2022 LiveLaw (SC) 809

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

DR. DHANANJAYA Y. CHANDRACHUD; J., A S BOPANNA; J., J.B. PARDIWALA; J.

September 29, 2022

Civil Appeal No 5802 of 2022 (Arising out of SLP (C) No 12612 of 2022)

X *versus* **The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.**

Medical Termination of Pregnancy Act, 1971 - All women are entitled to safe and legal abortions *(Para 56)* **- There is no rationale in excluding unmarried women from the ambit of Rule 3B of MTP Rules which mentions the categories of women who can seek abortion of pregnancy in the term 20-24 weeks.** *(Para 121)*

Medical Termination of Pregnancy Rules, 2003 - Rule 3B (categories of women who can seek abortion of pregnancy of 20-24 weeks) - 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. 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 140 - Purposive interpretation given to Rule 3B to include unmarried women whose pregnancy arise out of consensual relationship. *(Para 121)*

Medical Termination of Pregnancy Act 1971 - Section 3(2)(b) - Termination of a pregnancy till twenty-four weeks of women if it causes risk of injury to the mental health – unwanted pregnancy can be construed as injury to mental health. *(Para 62, 63, 64)*

Marital Rape - Rape includes 'marital rape' for the purpose of MTP Rules - Rule 3B(a) -Survivors of sexual assault or rape or incest shall be considered eligible for termination of pregnancy up to twenty-four weeks – Supreme Court holds that meaning of rape must be understood as including marital rape, solely for the purposes of the MTP Act – Woman need not seek recourse to formal legal proceedings to prove sexual assault, rape or incest. *(Para 70, 75, 76)*

Medical Termination of Pregnancy Rules, 2003 - Rule 3B(b) - Rule 3B(b) includes minors within the category of women who may terminate their pregnancy up to twenty-four weeks – the RMP need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. *(Para 81)*

Medical Termination of Pregnancy Rules, 2003; Rule 3B(c) -Women going through a change of marital status during the ongoing pregnancy shall be considered eligible for termination of pregnancy – distinction between married and single women is not constitutionally sustainable – benefits in law extend equally to both single and married women. *(Para 90, 92)*

Marital Rape - Exception 2 to Section 375 of IPC - Exception 2 states that sexual intercourse by a man with his wife is not rape, unless she is below 15 years of age – Supreme Court leaves the constitutional validity of marital rape to be decided in appropriate proceedings but states that for the purpose of MTP Act, meaning of rape includes marital rape. *(Para 74, 75, 115)*

Protection of Children from Sexual Offences Act, 2012; Section 19(1) - When a minor approaches a Registered Medical Practitioner for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged to provide information to concerned authorities – Supreme Court states that the RMP need not disclose the identity and other personal details of the minor in the information. *(Para 79, 80, 81)*

For Appellant(s) Dr. Amit Mishra, Adv. Mr. Rahul Sharma, AOR

For Respondent(s) Ms. Aishwarya Bhati, ASG Ms. Ameyavikrama Thanvi, Adv. Ms. Manisha Chava, Adv. Mr. BLN Shivani, Adv. Ms. Shivika Mehra, Adv. Mr. Aman Sharma, Adv. Mr. Manvendra Singh, Adv. Ms. Chitrangda Rastravara, Adv. Mr. Nithin Pavuluri, Adv. Mr. Abhijeet Singh, Adv. Mr. Shagun Thakur, Adv. Ms. Poornima Singh, Adv. Mr. Ketan Paul, Adv. Ms. Aakanksha Kaul, Adv. Mr. GS. Makker, AOR

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

Table of Contents

A. Background

1. Leave granted.

2. This appeal arises out of the judgment of a Division Bench of the High Court of Delhi dated 15 July 2022. The appellant invoked the writ jurisdiction of the High Court seeking its permission to terminate her pregnancy before the completion of twenty-four weeks on 15 July 2022. Other ancillary reliefs were sought. For convenience of reference, the reliefs claimed before the High Court are extracted below:

"A. Permit the Petitioner to terminate her ongoing pregnancy through registered medical practitioners at any approved private or government center or Hospital before 15.07.2022 as her relief will be infructuous after that as the pregnancy will be of around 24 Weeks by that time;

B. Restrain the Respondent from taking any coercive action or criminal proceedings against the Petitioner or any Registered Medical Practitioner terminating the pregnancy of the petitioner at any approved private center or hospital registered by Govt NCT of Delhi;

C. Direct the Respondent to include unmarried woman also within the ambit of the Rule 3B of the Medical Termination of Pregnancy Rules 2003 (as amended on 21.10.2021) for termination of

pregnancy under clause (b) of sub-section (2) Section 3 of the MTP Act, for a period of up to twenty-four weeks;

D. Order an immediate Interim Relief of Stay during the course of proceedings"

3. The appellant is an Indian citizen and a permanent resident of Manipur. She is currently residing in New Delhi. The appellant averred that she is the eldest amongst five siblings and that her parents are agriculturists. At the time of the institution of the Writ Petition before the High Court of Delhi,[1] the appellant was carrying a single intrauterine pregnancy corresponding to a gestational age of twenty-two weeks. The appellant is an unmarried woman aged about twenty-five years, and had become pregnant as a result of a consensual relationship. The appellant wished to terminate her pregnancy as "her partner had refused to marry her at the last stage." She stated that she did not want to carry the pregnancy to term since she was wary of the "social stigma and harassment" pertaining to unmarried single parents, especially women. Moreover, the appellant submitted that in the absence of a source of livelihood, she was not mentally prepared to "raise and nurture the child as an unmarried mother." The appellant stated that the continuation of the unwanted pregnancy would involve a risk of grave and immense injury to her mental health.

4. The appellant sought permission to terminate her pregnancy in terms of Section 3(2)(b) of the Medical Termination of Pregnancy Act 1971[2] and Rule 3B(c) of the Medical Termination of Pregnancy Rules 2003[3] (as amended on 12 October 2021). The appellant instituted a Criminal Miscellaneous Application[4] for grant of interim relief to terminate her pregnancy during the pendency of the Writ Petition.

5. By its order dated 15 July 2022, the High Court issued notice restricted only to prayer C of the Writ Petition, and rejected the Criminal Miscellaneous Application, effectively rejecting prayers A and B. The High Court observed that Section 3(2)(b) of the MTP Act was inapplicable to the facts of the present case since the appellant, being an unmarried woman, whose pregnancy arose out of a consensual relationship, was not covered by any of the sub-clauses of Rule 3B of the MTP Rules. The High Court held that:

"8. The Petitioner, who is an unmarried woman and whose pregnancy arises out of a consensual relationship, is clearly not covered by any of the Clauses under the Medical Termination of Pregnancy Rules, 2003. Therefore, Section 3(2)(b) of the Act is not applicable to the facts of this case.

9. Learned counsel for the Petitioner states that Rule 3B of the Medical Termination of Pregnancy Rules, 2003 is violative of Article 14 of the Constitution of India, 1950, inasmuch as it excludes an unmarried woman. Whether such rule is valid or not can be decided only after the said rule is held ultra vires, for which purpose, notice has to be issued in the writ petition and has been done so by this Court.

10. As of today, Rule 3B of the Medical Termination of Pregnancy Rules, 2003, stands, and this Court, while exercising its power under Article 226 of the Constitution of India, 1950, cannot go beyond the Statute. Granting interim relief now would amount to allowing the writ petition itself."

6. The order of the High Court gave rise to the present appeal. Notice was issued on the Petition for Special Leave to Appeal on 21 July 2022. This Court, by its order dated 21 July 2022 modified the order of the High Court and permitted the appellant to terminate her pregnancy. This Court passed the following *ad interim* order:

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[1] WP(C) 10602/2022
[2] "MTP Act"
[3] "MTP Rules"
[4] CM Application 30708/2022

"22. In the above background, we pass the following *ad interim* order:

(i) We request the Director of the All India Institute of Medical Sciences, Delhi to constitute a Medical Board in terms of the provisions of Section 3(2D) of the Act, extracted in the earlier part of this order, during the course of 22 July 2022; and

(ii) In the event that the Medical Board concludes that the fetus can be aborted without danger to the life of the petitioner, a team of doctors at the All India Institute of Medical Sciences shall carry out the abortion in terms of the request which has been made before the High Court and which has been reiterated both in the Special Leave Petition and in the course of the submissions before this Court by counsel appearing on behalf of the petitioner. Before doing so the wishes of the petitioner shall be ascertained again and her written consent obtained after due verification of identity."

