisal v. Union of India, (2018) 12 SCC 57, Mamta Verma v Union of India, (2018) 14 SCC 289]

[75* X v. Union of India, (2017) 3 SCC 458, Meera Santosh Pal v. Union of India, (2017) 3 SCC 462, Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339, Mamta Verma v. Union of India, (2018) 14 SCC 289, Z v. State of Bihar, (2018) 11 SCC 572]

[76" A v. Union of India, (2018) 14 SCC 75. Sarmishtha Chakraborty v. Union of India, (2018) 13 SCC 339. Tapasya Umesh Pisal v Union of India, (2018) 12 SCC 57, Mamta Verma v. Union of India, (2018) 14 SCC 289]

[77" X v. Union of India, (2020) 19 SCC 806]

[78 Z v. State of Bihar, (2018) 11 SCC 572, X v. Union of India, (2020) 19 SCC 806]

64. The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The World Health Organization defines mental health as a state of "mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community." [79] The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context.

Our understanding of the term mental health cannot be confined to medical terms or medical language, but should be understood in common parlance. The MTP Act itself recognizes the need to look at the surrounding environment of the woman when interpreting injury to her health. Section 3(3) states that while interpreting "grave injury to her physical or mental health", account may be taken of the pregnant woman's actual or reasonably foreseeable environment. The consideration of a woman's "actual or reasonably foreseeable environment" becomes pertinent, especially when determining the risk of injury to the mental health of a woman.

(70* World Health Organization, "Promoting mental health: concepts, emerging evidence, practice (Summary Report)" (2004))

*65. There have been numerous decisions of the High Courts where a purposive interpretation is given to the phrase mental health as used in the MTP Act. In **High Court on its Own Motion v. State of Maharashtra, 2016 SCC OnLine Bom 8426** the High Court of Bombay correctly held that compelling a woman to continue any unwanted pregnancy violates a woman's bodily integrity, aggravates her mental trauma and has a deleterious effect on the mental health of the woman because of the immediate social, financial and other consequences flowing from the pregnancy.*

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v. Construing Rule 3B

68. By framing Rule 3B, the legislature intended to solve the mischief, so to speak, of women being unable to access abortions when their lives underwent significant changes impacting their physical and mental health, and their

decision to have a child was impacted after the length of the pregnancy exceeded twenty weeks. The Minutes of the Meeting of the Expert Committee held on 22 June 2021 for deliberating upon and drafting the MTP Rules dealt with, inter alia, category of women under Rule 3B. The members of the Expert Committee suggested different categories of women such as "survivors of sexual violence/ rape; mentally challenged women, minors, women with disabilities; foetal anomalies; conception in lactational amenorrhea period; single women (such as unwed women (major), divorced and widowed, separated women); women who are facing difficulties in contexts of humanitarian setting/ emergencies and/or natural disasters; women victims of domestic violence/gender-based violence etc." The members of the Expert Committee urged the inclusion of women in Rule 3B, who often delay revealing the pregnancy or making decisions as to its continuance, for various reasons.

69. The common thread running through each category of women mentioned in Rule 3B is that the woman is in a unique and often difficult circumstance, with respect to her physical, mental, social, or financial state. All the different categories in Rule 3B represent women who seek an abortion after twenty weeks either due to a delay in recognizing pregnancy, or some other change in their environment impacting their decision on whether the pregnancy is wanted or unwanted. The law recognizes the myriad ways in which a pregnancy may cause distress in such situations and cause grave injury to her physical and mental health. It gives such women latitude in seeking out the termination of an unwelcome pregnancy by extending the gestational period up to which the termination is legally permissible.

70. Rule 3B(a) is based on an acknowledgement of the reality that survivors of sexual assault, rape, or incest may face immense stigma if and when they share the fact of their assault with others, including family members. It is no secret that a culture of shame surrounds sexual violence in India. Survivors are often hesitant to speak about the violence inflicted upon them. This is doubly the case with victims of incestuous sexual assault or rape, whose close relatives abuse their power and authority over the woman and other family members oftentimes being unwilling to believe that the perpetrator (that is to say, their relative) is guilty of sexual violence. Many survivors, including minors, may not even be aware that pregnancy is a possible consequence of rape. Hence, the delay in revealing the fact that a man has raped them may lead to a delay in discovering the pregnancy. Alternatively, the woman in question may be unable to access medical facilities in a timely fashion and may therefore find herself unable to terminate the pregnancy before the completion of twenty weeks.

