



## MEDICAL TERMINATION OF PREGNANCY

### An Autonomous Right of Woman

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#### Background

A 25-year-old unmarried woman moved the Supreme Court seeking medical termination of her pregnancy, being in an advanced stage as her partner had refused to marry her at the last stage. *The relief was sought from the apex Court as the Delhi High Court had earlier declined her plea for abortion on 15 July 2022.* She learnt that she was pregnant in June 2022 but decided to terminate her pregnancy as her relationship had failed. 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 denial by the Delhi High Court was based on the court’s interpretation of **Rule 3B of the Medical Termination of Pregnancy (Amendment) Rules, 2021 (MTP Rules)** (*see Box*). *The High Court had ruled that the petitioner, who is an unmarried woman whose pregnancy arises out of a consensual relationship, is not covered by any of the clauses of Rule 3B of the MTP Rules.*

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In its interim order on the Special Leave Petition dated 21 July 2022<sup>1</sup>, the Supreme Court allowed the woman to terminate her pregnancy by abortion. In the final order dated 29 September 2022, the apex Court laid down the principle of autonomy of every woman in accessing medical termination of her pregnancy.

### Rule 3B of the MTP (Amendment) Rules 2021

**Rule 3B\*** lays down the categories of women eligible for termination of pregnancy up to 24 weeks.

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

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

(\* inserted after **Rule 3 of the MTP Rules, 2003**)

### The Supreme Court Judgment<sup>2</sup>

In its milestone judgment dated 29 September 2022, the Supreme Court bench of Justices D.Y. Chandrachud, A.S. Bopanna and J.B. Pardiwala ruled that all women, irrespective of their marital status, are entitled to a safe and legal abortion up to 24 weeks of their pregnancy as the MTP Act recognises the reproductive autonomy of every pregnant woman to choose medical intervention to terminate her pregnancy.

*The Supreme Court in its interim order dated 21 July 2022 noted that as per the MTP (Amendment) Act 2021, “the phrase ‘married woman’ was replaced by ‘any woman’ and the word ‘husband’ was replaced by ‘partner’. But evidently, there is a gap in the law: while Section 3 travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules does not envisage a situation involving unmarried women..... Parliament by amending the MTP Act through Act 8 of 2021 intended to include unmarried women and single women within the ambit of the Act”. The apex court accordingly plugged the deficiency in the interpretation of the MTP Act.*

<sup>1</sup> [https://main.sci.gov.in/supremecourt/2022/21815/21815\\_2022\\_4\\_33\\_36536\\_Judgement\\_21-Jul-2022.pdf](https://main.sci.gov.in/supremecourt/2022/21815/21815_2022_4_33_36536_Judgement_21-Jul-2022.pdf)

<sup>2</sup> [https://main.sci.gov.in/supremecourt/2022/21815/21815\\_2022\\_2\\_1501\\_38628\\_Judgement\\_29-Sep-2022.pdf](https://main.sci.gov.in/supremecourt/2022/21815/21815_2022_2_1501_38628_Judgement_29-Sep-2022.pdf)

The Centre, represented by Additional Solicitor General (ASG), told the top court that discrimination, if any, is not in the MTP (Amendment) Act 2021 passed by Parliament and that categorisation has been provided in the relevant Rules to avoid the misuse of laws including the **Pre-Conception and Pre-Natal Diagnostic Techniques (PC-PNDT) Act, 1994** due to sex determination of the foetus.

### (a) Extension of abortion right to single, unmarried women

- Delivering its judgment, the bench said that the right to reproductive choice for women is a facet of the right to personal liberty under Article 21 of the Constitution. *“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,”* the judgment said.
- Construing Rule 3B, the apex court noted that **“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 ..... 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”*.
- The Bench, which went into the provisions of the **MTP Act of 1971 and its 2021 amendment**, said “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”.
- The Bench said that “the impact of the consequence 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
- The court noted that due to a widespread misconception that termination of pregnancies of unmarried women is illegal in India, a woman and her partner might resort to carrying out abortion by unlicensed medical practitioners, leading to a heightened risk of complications and maternal mortality.
- The top court added that while much of the MTP Act’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 pre-condition to the rights of individuals (alone or in relation to one another)”. *Changing social mores, the court said, must be borne in mind when interpreting the provisions of an enactment to further its object and purpose.*

### (b) Inclusion of marital rape under the MTP Act

- ✓ The SC bench said that the exception permitting abortions between 20 and 24 weeks will also apply to married women since “it is not inconceivable that married women become pregnant as a result of their husbands having raped them” ..... *“We would be remiss in not recognizing that intimate partner violence is the reality and can take the form of rape”*.