7. Counsel for the petitioner and the respondent stated that a Medical Board was constituted at the All India Institute of Medical Sciences.[5] The Board noted that the petitioner had consented to the termination of her pregnancy and the procedure could be undertaken without danger to her life. The report submitted by AIIMS indicates that the termination of the pregnancy was safely carried out.

8. As the case involves a substantial question of law, this Court has taken it up for further consideration. The Writ Petition before the Delhi High Court shall stand transferred to this Court. The significant issue which comes up for determination in this appeal turns on the interpretation of Rule 3B of the MTP Rules.

B. Submissions

9. Dr. Amit Mishra, learned counsel appearing on behalf of the appellant made the following submissions:

a. The appellant was an unmarried woman whose partner had refused to marry her. She did not wish to continue the pregnancy and have the child out of wedlock as she lacked the financial resources to do so. She was not employed and her parents were farmers;

b. She was also not mentally prepared to raise a child by herself. If she was compelled to do so, it would cause grave injury to her physical and mental health. The appellant was not prepared to face the social stigma surrounding unwed mothers; and

c. Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Rules are arbitrary and discriminatory because they exclude unmarried women from their ambit. They discriminate against women on the ground of marital status, in violation of Article 14 of the Constitution.

10. Ms. Aishwarya Bhati, learned senior counsel and Additional Solicitor General has ably assisted this Court in the interpretation of Section 3(2) of the MTP Act and Rule 3B(c) of the MTP Rules. She made the following submissions in support of the argument that Rule 3B(c) extends to unmarried or single women who are in long-term relationships:

a. The interpretation of legislation must be guided by the text and context of a statute as well as the object it seeks to achieve. The Statement of Objects and Reasons of a statute must also guide its interpretation;

b. Modern legislations ought to be read in view of the evolution of society from the time of enactment. The literal construction of beneficial legislations must be avoided, and they ought to be given a purposive interpretation;

[5] "AIIMS"

c. A subordinate legislation should give effect to the statute it is enacted under. If two constructions are possible, the interpretation in consonance with the statutory scheme ought to be adopted;

d. The term "change of marital status" in Rule 3B(c) ought to be interpreted as "change in the status of a relationship" to include unmarried or single women as well as women who are not divorced but are separated or have been deserted;

e. "Live-in relationships" are equivalent to marital relationships because in both types of relationships, the woman is entitled to maintenance. Further, the children born out of such a relationship are vested with the right of succession. Various national legislations, including the MTP Act, do not make a distinction between married women and unmarried or single women; and

f. Women enjoy the right to bodily integrity and autonomy, as well as reproductive rights. They are entitled to exercise decisional autonomy.

C. The Medical Termination of Pregnancy Act 1971 and the rules framed thereunder

11. Before we embark upon a discussion on the law and its application, it must be mentioned that we use the term "woman" in this judgment as including persons other than cis-gender women who may require access to safe medical termination of their pregnancies.

12. In India, termination of pregnancies is to be done strictly in terms of the MTP Act. The preamble of the MTP Act states that it is an "Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto." The MTP Act specifies the requirements to be fulfilled for terminating a pregnancy, including the persons who are competent to perform the termination procedure, circumstances when abortion is permissible, and places where the procedure may be performed.

13. Section 3 of the MTP Act, as amended by the Medical Termination of Pregnancy (Amendment) Act 2021 (8 of 2021),[6] provides for when pregnancies may be terminated:

"Section 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[(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

[6] "MTP Amendment Act 2021"

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 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."

14. Section 3 provides that registered medical practitioners[7] shall not be guilty of committing any offence under the Indian Penal Code 1860[8] or under any other law for the time being in force if they terminate pregnancies in accordance with the MTP Act. Sub-section (4) of Section 3 stipulates that a pregnancy shall not be terminated except with the consent of the pregnant woman,[9] and if the woman is below 18 years of age or is mentally ill, with the consent of her guardian.[10] Subject to the requirement contained in sub-section (4) of Section 3, sub-section (2) of Section 3 provides that a pregnancy may be terminated by a registered medical practitioner subject to the conditions laid down therein. Pregnancies may be terminated where they do not exceed twenty weeks[11] and for certain categories of women where they do not exceed twenty-four weeks.[12] Section 3(2)(a) of the MTP Act permits the termination of a pregnancy where the length of the pregnancy does not exceed twenty weeks. Section 3(2)(b) of MTP Act permits the termination of a pregnancy, where the length of the pregnancy is between twenty and twenty-four weeks, of such categories of women "as may be prescribed by Rules." These pregnancies under Section 3 may be terminated if the medical practitioner in question (or in the case of pregnancies between

[7] "RMP"
[8] "IPC"
[9] Section 3(4)(b), MTP Act
[10] Section 3(4)(a), MTP Act
[11] Section 3(2)(a), MTP Act
[12] Section 3(3)(b), MTP Act

twenty and twenty-four weeks, not less than two registered medical practitioners) is, in good faith, of the opinion that:

a. The continuance of the pregnancy would put the pregnant woman's life at risk (Section 3(2)(i));

b. The continuance of the pregnancy would involve grave danger to the pregnant woman's physical health (Section 3(2)(i));

c. The continuance of the pregnancy would involve grave danger to the pregnant woman's mental health (Section 3(2)(i)); or

d. There is a substantial risk that the child would suffer from a serious physical or mental abnormality, if it is born (Section 3(2)(ii)).

In determining whether the continuation of the pregnancy would involve grave danger to the pregnant woman's physical or mental health, her actual or reasonably foreseeable environment may be taken into account.[13] We are of the opinion that significant reliance ought to be placed on each woman's own estimation of whether she is in a position to continue and carry to term her pregnancy.

15. The explanations to Section 3(2) provide for two legal presumptions indicating what constitutes a grave injury to the pregnant woman's mental health. Explanation 1 stipulates that pregnancies which occur due to the failure of a contraceptive device or method used by a woman or her partner for limiting the number of children or preventing pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman, if the pregnancy has not exceeded twenty weeks. A similar legal presumption is provided for in Explanation 2, which stipulates that where a woman alleges that a pregnancy was caused as a consequence of rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to her mental health. The legal presumption in Explanation 2 is applicable to all pregnancies which have not exceeded twenty-four weeks.

16. Pregnancies may be terminated only in a hospital established or maintained by the government,[14] or any place approved for the purposes of the MTP Act either by the government or by a District Level Committee constituted in terms of Section 4(b). Further, the provisions of Section 4 and the provisions in Section 3(2) (which relate to the length of the pregnancy and the requirement for the opinion of at least two RMPs) shall not apply to the termination of pregnancies by an RMP, where the RMP is, in good faith, of the opinion that the termination of the pregnancy is immediately necessary to save the life of the pregnant woman.[15] The MTP Act also seeks to protect the privacy of a woman who has terminated a pregnancy – any RMP who reveals the name or other particulars of such a woman shall be liable to be sentenced to imprisonment which may extend to one year, or with fine, or both.[16] The MTP Act vests the Central Government with the power to enact rules to carry out its provisions[17] and the State Governments with the power to enact regulations in certain cases.[18]

17. In exercise of this power, the Central Government notified the MTP Rules. The MTP Rules govern various aspects of the medical termination of pregnancies: they include rules

[13] Section 3(3), MTP Act
[14] Section 4(a), MTP Act
[15] Section 5(1), MTP Act
[16] Section 5A, MTP Act
[17] Section 6, MTP Act
[18] Section 7, MTP Act

on the District Level Committee,[19] the Medical Board,[20] RMPs,[21] and the place where a pregnancy may be terminated.[22] Rule 3B, recently amended by the Medical Termination of Pregnancy (Amendment) Rules 2021,[23] is relevant for the purposes of the present discussion. It governs the categories of women under clause (b) of sub-section 2 of Section 3 who may have their pregnancy terminated if the length of their pregnancy exceeds twenty weeks but does not exceed twenty-four weeks. It states:

"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 women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government."