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81. To ensure that the benefit of Rule 3B(b) is extended to all women under 18 years of age who engage in consensual sexual activity, it is necessary to harmoniously read both the POCSO Act and the MTP Act. For the limited purposes of providing medical termination of pregnancy in terms of the MTP Act, we clarify that the RMP, only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. The RMP who has provided information under Section 19(1) of the POCSO Act (in reference to a minor seeking medical termination of a pregnancy under the MTP Act) is

also exempt from disclosing the minor's identity in any criminal proceedings which may follow from the RMP's report under Section 19(1) of the POCSO Act. Such an interpretation would prevent any conflict between the statutory obligation of the RMP to mandatorily report the offence under the POCSO Act and the rights of privacy and reproductive autonomy of the minor under Article 21 of the Constitution. It could not possibly be the legislature's intent to deprive minors of safe abortions.

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90. Rule 3B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances. A change in material circumstance during the ongoing pregnancy may arise when a married woman divorces her husband or when he dies, as recognized by the examples provided in parenthesis in Rule 3B(c). The fact that widowhood and divorce are mentioned in brackets at the tail end of Rule 3B(c) does not hinder our interpretation of the rule because they are illustrative.

91. A change in material circumstance may also result when a woman is abandoned by her family or her partner. When a woman separates from or divorces her partner, it may be that she is in a different (and possibly less advantageous) position financially. She may no longer have the financial resources to raise a child. This is of special concern to women who have opted to be a homemaker thereby forgoing an income of their own. Moreover, a woman in this situation may not be prepared to raise a child as a single parent or by coparenting with her former partner. Similar consequences may follow when a woman's partner dies.

92. Women may undergo a sea change in their lives for reasons other than a separation with their partner (Rule 3B(c)), detection of foetal "abnormalities" (Rule 3B(f)), or a disaster or emergency (Rule 3B(g)). They may find themselves in the same position (socially, mentally, financially, or even physically) as the other categories of women enumerated in Rule 3B but for other reasons. For instance, it is not unheard of for a woman to realise that she is pregnant only after the passage of twenty weeks, [88] Other examples are if a woman loses her job and is no longer financially secure, or if domestic violence is perpetrated against her, [89] or if she suddenly has dependents to support. Moreover, a woman may suddenly be diagnosed with an acute or chronic or life- threatening disease, which impacts her decision on whether to carry the pregnancy to term. If Rule 3B(c) was to be interpreted such that its benefits extended only to married women, it would perpetuate the stereotype and socially held notion that only married women indulge in sexual intercourse, and that consequently, the benefits in law ought to extend only to them. This artificial distinction between married and single women is not constitutionally sustainable. The benefits in law extend equally to both single and married women.

[88" Siddhi Vishwanath Shelar v. State of Maharashtra, 2020 SCC OnLine Bom 11672]

[89 Sidra Mehboob Shaikh v. State of Maharashtra, 2021 SCC OnLine Bom 1839]

93. A recognition of the fact that there may be a change in a woman's material circumstance animates Rule 3B(c), Rule 3B(g) and Rule 3B(f). However, Rule 3B does not enumerate all the potential changes that a woman's material circumstances may undergo. It merely specifies some of the potential changes to a woman's material

circumstances, in sub-rules (c), (f) and (g). From the object and purpose of the MTP Act, its overall scheme, and the categories of women specified in Rule 3B, it is evident that it was not the intention of the legislature to restrict the benefit of Section 3(2)(b) and Rule 3B only to women who may be confronted with a material alteration in the circumstances of their lives in the limited situations enumerated in Rule 3B. Rather, the benefit granted by Rule 3B must be understood as extending to all women who undergo a change of material circumstances.

94. It is not possible for either the legislature or the courts to list each of the potential events which would qualify as a change of material circumstances. Suffice it to say that each case must be tested against this standard with due regard to the unique facts and circumstances that a pregnant woman finds herself in.

95. Certain constitutional values, such as the right to reproductive autonomy, the right to live a dignified life, the right to equality, and the right to privacy have animated our interpretation of the MTP Act and the MTP Rules. A brief discussion of these values is undertaken below.

i. The right to reproductive autonomy

96. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose

whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.

97. Zakiya Luna has, in a 2020 publication, argued that reproduction is both biological and political. [90] According to Luna, it is biological since physical bodies reproduce, and it is political since the decision on whether to reproduce or not is not solely a private matter. This decision is intimately linked to wider political, social, and economic structures. A woman's role and status in family, and society generally, is often tied to childbearing and ensuring the continuation of successive generations.