✓ *The ruling assumes significance since it signals the first legal recognition of marital rape, although purely within the limited purview of abortion under the MTP Act and any rules and regulations framed thereunder.*

✓ The judgment said that *notwithstanding Exception 2 to Section 375 of the IPC, the meaning of the words “sexual assault” or “rape” in Rule 3B(a) of the MTP Rules 2003, as amended on 12 October 2021, includes a husband’s act of sexual assault or rape committed on his wife.* To terminate pregnancy, a married woman need not seek registration of FIR against her spouse.

### **(c) Exemption to medical practitioners from disclosing identity of the Minor**

❖ The **Protection of Children from Sexual Offences Act 2012 (POCSO)** criminalises sexual activity with anyone below the age of 18 years. The court observed that women under 18 engaging in consensual sexual activity ought to have access to safe abortions from a registered medical practitioner (RMP). Standing in the way of this is a mandatory obligation under **Section 19(1) of POCSO**, wherein a RMP is obliged to report to the police when a minor approaches him or her for an abortion.

❖ It said that in many cases minors and their guardians opt to go to an unqualified doctor for abortion rather than risk being involved in criminal proceedings following a report under Section 19(1) of the POCSO Act.

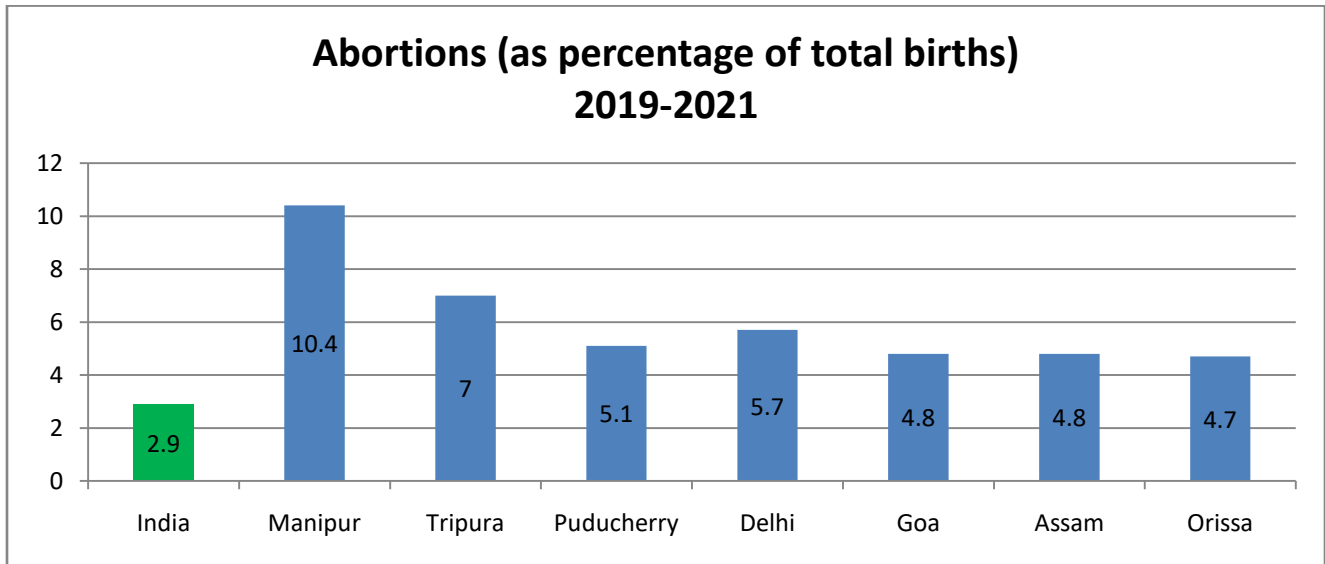
❖ The court noted that the MTP Act recognizes minors as a special category entitled to an abortion up to 24 weeks. *“For the limited purposes of providing medical termination of pregnancy in terms of the MTP Act, we clarify that the RMP, only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act,”* the court ordered.