D. Barriers to accessing safe and legal abortions

18. Despite the enactment of the MTP Act, a number of hurdles continue to prevent full access to safe and legal abortions, pushing women to avail of clandestine, unsafe abortions. These barriers include insufficient infrastructural facilities, a lack of awareness, social stigma, and failure to ensure confidential care. In some situations, unmarried women face particular barriers due to gender stereotypes about women's sexual autonomy outside marriage. These barriers are a serious impediment and deter single women from seeking safe and legal abortions. Such barriers may contribute to a delay in accessing abortion services or a complete denial of such services, consequently negating women's right to reproductive autonomy.

i. RMPs' fear of prosecution

19. It is not only the factors mentioned above which hinder access to safe abortion but also a fear of prosecution under the country's criminal laws. Under the current legal framework, the MTP Act merely lays out exceptions to the provisions criminalizing abortion in Sections 312 to 318 of the IPC. Section 3(1) of the MTP Act begins with a non-obstante clause and stipulates that "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." In terms of Section 3(1), the termination of a pregnancy is a criminal offence under the IPC, unless it fulfils the conditions laid down in the MTP Act, including who can terminate a pregnancy, the place where termination can take place, and the specific conditions in accordance with which such termination is permissible. Section 5(2) provides penalties when termination of pregnancy is carried out by a person

[19] Rule 3, MTP Rules
[20] Rule 3A, MTP Rules
[21] Rules 4, 4A, MTP Rules
[22] Rules 5, 6, 7, 8, MTP Rules
[23] "MTP Amendment Rules"

who is not an RMP. Section 5(3) provides penalties when termination of pregnancy is carried out in a place other than that mentioned in Section 4. RMPs and women seeking termination of pregnancy are exempted from any legal action under the provisions of the IPC mentioned above only when these conditions are fulfilled.

20. Presently, under the MTP Act, the opinion of an RMP (in accordance with the restrictions and grounds laid down in the Act) is decisive. It is on the basis of the opinion formed by RMP(s), either under Section 3 or under Section 5, that a woman can terminate a pregnancy under the MTP Act. This makes the MTP Act a provider-centric law. Since women's right to access abortion is conditional on the approval by an RMP, the denial of services by an RMP compels women to approach courts or seek abortions in unsafe conditions.[24] A fear of prosecution under this complex labyrinth of laws, including linking of the MTP Act with the IPC, acts as a major barrier to safe abortion access, by having a chilling effect on the behaviour of RMPs. The chilling effect — historically associated with protection of freedom of speech and expression under Article 19[25] — has an impact on the decision-making of medical professionals acting under the MTP Act and consequently impedes access to safe and legal abortions and the actualization of women's fundamental right to reproductive autonomy.

21. In **Navtej Singh Johar** v. **Union of India**[26] a Constitution Bench of this Court held that Section 377 had a chilling effect on the exercise of freedom of individuals, which posed a grave danger to the unhindered fulfilment of one's sexual orientation, as an element of dignity and privacy. One of us, Dr. DY Chandrachud, J., recognized the impact of the criminalization of homosexuality on the spread of HIV/AIDS and how fear of prosecution and stigma created barriers to accessing HIV prevention services, in his concurring opinion. This Court observed that:

"508. The silence and secrecy that accompanies institutional discrimination may foster conditions which encourage escalation of the incidence of HIV/AIDS. The key population is stigmatized by health providers, employers and other service providers. As a result, there exist serious obstacles to effective HIV prevention and treatment as discrimination and harassment can hinder access to HIV and sexual health services and prevention programmes."

22. Although the actions of RMPs done in good faith under the MTP Act are protected under Section 8, the spectre of criminalization casts a chilling effect on them. The fear faced by RMPs of prosecution under the penal provisions often leads to unnecessary delays. It is a common yet lamentable practice for RMPs to insist on compliance with extra-legal conditions such as consent from the woman's family, documentary proofs, or judicial authorisation.[27] If the woman fails to comply with these additional requirements, RMPs frequently decline to provide their services in conducting legal abortions.

23. These extra-legal requirements have no basis in law. As noted above, it is only the woman's consent (or her guardian's consent if she is a minor or mentally ill) which is material. RMPs must refrain from imposing extra-legal conditions on women seeking to terminate their pregnancy in accordance with the law. They need only ensure that the provisions of the MTP Act (along with the accompanying rules and regulations) are complied with.

24. Before the MTP Amendment Act 2021 was enacted, the petitioners in a number of cases before the High Courts also sought permission to terminate pregnancy where the

[24] Dipika Jain, Time to Rethink Criminalisation of Abortion? Towards a Gender Justice Approach, 12 NUJS Law Review 2 (2019)
[25] S. Khushboo v. Kanniammal, (2010) 5 SCC 600; Shreya Singhal v. Union of India, (2015) 5 SCC 1
[26] (2018) 10 SCC 1
[27] Centre for Reproductive Rights, "Reform to Address Women's and Girl's need for Abortion after 20 weeks" (2018)

gestation was below twenty weeks.[28] The unamended MTP Act clearly stated that termination of pregnancy between twelve and twenty weeks was permissible when two RMPs opined that the request for termination of pregnancy meets either of the four grounds mentioned in Section 3(2).[29] Thus, there was no legal requirement to refer cases within the legal limit of twenty weeks to the courts. These cases represent the barriers faced by women in accessing safe and legal abortions, even when their decision to terminate their pregnancy is permitted by the law.

25. This Court has recognized the disastrous effects of unnecessary delays and lack of promptitude in the attitude of authorities when dealing with termination of pregnancies. In **Z** v. **State of Bihar**,[30] this Court found that the state authorities, including Patna Medical College and Hospital, had erred in failing to terminate the pregnancy before the passage of twenty weeks, despite the woman seeking an abortion on the ground that she was a victim of rape. This Court also rebuked the "negligence and carelessness" of the authorities in failing to terminate the pregnancy as permitted by law. It noted that the proceedings in the High Court were unduly delayed, leading to a situation where the pregnancy could not be terminated without endangering the life of the woman in question. Compensation was awarded to the petitioner (i.e., the pregnant woman).

ii. Social stigma surrounding unmarried women

26. An RMP's decision to provide medical termination of a pregnancy is also influenced by social stigma surrounding unmarried women and pre-marital sex, gender stereotypes about women taking on the mantle of motherhood, and the role of women in society.

27. Due to a widespread misconception that termination of pregnancies of unmarried women is illegal, a woman and her partner may resort to availing of abortions by unlicensed medical practitioners in facilities not adequately equipped for such medical procedures, leading to a heightened risk of complications and maternal mortality. In **Surendra Chauhan** v. **State of Madhya Pradesh**,[31] a twoJudge Bench of this Court upheld the Madhya Pradesh High Court's order to convict the accused under Section 314 read with Section 34 of the IPC for causing a woman's death by miscarriage. According to the facts of the case, the accused was in an "illicit relation" with the deceased, an unmarried woman of twenty-four years. The deceased woman had become pregnant as a result of this relationship. Both of them had approached the clinic of a so-called doctor (who was named as a co-accused) to terminate the pregnancy of around 3 months (approximately 12 weeks). The purported doctor was neither an RMP nor was his clinic approved by the government, in terms of the requirements laid down in the MTP Act. During the procedure for the termination of pregnancy, the woman passed away. This case is illustrative of the dangers of unsafe abortions, undertaken due to the social stigma surrounding pregnancies among unmarried women.