[90 ZAKIYA LUNA, REPRODUCTIVE RIGHTS AS HUMAN RIGHTS: WOMEN OF COLOR AND FIGHT FOR REPRODUCTIVE JUSTICE (NYU Press, 2020)]

98. To this, we may add that a woman is often enmeshed in complex notions of family, community, religion, and caste. Such external societal factors affect the way a woman exercises autonomy and control over her body, particularly in matters relating to reproductive decisions. Societal factors often find reinforcement by way of legal barriers restricting a woman's right to access abortion. The decision to have or not to have an abortion is borne out of complicated life circumstances, which only the woman can choose on her own terms without external interference or influence. Reproductive autonomy requires that every pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorization from a third party.

99. *The right to reproductive autonomy is closely linked with the right to bodily autonomy. As the term itself suggests, bodily autonomy is the right to take decisions about one's body. The consequences of an unwanted pregnancy on a woman's body as well as her mind cannot be understated. The foetus relies on the pregnant woman's body for sustenance and nourishment until it is born. The biological process of pregnancy transforms the woman's body to permit this. The woman may experience swelling, body ache, contractions, morning sickness, and restricted mobility, to name a few of a host of side effects. Further, complications may arise which pose a risk to the life of the woman. A mere description of the side effects of a pregnancy cannot possibly do justice to the visceral image of forcing a woman to continue with an unwanted pregnancy. Therefore, the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman.*

100. *In K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1 a nine-judge bench of this Court recognized the right to privacy as a constitutionally protected right under Article 21 of the Constitution. In Puttaswamy (supra), this Court held that the right to privacy enables individuals to retain and exercise autonomy over the body and mind. The autonomy of the individual was defined as "the ability to make decision on vital matters of concern to life.[92] The judgement delivered on behalf of four judges described the right to privacy in the following terms:*

[92 KS Puttawamy Union of India (2017) 10 SCC 1, at paragraph 298 (Puttaswamy")]

297. Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt."

(emphasis supplied)

101. Importantly, Puttaswamy (supra) also deals with facets of reproductive autonomy. Chelameshwar, J. held that a "woman's freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy." [93] This Court recognized the right to bodily integrity as an important facet of the right to privacy. Puttaswamy (supra) considered Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1 to reiterate that the statutory right of a woman to undergo termination of pregnancy under the MTP Act is relatable to the constitutional right to make reproductive choices under Article 21 of the Constitution. [95]

[93 Puttaswamy, at paragraph 373]

[95 Puttaswamy, at paragraph 82]

102. In Suchita Srivastava (supra) this Court explicitly recognized the concept of reproductive autonomy. In this case, the victim, an orphaned woman of around 19 years, with mental retardation, became pregnant as a result of a rape that took place while she was an inmate at a government-run welfare institution. After the discovery of her pregnancy, the Chandigarh Administration approached the High Court of Punjab and Haryana seeking approval for the termination of her pregnancy. The High Court constituted an expert body to conduct an enquiry into the facts. The expert body recorded that the victim had expressed her willingness to bear the child and accordingly recommended the continuation of the pregnancy. However, the High Court directed the termination of the pregnancy on the ground that the victim was mentally incapable of making an informed decision on her own.

103. A three-judge Bench of this Court disagreed with the High Court's decision. In a judgment authored by K G Balakrishnan, C.J., this Court emphasized that the consent of the pregnant woman is an essential requirement to proceed with the termination of a pregnancy under the MTP Act. It was held that the state administration cannot claim guardianship of the woman as she was a major. It was further held that the woman only had "mild mental retardation" and was therefore competent to give her consent in terms of Section 3(4)(a) of the MTP Act. This Court concluded that the state must respect the reproductive rights of women with "mental retardation" with regard to decisions about terminating their pregnancy. In the process, this Court recognized that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution:

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices."

104. Suchita Srivastava (supra) rightly recognised that the right of women to make reproductive choices is a dimension of personal liberty under Article 21. It held that reproductive rights include a woman's entitlement to carry the pregnancy to full term, give birth, and raise children. More importantly, it also recognised that the right to reproductive choice also includes the right not to procreate.

In doing so, it situated the reproductive rights of women within the core of constitutional rights.