### **The Medical Termination of Pregnancy Act**

The **Medical Termination of Pregnancy Act, 1971**<sup>3</sup> (Principal Act) was enacted for providing termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. In view of the relatively lower risk in medical termination of pregnancy than before owing to advancement in medical sciences, the need to amend the Act was felt due to growing demand for increasing the gestational limit for terminating pregnancies for wishing women.

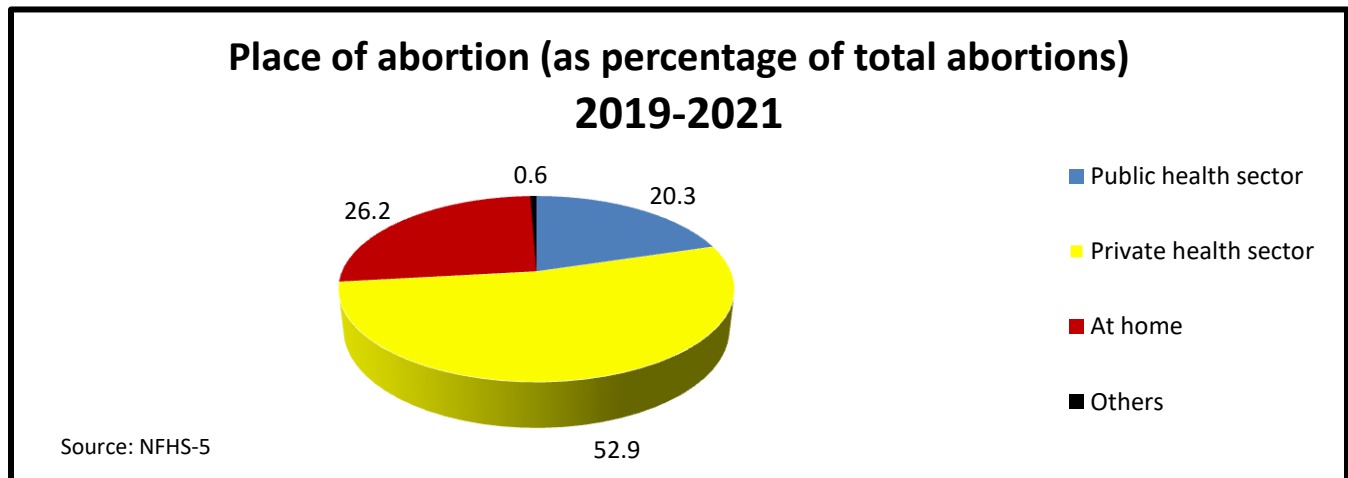
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<sup>3</sup> [https://legislative.gov.in/sites/default/files/A1971-34\\_1.pdf](https://legislative.gov.in/sites/default/files/A1971-34_1.pdf)



Source: National Family Health Survey (NFHS-5)

Eventually, with a view towards increasing the well-being of women and to enlarge the ambit and access of women to safe and legal abortion, the MTP (Amendment) Bill, 2020<sup>4</sup> was passed by Lok Sabha on 17 March, 2020 and by Rajya Sabha on 16 March, 2021. The **MTP (Amendment) Act, 2021** received the President's assent on 25 March, 2021 and the **Rules**<sup>5</sup> pertaining to the Amendment Act were notified on 12 October, 2021 (see rule 3B supra) to amend the **MTP Rules, 2003**.



### Parliamentary Debate on the Bill

During the debate on the Bill in Lok Sabha on 17 March 2020, Members expressed their overwhelming support to the proposed Bill. When both Houses of Parliament passed the MTP Act last year, the debating Members rightly made no distinction between married and unmarried women and substituted the word “husband” in the Principal Act with “partner”.