28. The social stigma that women face for engaging in pre-marital sexual relations prevents them from realizing their right to reproductive health in a variety of ways. They have insufficient or no access to knowledge about their own bodies due to a lack of sexual health education, their access to contraceptives is limited, and they are frequently unable to

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[28] *See* XYZ v. State of Maharashtra, 2018 SCC OnLine Bom 13751; Prabhavati Dattatray Jadhav v. State of Maharashtra, 2021 SCC Online Bom 9339; ABC v. State of Maharashtra, (2018) 4 Mah LJ 374, 2018 SCC Online Bom 144; A v. State of Maharashtra, 2022 SCC OnLine Bom 1361; D. Rajeswari v. State of Tamil Nadu, 1996 Cri LJ 3795; X v. Govt. of NCT of Delhi, 2013 SCC OnLine Del 4929; Puja Kumari v. State of West Bengal, 2019 SCC Online Cal 1277; Velunatchiyar v. Govt. of Tamil Nadu, 2021 SCC Online Mad 5047; M. Kala v. The Inspector of Police, 2015 SCC OnLine Mad 7767

[29] Section 3(2)(b), MTP Act 1971

[30] (2018) 11 SCC 572

[31] (2000) 4 SCC 110

approach healthcare providers and consult them with respect to their reproductive health. Consequently, unmarried and single women face additional obstacles.

29. The social stigma surrounding single women who are pregnant is even greater and they often lack support from their family or partner. This leads to the proliferation of persons not qualified / certified to practice medicine. Such persons offer the possibility of a discreet abortion and many women may feel compelled by their circumstances to engage the services of such persons instead of opting for a medically safe abortion. As illustrated in **Surendra Chauhan** (supra), this often leads to disastrous consequences for the woman. Keeping in view these barriers to accessing reproductive healthcare, we now turn to the interpretation of Section 3(2) of the MTP Act and Rule 3B of the MTP Rules.

E. Analysis

i. The rule of purposive interpretation

30. The question that arises is whether Rule 3B includes unmarried women, single women, or women without a partner under its ambit. The answer may be discerned by imparting a purposive interpretation to Rule 3B.

31. The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualise.[32] Ordinarily, the language used by the legislature is indicative of legislative intent. In **Kanailal Sur** v. **Paramnidhi Sadhu Khan**,[33] Gajendragadkar, J. (as the learned Chief Justice then was) opined that "the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself." But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be "illumined by the goal, though guided by the word."[34] Aharon Barak opines that in certain circumstances this may indicate giving "an unusual and exceptional meaning" to the language and words used.[35] Before we engage in the exercise of purposive construction, we must caution that a court's power to purposively interpret a statutory text does not imply that a judge can substitute legislative intent with their own individual notions. The alternative construction propounded by the judge must be within the ambit of the statute and should help carry out the purpose and object of the Act in question.

32. The interpretation of a subordinate legislation should be consistent with the enabling Act.[36] A subordinate legislation must be reasonable and in consonance with the legislative policy. It should be interpreted in a meaningful manner, so as to give effect to the purpose and object of the enabling Act. The interpretation which is in consonance with the statutory scheme and gives effect to the statute must be adopted.

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[32] JUSTICE G.P SINGH, G.P. SINGH: PRINCIPLES OF STATUTORY INTERPRETATION, (LexisNexis, 2016), at page 12; State of Himachal Pradesh v. Kailash Chand Mahajan, 1992 Supp (2) SCC 351; Union of India v. Elphinstone Spinning and Weaving Co. Ltd., (2001) 4 SCC 139

[33] AIR 1957 SC 907

[34] Kanta Goel v. B.P Pathak, 1977 SCR (3) 412

[35] AHARON BARAK, PURPOSIVE INTERPRETATION IN LAW, (Princeton University Press, 2007), at page 306

[36] Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer, AIR 1966 SC 12; Union of India v. Tulsiram Patel, (1986) 3 SCC 398; M.L. Kamra v. Chairman-cum-Managing Director, New India Assurance Co. Ltd. (1992) 1 SCR 220; St Johns Teachers Training Institute v. Regional Director National Council of Teacher Education, (2003) 3 SCC 321

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:

"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**[39] 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**,[40] 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.)**,[41] 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

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[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
[39] (1584) 3 Co Rep 7a
[40] (1955) 2 SCR 603
[41] (1988) 3 SCC 609

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."

36. A catena of decisions emanating from this Court, including **Kerala Fishermen's Welfare Fund Board** v. **Fancy Food**,[42] **Bharat Singh** v. **Management of New Delhi Tuberculosis Centre, New Delhi**,[43] **Bombay Anand Bhavan Restaurant** v. **ESI Corpn**.,[44] **Union of India** v. **Prabhakaran Vijaya Kumar,**[45] settle the proposition that progressive and beneficial legislation must be interpreted in favour of the beneficiaries when it is possible to take two views of a legal provision.

37. In **S. Gopal Reddy** v. **State of A.P.**,[46] while interpreting the Dowry Prohibition Act 1961 (a beneficial legislation), this Court interpreted the meaning of "dowry" by adopting the purposive interpretation approach:

"12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary. We are unable to persuade ourselves to agree with Mr Rao that it is only the property or valuable security given at the time of marriage which would bring the same within the definition of "dowry" punishable under the Act, as such an interpretation would be defeating the very object for which the Act was enacted. Keeping in view the object of the Act, "demand of dowry" **as a consideration for a proposed marriage** would also come within the meaning of the expression dowry under the Act. If we were to agree with Mr Rao that it is only the "demand" made at or after marriage which is punishable under Section 4 of the Act, some serious consequences, which the legislature wanted to avoid, are bound to follow. Take for example a case where the bridegroom or his parents or other relatives make a "demand" of dowry during marriage negotiations and later on after bringing the bridal party to the bride's house find that the bride or her parents or relatives have not met the earlier "demand" and call off the marriage and leave the bride's house, should they escape the punishment under the Act. The answer has to be an emphatic "no". It would be adding insult to injury if we were to countenance that their action would not attract the provisions of Section 4 of the Act. Such an interpretation would frustrate the very object of the Act and would also run contrary to the accepted principles relating to the interpretation of statutes."

(emphasis in original)

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[42] (1995) 4 SCC 341
[43] (1986) 2 SCC 614
[44] (2009) 9 SCC 61
[45] (2008) 9 SCC 527
[46] (1996) 4 SCC 596

This principle has consistently been applied by this Court while construing beneficial legislation. Most recently in **KH Nazar** v. **Mathew K Jacob**,[47] Nageshwar Rao, J. writing for a two-judge Bench observed:

"11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The Act should receive a liberal construction to promote its objects. Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation."

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]

39. In **Badshah** v. **Urmila Badshah Godse**,[49] 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]

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**,[51] 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:

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[47] (2020) 14 SCC 126
[48] Dharni Sugars and Chemicals Ltd v. Union of India, (2019) 5 SCC 480
[49] (2014) 1 SCC 188
[50] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, at paragraph 122
[51] (2010) 5 SCC 600

"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**,[52] 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 nontraditional 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."

45. The Hindu Succession Act 1956 was enacted to codify the law relating to intestate succession among Hindus. Section 6 of the Hindu Succession Act 1956 pertains to devolution of interest in coparcenary property. In terms of this provision a daughter, irrespective of her marital status, is a coparcener in her own right in the same manner as the son by virtue of the Hindu Succession (Amendment) Act 2005.

46. Section 8 of the Hindu Adoptions and Maintenance Act 1956 stipulates that any female Hindu regardless of her marital status has the capacity to take a son or daughter in adoption. Sections 7 and 8 of the Guardian and Wards Act 1890 allows for persons to apply for an order of guardianship without making any distinction between men or women, married or unmarried.

[52] 2022 SCC OnLine SC 1088

47. Through the above enactments, the law has emphasized that unmarried women have the same rights as married women in terms of adoption, succession, and maternity benefits. Importantly, these legislations also signify that both married and unmarried women have equal decisional autonomy to make significant choices regarding their own welfare.

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**,[53] **A. Thangal Kunju Musaliar** v. **M. Venkatachalam Potti**,[54] **State of Himachal Pradesh** v. **Kailash Chand Mahajan**,[55] and **National Insurance Co. Ltd.** v. **Swaran Singh**[56] 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.

50. Prior to the enactment of the MTP Act, the medical termination of pregnancy was governed by the IPC. Chapter XVI of the IPC contains a segment titled "Of the causing of miscarriage, of injuries to unborn children, of the exposure of infants, and of the concealment of births", with Sections 312 to 318 forming a part of this segment. Section 312 criminalizes abortion, making any person (including the pregnant woman herself) liable for causing the miscarriage of a woman with an unborn foetus, except where the procedure is done in good faith in order to save the woman's life. Section 313 stipulates a penalty of imprisonment for life or imprisonment for a term which may extend to ten years when the offence of 'causing miscarriage' is committed without the consent of the woman. Section 312 to Section 316 of the IPC failed to make a distinction between wanted and unwanted pregnancies, thereby making it extremely onerous for women to access safe abortions. Before 1971, the criminalization of abortion under the IPC often compelled women to seek unsafe, unhygienic and unregulated abortions, leading to an increase in maternal morbidity and mortality.