*105. Decisional autonomy is an integral part of the right to privacy. Decisional autonomy is the ability to make decisions in respect of intimate relations [96] In Puttaswamy (supra) this Court held that personal aspects of life such as family, marriage, procreation, and sexual orientation are all intrinsic to the dignity of the individual. 1971 The right to privacy safeguards and respects the decisional autonomy of the individual to exercise intimate personal choices and control over the vital aspects of their body and life. In **Common Cause v. Union of India, (2018) 5 SCC 1** this Court observed that right to privacy protects decisional autonomy in matters related to bodily integrity:*

[96 Puttaswamy, at paragraph 248]

[97 Puttaswamy, at paragraph 298]

"441. The right to privacy resides in the right to liberty and in the respect of autonomy. The right to privacy protects autonomy in making decisions related to the intimate domain of death as well as bodily integrity. Few moments could be of as much importance as the intimate and private decisions that we are faced regarding death. Continuing treatment against the wishes of a patient is not only a violation of the principle of informed consent, but also of bodily privacy and bodily integrity that have been recognised as a facet of privacy by this Court."

106. The right to decisional autonomy also means that women may choose the course of their lives. Besides physical consequences, unwanted pregnancies which women are forced to carry to term may have cascading

effects for the rest of her life by interrupting her education, her career, or affecting her mental well-being.

107. In High Court on its Own Motion (supra), an under-trial prisoner requisitioned for obtaining permission to terminate her 4-month pregnancy to a judge of the City Civil & Sessions Court visiting the prison. The woman stated that it would be too difficult for her to maintain another child in addition to her five-month-old child, who was suffering from various malaises such as epilepsy, hernia and other illnesses. In such circumstances, the woman stated that it was difficult for her to maintain and take care of another child. The judge forwarded a letter to the High Court of Bombay along with the woman's requisition for information and further action, which was converted into a suo moto PIL.. The High Court referred to the relevant provisions of the MTP Act to observe that mental health can deteriorate if the pregnancy is forced or unwanted:

"14. A woman's decision to terminate a pregnancy is not a frivolous one. Abortion is often the only way out of a very difficult situation for a woman. An abortion is a carefully considered decision taken by a woman who fears that the welfare of the child she already has, and of other members of the household that she is obliged to care for with limited financial and other resources, may be compromised by the birth of another child. These are decisions taken by responsible women who have few other options. They are women who would ideally have preferred to prevent an unwanted pregnancy, but were unable to do so. If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman's bodily

integrity and aggravates her mental trauma which would be deleterious to her mental health."

108. A woman can become pregnant by choice irrespective of her marital status. In case the pregnancy is wanted, it is equally shared by both the partners. However, in case of an unwanted or incidental pregnancy, the burden invariably falls on the pregnant woman affecting her mental and physical health. Article 21 of the Constitution recognizes and protects the right of a woman to undergo termination of pregnancy if her mental or physical health is at stake. Importantly, it is the woman alone who has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo an abortion.

ii. The right to dignity

109. The right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being possesses dignity merely by being a human, and can make self-defining and self-determining choices. Dignity has been recognized as a core component of the right to life and liberty under Article 21.

110. If women with unwanted pregnancies are forced to carry their pregnancies to term, the state would be stripping them of the right to determine the immediate and long-term path their lives would take. Depriving women of autonomy not only over their bodies but also over their lives would be an affront to their dignity. The right to choose for oneself- be it as significant as choosing the course of one's life or as mundane as one's day-to-day activities-forms a part of the right to dignity. It is this right which would be under attack

if women were forced to continue with unwanted pregnancies.

*111. In **Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225** it was held that dignity forms a part of the basic structure of the Constitution. Such is its fundamental value in our legal system the concept of dignity forms the very foundation to the Constitution and the rights enshrined in it. Dignity inheres in every individual and is an inalienable aspect of one's humanity.*

*112. In **Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608** a two-judge bench of this Court was dealing with the rights of detenus under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. This Court recognized that the right to dignity is an essential part of the right to life under Article 21 of the Constitution. It was observed:*

"8.... We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair

and just procedure established by law which stands the test of other fundamental rights."

113. In Puttaswamy (supra) one of us (Dr. D. Y. Chandrachud, J.) emphasized the interlinkage between privacy, dignity, and liberty as follows:

"298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right.... The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised... Dignity cannot exist without privacy. Both reside within the inalienable

values of life, liberty and freedom which the Constitution has recognised.

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121. The object of Section 3(2)(b) of the MTP Act read with Rule 3B is to provide for abortions between twenty and twenty-four weeks, rendered unwanted due to a change in the material circumstances of women. In view of the object, there is no rationale for excluding unmarried or single women (who face a change in their material circumstances) from the ambit of Rule 3B. A narrow interpretation of Rule 3B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Article 14 requires the state to refrain from denying to any person equality before the law or equal protection of laws.

Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14. The law should not decide the beneficiaries of a statute based on narrow patriarchal principles about what constitutes "permissible sex", which create invidious classifications and excludes groups based on their personal circumstances. The rights of reproductive autonomy, dignity, and privacy under Article 21 give an unmarried woman the right of choice on whether or not to bear a child, on a similar footing of a married woman."

29 It is evident from a perusal of the same that rule 3 B provides for abortion within a period of 24 weeks, due to change of material (including marital) circumstances and that the said provision has to be read to extend also to an unmarried woman and that

disallowing the same access to an unmarried woman/girl under Rule 3 B, would be discriminatory to her and she too deserves the reproductive autonomy and right of her choice whether or not to bear a child. The said provisions are, however, not a means to dilute the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.

30 Hence, I am of the view that law needs no further elaboration. An unmarried girl/a single mother cannot be made to suffer social, physical, psychological and financial trauma merely for having exercised her rightful autonomy. Changed circumstances/material alterations as available to a married woman under Rule 3 B of the Rules of 2003, as amended, would also subsist in favour of an unmarried consenting adult and that when a consensual sexual relationship between adult parts away or is mutually closed, the same would have certain callings equivalent to the scenario contemplated by the Legislature akin to divorce/widowhood for the purpose of seeking medical termination of pregnancy. A changed scenario, in terms of requirement has to presume a legal recognition of a relationship with her partner at par with a spousal relationship stipulated under Rule 3 B of the Rules of 2003 and that on existence of such circumstances which permit a married woman to seek termination of pregnancy, the Court may exercise its power to grant approval to medical termination of pregnancy even in case of an unmarried girl.

31 Further, during the course of hearing, a question was also posed to the petitioner herein as to whether she would like to name or disclose the identity of the person who is the father of the child,

however, she expressed her unwillingness to disclose the name. Her right of privacy and dignity empowers her to make a choice as to whether she would like to disclose the name of the partner or not and that the law cannot compel a woman to make public the name of the person who is the father of the foetus and/or the child.

32 Having recognized the right of the petitioner to seek medical termination, this Court now proceeds on the factual aspects of the case and to determine as to whether such permission needs to be granted in the facts of the present case.

33 I have gone through the judgments that have been cited by the petitioner where pregnancy has been permitted to be terminated after expiry of 24 weeks, however, in all the said judgments cited by the senior counsel for the petitioner, the child/pregnancy posed grave risk to the lives of mother as well as the child or the child suffered from serious physical and mental abnormalities. While it is recognized that the foetus in the present case is an unwanted pregnancy and the possible social stigmatic fall out for the petitioner cannot be entirely ruled out, however, the legislature has prescribed the time frame within which such termination may be permitted, after due consideration of the medical condition and the status of the foetus. It is also seen that while the law may confer a right to be exercised by the mother for seeking a termination of pregnancy on occurrence of the circumstances stipulated thereunder, the above said right is recognised by law till such time that the pregnancy completes 24 weeks. The mandate of Article 21 of the Constitution of India guarantees life and personal liberty to an individual

in accordance with the procedure established by law. Hence, when such a right is subject to certain procedural restrictions and on occurrence of an event (i.e. the pregnancy beyond 24 weeks), an individual cannot claim an unbridled right yet in her favour and to claim that notwithstanding the mandate of the Act of 1971 and the Rules of 2003, yet, she is entitled to seek medical termination. The legislative wisdom of confining the time line is not a subject matter of challenge and is also not confronted by any medical jurisprudence to the contrary. Invariably, in the process of carrying out a termination of the pregnancy, post expiry of 24 weeks, when a child is healthy and is grown, the implications and consequences have been segregated and consciously confined by the Legislature. The law leaves it to the discretion of the constitutional Courts, to exercise on case to case basis, as to whether such circumstances exist as would necessitate issuance of directions for termination of pregnancy. Hence, the Court is required to take into consideration the admissible evidence.

34 Even though the Medical Board cannot substitute a decision of a person to exercise his right, however, once it is held that such right is circumscribed by the legal provisions, the opinion of the expert Medical Board of an Institution of Eminence, would not ordinarily be disregarded.