<sup>4</sup> <http://164.100.47.193/BillsPDFFiles/Notification/2020-55-gaz.pdf>

<sup>5</sup> <https://egazette.nic.in/WriteReadData/2021/230390.pdf>

### Excerpts from the Parliamentary Debate

- India will now stand amongst nations with a highly progressive law, which allows legal abortions on a broad range of therapeutic, humanitarian and social grounds.
- According to 2017 data, 59 countries allowed elective abortions, of which only seven permitted the procedure after 20 weeks like Canada, China, the Netherlands, North Korea, Singapore, the United States, and Vietnam. Now, India has joined them.
- Criminalisation stigmatizes abortions.....This stigmatization forces women to seek unsafe abortions which are often carried out at unregistered facilities by unqualified practitioners.
- The issue of unwed pregnancies is a key issue that needs urgent attention. Modern times bring about new problems and handling them needs to be modern as well.
- The Bill also applies to unmarried women and therefore, relaxes one of the regressive clauses of the 1971 Act.
- In our country today 56 per cent of abortions are unsafe; out of 6.4 million annual abortions in India, 3.6 million are unsafe resulting in 13 per cent maternal deaths in India. So, to prevent these maternal deaths, we need safe abortion.
- This Bill assumes greater significance as the **Sustainable Development Goal for India** which aims to bring down the maternal mortality ratio from the current level of 122 per lakh live births to 70 per lakh live births by 2030.
- We are now among the countries with the highest upper gestational limit, and that is truly commendable.

### Report of the Committee on Empowerment of Women (2020-2021)

In the Fourth Report of the Committee on Empowerment of Women (2020-2021) (presented to Lok Sabha on 12 February 2021) regarding Action Taken by the Government on the earlier Committee's recommendations on 'Women's Healthcare: Policy Options', the Ministry of Health and Family Welfare in its reply, *inter alia*, states:

*"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."*

<b>Details of Abortions conducted (Spontaneous and Induced)<sup>6</sup></b>					
	2016-17	2017-18	2018-19	2019-20 (up to December)	Total
<b>All India</b>	<b>973701</b>	<b>1284279</b>	<b>1316595</b>	<b>950349</b>	<b>4524924</b>
A & N Islands	183	338	306	231	1058
Andhra Pradesh	11848	12456	11849	7719	43872
Arunachal Pradesh	818	1736	2175	1850	6579
Assam	96380	114972	127176	93647	432175
Bihar	6575	25516	20299	11120	63510
Chandigarh	2842	3878	3472	2057	12249
Chhattisgarh	20295	34120	32542	26757	113714
Dadra & Nagar Haveli	927	1167	1286	850	4230
Daman & Diu	215	335	440	546	1536
Delhi	38114	43779	43514	31230	156637
Goa	825	1266	1290	1355	4736
Gujarat	28204	42391	41883	28660	141138
Haryana	48437	59603	52749	37334	198123
Himachal Pradesh	9716	9842	12847	8155	40560
Jammu & Kashmir	11825	17869	15617	10845	56156
Jharkhand	19986	26643	25922	20872	93423
Karnataka	39455	53269	58617	46655	197996
Kerala	15810	21633	23633	17484	78560
Lakshadweep	30	109	111	46	296
Madhya Pradesh	49590	71601	76336	58396	255923
Maharashtra	209231	220911	209561	146466	786169
Manipur	4778	6285	5814	3902	20779
Meghalaya	4242	4588	4620	3345	16795
Mizoram	1200	1424	1326	1001	4951
Nagaland	2956	2879	2543	1378	9756
Odisha	55582	59403	63391	46056	224432
Puducherry	1346	2442	2297	1339	7424
Punjab	24040	40214	42768	32450	139472
Rajasthan	51505	77586	84712	66175	279978
Sikkim	586	426	376	239	1627
Tamil Nadu	60359	99336	112431	82670	354796
Telangana	6481	7862	8154	5062	27559
Tripura	3216	3896	3558	2597	13267
Uttar Pradesh	51419	72925	76856	51231	252431
Uttarakhand	7811	7754	8256	5807	29628
West Bengal	86874	133825	137868	94822	453389

<sup>6</sup> Rajya Sabha Unstarred Question No. 277 dated 4<sup>th</sup> February 2020