51. In this background, the Medical Termination of Pregnancy Bill[57] was drafted and introduced in the Rajya Sabha on 17 November 1969. On 2 August 1971, the MTP Bill was introduced in the Lok Sabha with the intent to "liberalise some of the restrictions under section 312 of the IPC."[58] The MTP Act was enacted by Parliament as a "health" measure, "humanitarian" measure and "eugenic" measure. The relevant portion of the Statement of Objects and Reasons of the MTP Act is extracted below:

"1. The provisions regarding the termination of pregnancy in the Penal Code, 1860 which were enacted about a century ago were drawn up in keeping with the then British Law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. It has been stated that this very

[53] 1950 SCR 869
[54] 1950 SCR 869
[55] 1992 Supp (2) SCC 351
[56] (2004) 3 SCC 297
[57] "MTP Bill"
[58] Lok Sabha Debates, Fifth Series, Vol. VII, No. 53 (2 August 1972), at page 159

strict law has been observed in the breach in a very large number of cases all over the country. Furthermore, most of these mothers are married women, and are under no particular necessity to conceal their pregnancy.

2. In recent years, when health services have expanded and hospitals are availed of to the fullest extent by all classes of society, doctors have often been confronted with gravely ill or dying pregnant women whose pregnant uterus have been tampered with a view to causing an abortion and consequently suffered very severely.

3. There is thus avoidable wastage of the mother's health, strength and, sometimes, life. The proposed measure which seeks to liberalise certain existing provisions relating to termination of pregnancy has been conceived (1) as a health measure—when there is danger to the life or risk to physical or mental health of the woman; (2) on humanitarian grounds-such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc.; and (3) eugenic grounds—where there is substantial risk that the child, if born, would suffer from deformities and diseases."

The whole tenor of the MTP Act is to provide access to safe and legal medical abortions to women. The MTP Act is primarily a beneficial legislation, meant to enable women to access services of medical termination of pregnancies provided by an RMP. Being a beneficial legislation, the provisions of the MTP Rules and the MTP Act must be imbued with a purposive construction. The interpretation accorded to the provisions of the MTP Act and the MTP Rules must be in consonance with the legislative purpose.

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.

57. This is consistent with the Reply of the Ministry of Health & Family Welfare to the Report on 'Women's Healthcare: Policy Options' by the Committee on Empowerment of Women (2020-2021). The Ministry responded that "to increase the access of safe abortion services to all women, the provision of abortion services is proposed for all women irrespective of their marital status."[59] The Committee on Empowerment of Women had recommended a "raise *[in]* the permissible period of abortions to 24 weeks" and the deletion of the word "married" in the legislation, so that "anyone can get an abortion without having to depend on sham clinics as a last recourse."

58. The legislative history of the MTP Act, including the speech of the Minister of Health and Family Welfare while introducing the Amendment Bill, sheds light on the social context which necessitated the MTP Amendment Act 2021. Dr. Harsh Vardhan (who was, at the time, the Union Minister for Health and Family Welfare) stated that the purpose of extending the upper gestational limit was to strengthen access to comprehensive abortion care,[60] especially for special categories of women.[61] Elaborating on the prevailing circumstances, the Union Minister for Health and Family Welfare stated that "26 petitions have been filed in the Supreme Court and over hundred petitions have been filed before High Courts", seeking permission for aborting pregnancies at a gestational age beyond the twenty week limit. In view of this, the "long-awaited amendment" was introduced.[62] Responding to the objections raised on the inclusion of a woman and her partner instead of a married woman and her husband, the Minister opined that in keeping abreast with the evolution of social norms, the failure of contraceptive must encompass access to abortion facilities to all women.[63] Explaining the object behind this amendment, the Minister observed that taking into

[59] Committee of Empowerment of Women (2020-2021), "Fourth Report (Seventeenth Lok Sabha) on the action taken by the Government on the recommendations contained in the Eleventh Report (Sixteenth Lok Sabha) on Women's Healthcare: Policy Options" (2021), at page 33
[60] Lok Sabha Debates, Seventeenth Series, Vol. VIII, Third Session, 2020/1041, No. 19 (17 March 2020), at page 271 ("Lok Sabha Debates, Seventeenth Series")
[61] Lok Sabha Debates, Seventeenth Series, at page 336
[62] Lok Sabha Debates, Seventeenth Series, at page 272
[63] Lok Sabha Debates, Seventeenth Series, at page 337

consideration an ever-changing society, rights of single women, widows, and sex workers must be considered.[64] After the amendment, the scheme of the MTP Act does not make a distinction between married and unmarried women for the purpose of medical termination of pregnancies. The Amendment Bill was termed as a "progressive legislation" introduced to uphold women's right to live with dignity.[65]

59. A statutory text concerned with a significant aspect of the right to life and enhancing access to reproductive rights should be given the widest construction. The legislative history of the MTP Amendment Act 2021 provides insight into the hardship at which the amendment aimed. During the Parliamentary debates concerning the MTP Amendment Act 2021, statistics were shared on the connection between unsafe abortions and maternal deaths. The continuing crisis of unsafe abortions looms large in the parliamentary history of the MTP Act since 1971. Unsafe abortions are a leading but preventable cause of maternal mortality and morbidity. However, despite the enactment of the MTP Act in 1971, unsafe abortions continue to be the third leading cause of maternal mortality, and close to eight women in India die each day due to causes related to unsafe abortions.[66] Another study published in the BMJ Global Health points out to the grim statistics of unsafe abortions in India: between the years 2007 and 2011, an estimate of 67% of abortions carried out were classified as unsafe.[67] It further observes that disadvantaged women in India, including women from a lower socio-economic status, are at a higher risk of undergoing unsafe abortions. By denying access to safe abortion services, restrictive abortion laws have been shown to increase the incident of unsafe abortions.[68] In view of the serious social malady due to illegal and unsafe abortions, the MTP Amendment Act 2021 intended to improve the availability and quality of legal abortion care for women by liberalizing certain restrictive features of the unamended MTP Act and by increasing the legal limit of the gestational period within which abortions could be conducted from twenty to twenty-four weeks.

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.

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

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[64] Lok Sabha Debates, Seventeenth Series, at page 337
[65] Lok Sabha Debates, Seventeenth Series, at page 274
[66] United Nations Population Fund, "Seeing the Unseen: The case for action in the neglected crisis of unintended pregnancy, State of World Populations" (2022)
[67] Ryo Yokoe, Choudhury SS, *et al.*, Unsafe abortion and abortion-related death among 1.8 million women in India, 4(3) BMJ Global Health (2019)
[68] Jonathan Baerak, *et al*., Unintended pregnancy and abortion by income, region, and the legal status of abortion: estimates from a comprehensive model for 1990–2019, 8(9) Lancet Global Health (2020)
[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

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,**[70] **Mamta Verma** v. **Union of India**,[71] **Meera Santosh Pal** v. **Union of India**,[72] **Sarmishtha Chakrabortty** v. **Union of India**,[73] 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.

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.

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**,[80] 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

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[70] (2017) 3 SCC 458
[71] (2018) 14 SCC 289
[72] (2017) 3 SCC 462
[73] (2018) 13 SCC 339
[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 Chakrabortty 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 Chakrabortty 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
[79] World Health Organization, "Promoting mental health: concepts, emerging evidence, practice (Summary Report)" (2004)
[80] 2016 SCC OnLine Bom 8426

the woman because of the immediate social, financial and other consequences flowing from the pregnancy.