35 It is also noticed herein that it is not a case where delay has occasioned on account of delay in adjudication, rather, the petitioner herself approached this Court after expiry of the statutory period. The present writ petition was listed for the first time before this Court on

29.02.2024 and as per the ultrasound report of 23.02.2024, she was pregnant by 24 weeks and 06 days i.e. 25 weeks. Hence, she was pregnant by 26 weeks when she approached the High Court. Further, the report of the Medical Board of PGIMER, even though notices that the patient is medically and physically fit to undergo a procedure and expressed a suicidal ideation of the petitioner and recommends psychological assessments and support, also states it to be a case of pre-term delivery and not a medical termination as ordinarily understood. For carrying out a termination in such circumstances, the doctors are required to carry out a feticide as per which the heartbeat of the child have to be forcibly stopped, failing which the survival rates of the premature delivered child would be more than 65%, having numerous neuro-developmental handicaps and increasing the morbidity of such child. It seemingly is on account of the aforesaid circumstances and to avoid committing of a feticide that the legislature decided a 'cut off' for pregnancy period before any such right/authority ought to be exercised.

36 While pleading her circumstances, the petitioner is seeking a direction from this Court to authorize the doctors to carry out a feticide failing which it would be an instance of a pre-term delivery which is likely to add to the hardships of the child himself. The Court cannot be oblivious to the possibility of a pre-term delivery and the consequences which its order may have to a child or to assume a role where it takes upon itself to decide that the child ought not be allowed to be born alive. While ordinarily under general circumstances, this Court may have approved of the medical termination if the foetus or the mother would

have suffered a grave physical or mental harm or the child was likely to be born with serious physical, mental or psychological deformities, however, a mental shock or stigma as a result of a pregnancy not approved, but on account of a consensual relationship, cannot at this juncture be seen as an event which would have an irreversible mental hazard. Exercise of a right of sexual autonomy also at times comes along with the responsibility to discharge duties that arise on exercise of such an option. A person may be called upon to live with the consequences of the option exercised, when such consequences cannot be erased and are required to co-exist. The desirability of a circumstance cannot outweigh the reality of the circumstance.

37 The report of the Medical Board of the PGIMER having been perused, the same refers to the eventuality of a pre-term delivery with a survival rate of 60 to 65% along with significant morbidity and neuro-developmental handicaps. However, the said aspect may be specifically determined, before proceeding further, yet again. Taking into consideration the peculiar circumstances of this case, it is deemed appropriate to issue following directions for balancing the equities and to prevent continued incarceration, stigma and embarrassment to the petitioner:-

- (i) The petitioner shall appear before the Medical Board of the Rajindra Hospital, Patiala which such Board will carry out a re-determination as to whether the termination of the pregnancy can be carried out, without a feticide, and shall explain the said consequences to the petitioner, including

the enhanced risk to which the petitioner might be exposed in the event of being subjected to such medical termination of pregnancy.

In the event, the Medical Board is of the opinion that the medical termination of the pregnancy would not be possible and it would rather lead to a pre-term delivery or would call upon the Medical Board to carry out a feticide, the procedure shall not be carried out any further.

- (ii) The State shall take all appropriate steps to ensure an institutional delivery of the child of the petitioner along with necessary medical facilities without payment of any fee, charges or expenses of any nature whatsoever, and shall ensure that delivery takes place in a safe environment;
- (iii) The privacy of the petitioner shall be maintained at all stages and her identity be not divulged during the course of hospitalization, treatment, delivery or thereafter;
- (iv) The petitioner may be called upon to exercise an option of the institutional facility where she intends to get the treatment and delivery and also as to whether she intends to keep the child and to bring up the said child.
- (v) In the event, the petitioner exercises her option against bringing up the child, the same may be handed over to the Child Welfare Committee of the said District where delivery is to take place and the petitioner shall execute all such documents and procedural formalities mandated in law

for custody of the said child to the Child Welfare Committee.

- (vi) The above said Child Welfare Committee shall thereafter take care of all the needs and facilities of the child; and
- (vii) The petitioner shall thereafter have no objection to the said child being given in adoption by the State agencies to the willing parents/persons in accordance with law. The Child would be deemed to be free for being given in adoption.

38 The aforesaid directions are without prejudice to any other right and entitlement of the petitioner under the applicable policy/guidelines for financial assistance and rehabilitation.

39 The present petition is disposed of accordingly.

40 A copy of the order be given to the learned counsel for the respective parties under the signatures of the Bench Secretary.

March 11, 2024.	(VINOD S. BHARDWAJ)
raj arora	JUDGE
<i>Whether speaking/reasoned</i>	<i>: Yes/No</i>
<i>Whether reportable</i>	<i>: Yes/No</i>