66. In **Sidra Mehboob Shaikh** v. **State of Maharashtra**,[81] the High Court of Bombay permitted the petitioner to undergo medical termination of her pregnancy on the ground that compelling her to continue with her unwanted pregnancy would be oppressive, and would likely cause a grave injury to her mental health. The petitioner, a victim of domestic violence, had approached the court to allow her to undergo an abortion as she pleaded that she did not want to raise a child in the absence of financial and emotional support from her husband; and raising a child on her own would be burdensome. The High Court observed that "mental state of a person is a continuum with good mental health being at one end and diagnosable mental illness at the opposite end. Therefore, mental health and mental illness, although sound similar, are not the same."[82]

67. We note the correct interpretation adopted in two other judgments from the Bombay High Court, where the Court permitted unmarried petitioners to abort, after purposively construing the effects of carrying an unwanted pregnancy on the mental health of a woman. In **XYZ** v. **State of Maharashtra**,[83] an unmarried petitioner aged about 18 years was allowed to terminate her pregnancy in the 26th week after considering her socio-economic condition, and the impact of the continuation of pregnancy on her mental health. In **Siddhi Vishwanath Shelar** v. **State of Maharashtra**,[84] a twenty-three year old petitioner contended that she was not mentally ready to be an unwed mother and sought the termination of her pregnancy of approximately twenty-three weeks. The Petitioner was engaged in a consensual relationship but had since parted ways from her partner, and thus wanted to terminate the unwanted pregnancy. While permitting the abortion, the High Court of Bombay observed that insisting upon continuance of pregnancy would involve a grave injury to the petitioner's health. The High Court took note of the woman's submissions regarding her actual and foreseeable environment.

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

[81] 2021 SCC Online Bom 1839
[82] 2021 SCC Online Bom 1839, at paragraph 22
[83] Judgment dated 6 October 2021 in WP(L) 21977 of 2021 (Bombay High Court)
[84] 2020 SCC OnLine Bom 11672

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.

71. Married women may also form part of the class of survivors of sexual assault or rape. The ordinary meaning of the word 'rape' is sexual intercourse with a person, without their consent or against their will, regardless of whether such forced intercourse occurs in the context of matrimony. A woman may become pregnant as a result of non-consensual sexual intercourse performed upon her by her husband. We would be remiss in not recognizing that intimate partner violence is a reality and can take the form of rape. The misconception that strangers are exclusively or almost exclusively responsible for sex- and gender-based violence is a deeply regrettable one. Sex- and gender-based violence (in all its forms) within the context of the family has long formed a part of the lived experiences of scores of women.

72. Existing Indian laws recognize various forms of familial violence – the PreConception and Pre-Natal Diagnostic Techniques Act 1994 criminalises the communication of the sex of the foetus to the pregnant woman or her relatives. Section 498A of the IPC criminalises physical, mental, and emotional abuse. The Dowry Prohibition Act 1961 criminalises the giving and taking of dowry (a form of economic and social violence). Physical abuse or sexual abuse by family members and female infanticide are also criminalized under the IPC. Marital assault merely forms a part of a long list of deeds that amount to violence in the context of the family.

73. It is not inconceivable that married women become pregnant as a result of their husbands having "raped" them. The nature of sexual violence and the contours of consent do not undergo a transformation when one decides to marry. The institution of marriage does not influence the answer to the question of whether a woman has consented to sexual relations. If the woman is in an abusive relationship, she may face great difficulty in accessing medical resources or consulting doctors.

74. It is only by a legal fiction that Exception 2 to Section 375 of the IPC removes marital rape from the ambit of rape, as defined in Section 375. Understanding "rape" under the MTP Act and the rules framed thereunder as including marital rape does not have the effect of striking down Exception 2 to Section 375 of the IPC or changing the contours of the offence of rape as defined in the IPC. Since the challenge to Exception 2 to Section 375 of the IPC

is pending consideration before a different Bench of this Court, we would leave the constitutional validity to be decided in that or any other appropriate proceeding.

75. Notwithstanding Exception 2 to Section 375 of the IPC,[85] the meaning of the words "sexual assault" or "rape" in Rule 3B(a) includes a husband's act of sexual assault or rape committed on his wife. The meaning of rape must therefore be understood as including marital rape, solely for the purposes of the MTP Act and any rules and regulations framed thereunder. Any other interpretation would have the effect of compelling a woman to give birth to and raise a child with a partner who inflicts mental and physical harm upon her.

76. In order to avail the benefit of Rule 3B(a), the woman need not necessarily seek recourse to formal legal proceedings to prove the factum of sexual assault, rape or incest. Neither Explanation 2 to Section 3(2) nor Rule 3B(a) require that the offender be convicted under the IPC or any other criminal law for the time being in force before the pregnant woman can access an abortion. Further, there is no requirement that an FIR must be registered or the allegation of rape must be proved in a court of law or some other forum before it can be considered true for the purposes of the MTP Act. Such a requirement would be contrary to the object and purpose of the MTP Act. In fact, Explanation 2 triggers the legal presumption as to mental trauma "where any pregnancy is **alleged** by the pregnant woman to have been caused by rape."

77. Rule 3B(b) includes minors within the category of women who may terminate their pregnancy up to twenty-four weeks. They have been included in the list of special categories of women because adolescents who engage in consensual sexual activity may be unaware that sexual intercourse often results in pregnancy or be unable to identify the signs of a pregnancy. The Protection of Children from Sexual Offences Act 2012[86] is gender neutral and criminalizes sexual activity by those below the age of eighteen. Under the POCSO Act, factual consent in a relationship between minors is immaterial. The proscription contained in the POCSO Act does not – in actuality – prevent adolescents from engaging in consensual sexual activity. We cannot disregard the truth that such activity continues to take place and sometimes leads to consequences such as pregnancy. The legislature was no doubt alive to this fact when it included adolescents within the ambit of Rule 3B of the MTP Rules.

78. The absence of sexual health education in the country means that most adolescents are unaware of how the reproductive system functions as well as how contraceptive devices and methods may be deployed to prevent pregnancies. The taboos surrounding pre-marital sex prevent young adults from attempting to access contraceptives. The same taboos mean that young girls who have discovered the fact that they are pregnant are hesitant to reveal this to their parents or guardians, who play a crucial role in accessing medical assistance and intervention.

79. Furthermore, Section 19(1) of the POCSO Act requires that any person, including a child, who has knowledge of the commission of an offence punishable under the POCSO Act, or an apprehension that such an offence may be committed, is mandatorily required to provide information to the Special Juvenile Police Unit or the local police. Section 19(2) of the POCSO Act stipulates that every such report under Section 19(1) shall be ascribed an entry number and recorded in writing, read over to the informant, and entered in a book to be kept by the police unit. Failure to report, as mandated by Section 19, is a punishable

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[85] *See* Exception 2 to Section 375, IPC – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. It is to be noted that in Independent Thought v. Union of India (2017) 10 SCC 800, this Court read Exception 2 to Section 375 down such that the words "eighteen years" replaced the words "fifteen years" thereby raising the age of consent to eighteen years, notwithstanding the marital status of the woman.
[86] "POCSO Act"

offence under Section 21 of the POCSO Act. Neither the POCSO Act nor the Protection of Children from Sexual Offences Rules 2012 prescribe a template or a format for the report mandated under Section 19(1).

80. When a minor approaches an RMP for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged under Section 19(1) of the POCSO Act to provide information pertaining to the offence committed, to the concerned authorities. An adolescent and her guardian may be wary of the mandatory reporting requirement as they may not want to entangle themselves with the legal process. Minors and their guardians are likely faced with two options – one, approach an RMP and possibly be involved in criminal proceedings under the POCSO Act, or two, approach an unqualified doctor for a medical termination of the pregnancy. If there is an insistence on the disclosure of the name of the minor in the report under Section 19(1) of POCSO, minors may be less likely to seek out RMPs for safe termination of their pregnancies under the MTP Act.

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.

82. As opposed to consensual sexual activity among adolescents, minors are often subjected to sexual abuse by strangers or family members. In such cases, minor girls may (due to their tender age) be unaware of the nature of abuse the abuser or rapist is subjecting them to. In such cases, the guardian of minor girls may belatedly discover the fact of the pregnancy, necessitating the leeway granted by Rule 3B.

83. Rule 3B(d) includes women with physical disabilities within the special category of women. They may face additional complications arising from their disabilities and be unable to carry the pregnancy to term. They may also decide against carrying their pregnancy to term due to any personal difficulties (mental or physical) which may arise from their disability, either directly or indirectly.

84. Women who are mentally ill (including "mental retardation") are covered by Rule 3B(e). It extends to all categories of women who have mental illness. Women with mental illnesses may realize the fact of their pregnancy or determine that they do not want to carry it to term, later than usual. Further, men often sexually assault women with mental illnesses, especially if they have speech or communication disabilities, or reside in psychiatric care facilities. Their speech / communication disability may inhibit them from expressing that somebody has raped them. This may lead to a delay in the discovery of the pregnancy and its termination. This was found to be the case in **X** v. **Union of India**,[87] where a woman with

[87] 2017 SCC OnLine Bom 9334

Down's Syndrome had been raped by an unknown person. Her guardian discovered the pregnancy after the passage of twenty weeks.

85. Rule 3B(f) includes that class of women where foetal anomalies have a substantial risk of being incompatible with life or where the child, if born, may suffer from physical or mental "abnormalities" and be seriously handicapped.

86. Rule 3B(g) comprehends within its fold a change in the material circumstances of the pregnant woman by accounting for pregnant women in "humanitarian settings or disaster or emergency situations." Refugees who have had to flee their homes for any reason or those who find themselves the victims of a natural or man-made disaster, or otherwise in an emergency would fall within the ambit of this rule. They may not realise that they are pregnant due to difficulty in accessing medical facilities. For instance, in **Siddhi Vishwanath Shelar** (supra), the petitioner was unable to visit a doctor due to the lockdown instituted by the government in light of the COVID-19 pandemic and became aware of her pregnancy only after twenty weeks had elapsed.

87. Further, the decision to give birth to and raise a child is necessarily informed by one's material circumstances. By this, we mean the situational, social, and financial circumstances of a woman or her family may be relevant to her decision to carry the pregnancy to term. Those who fall victim to emergencies or disasters may unexpectedly find themselves without a home or separated from their families. They may have lost loved ones. Their livelihood may be adversely affected and they may undergo other deeply impactful changes in their lives, both material and psychological. The possibility that they have suffered grave injuries which alter their mobility or quality of life cannot be discounted. The myriad changes that may take place in the aftermath of a disaster, emergency, or humanitarian crisis cannot be exhaustively listed or envisaged. Each woman's circumstances are unique and we have merely listed (by way of illustration) some of the many potential repercussions of the catastrophes accounted for in Rule 3B(g).

88. A woman in such situations may have decided to have a child before the emergency or disaster which changed her material circumstances. However, this change may understandably impact each woman's evaluation of her ability to raise a child as well as her willingness to carry the pregnancy to term. While many women may decide to carry the pregnancy to term, others may no longer find the pregnancy to be a viable or practical option. It is ultimately the prerogative of each woman to evaluate her life and arrive at the best course of action, in view of the changes to her material circumstances.

89. Rule 3B(c) states that a "change in the marital status during the ongoing pregnancy (widowhood and divorce)" renders women eligible for termination of their pregnancy under Section 3(2)(b). The impact of the continuance of an unwanted pregnancy on a woman's physical or mental health should take into consideration various social, economic, and cultural factors operating in her actual or reasonably foreseeable environment, as provided in Section 3(3). The rationale behind Rule 3B(c) is comparable to the rationale for Rule 3B(g) i.e., a change in a woman's material circumstances during the ongoing pregnancy.

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.

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.

F. Constitutional values animating the interpretation of the MTP Act and the MTP Rules

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.

[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

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.

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**,[91] 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:

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[90] ZAKIYA LUNA, REPRODUCTIVE RIGHTS AS HUMAN RIGHTS: WOMEN OF COLOR AND FIGHT FOR REPRODUCTIVE JUSTICE (NYU Press, 2020)
[91] (2017) 10 SCC 1
[92] KS Puttaswamy v. 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**[94] 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]

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

[93] Puttaswamy, at paragraph 373
[94] (2009) 9 SCC 1
[95] Puttaswamy, at paragraph 82

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.[97] 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**,[98] this Court observed that right to privacy protects decisional autonomy in matters related to bodily integrity:

"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 wellbeing.

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-monthold 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

[96] Puttaswamy, at paragraph 248
[97] Puttaswamy, at paragraph 298
[98] (2018) 5 SCC 1

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 decisionmaker 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 selfdetermining 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**,[99] 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**,[100] 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 necessaries 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."

[99] (1973) 4 SCC 225
[100] (1981) 1 SCC 608

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."

114. In **Navtej Singh Johar** (supra), this Court read down Section 377 of the IPC insofar as it criminalized consensual sexual conduct between adults of same sex. Importantly, this Court also recognised that the members of the LGBTQ+ community are entitled to a full range of constitutional rights protected under the Constitution, including the right to dignity. Dipak Misra, CJ indicated the importance of dignity:

"144. Dignity is that component of one's being without which sustenance of his/her being to the fullest or completest is inconceivable. In the theatre of life, without possession of the attribute of identity with dignity, the entity may be allowed entry to the centre stage but would be characterised as a spineless entity or, for that matter, projected as a ruling king without the sceptre. The purpose of saying so is that the identity of every individual attains the quality of an "individual being" only if he/she has the dignity. **Dignity while expressive of choice is averse to creation of any dent. When biological expression, be it an orientation or optional expression of choice, is faced with impediment, albeit through any imposition of law, the individual's natural and constitutional right is dented. Such a situation urges the conscience of the final constitutional arbiter to demolish the obstruction and remove the impediment so as to allow the full blossoming of the natural and constitutional rights of individuals. This is the essence of dignity and we say, without any inhibition, that it is our constitutional duty to allow the individual to behave and conduct himself/herself as he/she desires and allow him/her to express himself/herself, of course, with the consent of the other. That is the right to choose without fear. It has to be ingrained as a necessary prerequisite that consent is the real fulcrum of any sexual relationship**."

(emphasis supplied)

115. In **Independent Thought** v. **Union of India**,[101] this Court held that sexual intercourse with a girl below 18 years of age is rape regardless of whether or not she is married. This Court emphatically rejected the argument that the state had a compelling state interest in preserving the institution of marriage (even child marriages), and observed that the impact of Exception 2 to Section 375 IPC has to be considered with the social realities of the present. It is important to note that the broader issue of marital rape of adult women was not dealt with since the issue was not specifically raised in that case. In the context of right to dignity, it was observed:

[101] (2017) 10 SCC 800

"90. We must not and cannot forget the existence of Article 21 of the Constitution which gives a fundamental right to a girl child to live a life of dignity. The documentary material placed before us clearly suggests that an early marriage takes away the self-esteem and confidence of a girl child and subjects her, in a sense, to sexual abuse. Under no circumstances can it be said that such a girl child lives a life of dignity. The right of a girl child to maintain her bodily integrity is effectively destroyed by a traditional practice sanctified by IPC. Her husband, for the purposes of Section 375 IPC, effectively has full control over her body and can subject her to sexual intercourse without her consent or without her willingness since such an activity would not be rape. Anomalously, although her husband can rape her but he cannot molest her for if he does so he could be punished under the provisions of IPC. This was recognised by LCI in its 172nd Report but was not commented upon. It appears therefore that different and irrational standards have been laid down for the treatment of the girl child by her husband and it is necessary to harmonise the provisions of various statutes and also harmonise different provisions of IPC inter se."

116. In the context of abortion, the right to dignity entails recognising the competence and authority of every woman to take reproductive decisions, including the decision to terminate the pregnancy. Although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the state. The right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical wellbeing also injures the dignity of women.

G. Purposive interpretation of Rule 3B furthers the constitutional mandate

117. Where two constructions of a provision are possible, courts ought to prefer the construction which gives effect to the provision rather than rendering the provision inoperative.[102] Courts must prefer a construction which is in favour of the constitutionality of the statutory provision.[103] A narrow, strict interpretation of a statutory provision which runs counter to the constitutional mandate should be avoided.

118. It seems to us that to give Rule 3B a restrictive and narrow interpretation would render it perilously close to holding it unconstitutional, for it would deprive unmarried women of the right to access safe and legal abortions between twenty and twenty-four weeks if they face a change in their material circumstances, similar to married women.

119. The Constitution Bench in **Express Newspapers Ltd** v. **Union of India**,[104] gave a wider meaning to Section 9(1) of the Working Journalists (Condition of Service) and Miscellaneous Provision Act 1955,[105] to avoid rendering it unconstitutional. The Working Journalists Act provides for the relevant criteria for the fixation of the rate of wages. The petitioners in that case argued that the Working Journalists Act imposed unreasonable restrictions on the freedom to carry on business *inter alia* on the ground that the capacity of the industry to pay was not set out as one of the criteria in the fixation of wages by the Wage Board. This Court held that the capacity of the industry to pay was one of the essential circumstances which should be taken into consideration for fixation of rate of wages, higher than the bare subsistence or minimum wage.

120. In **Githa Hariharan** v. **Reserve Bank of India**,[106] a three-Judge Bench of this Court had to interpret the term "after him" in Section 6(a) of the Hindu Minority and Guardianship

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[102] JUSTICE G.P SINGH, G.P. SINGH: PRINCIPLES OF STATUTORY INTERPRETATION, (LEXISNEXIS, 2016), at page 48; CIT v. S. Teja Singh, AIR 1959 SC 352; M. Pentiah v. Veeramallappa Muddal, 1961 (2) SCR 295; Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709

[103] K.P. Varghese v. ITO, (1981) 4 SCC 173; M.L. Kamra v. Chairman-cum-Managing Director, New India Assurance Co. Ltd, 1992 SCR(1) 220

[104] 1959 SCR 12, AIR 1958 SC 578

[105] "Working Journalists Act"

[106] (1999) 2 SCC 228

Act 1956, which provides that the natural guardian of a Hindu minor, in the case of a boy or an unmarried girl, is "the father and after him the mother." This Court interpreted "after him" to mean "in the absence of" to further the constitutional mandate of gender equality as enshrined in Article 14 and Article 15 of the Constitution. This Court stated that narrowly interpreting the phrase to mean a disqualification of a mother to act as a guardian during the lifetime of the father, would have made the section unconstitutional for violating the constitutional prohibition against discrimination on the grounds of sex.

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.

122. In view of the purposive interpretation accorded to Rule 3B, we are not required to adjudicate upon its constitutional validity.

H. India's obligations under international law

123. Article 51 of the Constitution requires the state to foster respect for international law and treaty obligations in the dealings of organised people with one another. The Protection of Human Rights Act 1993 recognises and incorporates international conventions and treaties as part of Indian human rights law.[107] International human rights norms contained in treaties and covenants ratified by India are binding on the state to the extent that they elucidate and effectuate the fundamental rights guaranteed by the Constitution.[108]

124. Article 6 of the International Covenant on Civil and Political Rights recognises and protects the inherent right to life of all human beings. The UN Human Rights Committee has remarked that, in terms of Article 6, State Parties have the responsibility to provide safe, legal, and effective access to abortion.[109] Further, it was suggested that State Parties should disseminate quality and evidence-based information and education about sexual and reproductive health to prevent stigmatisation of women and girls seeking abortion.

125. India has also ratified the International Covenant on Economic, Social and Cultural Rights,[110] which enumerates in detail the right to mental and physical health. The Committee on Economic, Social and Cultural Rights in their comment on Article 12 of ICESCR has

[107] Section 2(1)(d), Protection of Human Rights Act 1993
[108] People's Union of Civil Liberties v. Union of India, (1997) 3 SCC 433
[109] Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36 (30 October 2018)
[110] "ICESCR"

observed that the right to sexual and reproductive health is an integral part of the right to the highest attainable physical and mental health.[111]

126. India has ratified the Convention on the Elimination of All Forms of Discrimination against Women.[112] Article 12 of CEDAW requires the State Parties to take appropriate measures to eliminate discrimination against women in the field health care services in connection with family planning, pregnancy, confinement, and post-natal period. Similarly, Article 16 urges State Parties to eliminate all forms of discrimination against women and to ensure that they have the same right to decide freely and responsibly on the number and spacing of children and access the relevant information to effectively exercise these rights.

127. The UN Committee on the Elimination of Discrimination Against Women emphasized that State Parties should undertake appropriate measures to eliminate discrimination against women in their access to health-care services, particularly in areas of family planning, pregnancy and confinement, and post-natal period.[113] It is also urged that State Parties should refrain from imposing barriers on women who seek to pursue their right to access healthcare, including reproductive healthcare.

128. India's obligations under international law require the state to bring the MTP Act in conformity with said obligations. The reproductive rights of women must be harmonised in light of the principles laid down under the Constitution as well as the principles of international law codified in the various international conventions ratified by India. Our interpretation of the MTP Act and the MTP Rules furthers India's obligations under international law. However, the state must act proactively in order to ensure that women in India are able to actualize their right to reproductive health and healthcare, in line with the obligations assumed by the country under international law.

I. Reiterating the positive obligations of the state

129. True realization of reproductive autonomy is possible only by addressing problems in the societal contexts within which individuals, particularly women, are situated. It is not only social stigma which prevents women from realizing the right to health but also caste and economic location. The cost of an abortion at a private hospital may be prohibitive for those whose monthly salaries are a fraction of that cost. Public hospitals in rural areas are often not equipped with the resources to provide the kind and quality of healthcare that ought to be provided free of cost or at highly subsidized rates. A lack of awareness about the resources that public hospitals offer coupled with the discriminatory attitudes of many health providers only serve to exacerbate this problem.

130. The MTP Act recognises the reproductive autonomy of every pregnant woman to choose medical intervention to terminate her pregnancy. Implicitly, this right also extends to a right of the pregnant woman to access healthcare facilities to attain the highest standard of sexual and reproductive health. It is meaningless to speak of the latter in the absence of the former. Reproductive health implies that women should have access to safe, effective, and affordable methods of family planning and enabling them to undergo safe pregnancy, if they so choose.

131. The Directive Principles of State Policy in Part IV of the Constitution lay down the fundamental principles in the governance of the country and press upon the state to apply

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[111] Economic and Social Council, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22 (2 May 2016)

[112] [112] "CEDAW"

[113] Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), A/54/38/Rev.1, chap. I (1999)

them while making laws. Article 38(2) of the Constitution requires the state to promote the welfare of people and eliminate inequalities in opportunities:

"Article 38. State to secure a social order for the promotion of welfare of the people - ***

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

132. Article 47 of the Constitution contains a call to the state to improve public health:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health – The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about the prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

133. In **Devika Biswas** v. **Union of India**,[114] the petitioners challenged the mass sterilisation program that was implemented by the government in highly unsanitary conditions. This Court recognized the need to respect and protect different facets of reproductive health as delineated in international human rights law. It noted that government policies affecting reproductive freedoms must be aimed at remedying the systemic discrimination prevailing in society and ensuring substantive equality. In **Paschim Banga Khet Mazdoor Samiti** v. **State of West Bengal**,[115] this Court observed that Article 21 imposes an obligation on the state to safeguard the right to health and the right to life of every person. It was held that this constitutional obligation exhorts the state to provide adequate medical services to the people and to ensure timely medical treatment to everyone. The above conspectus of cases reveals that the state has a positive obligation under Article 21 to protect the right to health, and particularly reproductive health of individuals. In terms of reproductive rights and autonomy, the state has to undertake active steps to help increase access to healthcare (including reproductive healthcare such as abortion).

134. The state must ensure that information regarding reproduction and safe sexual practices is disseminated to all parts of the population. Further, it must see to it that all segments of society are able to access contraceptives to avoid unintended pregnancies and plan their families. Medical facilities and RMPs must be present in each district and must be affordable to all. The government must ensure that RMPs treat all patients equally and sensitively. Treatment must not be denied on the basis of one's caste or due to other social or economic factors. It is only when these recommendations become a reality that we can say that the right to bodily autonomy and the right to dignity are capable of being realized.

135. We clarify that nothing in this judgment must be construed as diluting the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994.

136. We dispose of the present appeal in terms of the reasons stated above. The writ petition before the High Court shall accordingly stand disposed of.

137. Pending applications, if any, stand disposed of.

[114] (2016) 10 SCC 726
[115] (1996) 4 SCC 37