

HIGH COURT OF MADHYA PRADESH: JABALPUR

Endorsement no. C/1469
III-2-5/09

Jabalpur, dated 24/02/2025

The copy of order dated 20.02.2025 Passed by Hon'ble Division Bench comprising of Hon'ble the Chief Justice Shri Suresh Kumar Kait & Hon'ble Shri Justice Vivek Jain in W.P. 5184/2025 [In Reference (Suo Motu) Vs. The State of Madhya Pradesh & Ors.], is forwarded to;

1. The Registrar cum PPS of Honourable the Chief Justice for kind information of His Lordship;
2. The Registrar General, the Principal Registrar (Judicial), the Principal Registrar (Vigilance) and the Principal Registrar, Bench at Indore and Gwalior High Court of Madhya Pradesh for information and necessary action;
3. The Principal District and Sessions Judges, all in the State, with a request to bring the same into the knowledge of all the Judicial Officers under your kind control for information and necessary compliance of the guidelines issued in the order;
4. District Judge, (Inspection), Jabalpur, Indore and Gwalior for information and necessary action;
5. The Director, Madhya Pradesh State Judicial Academy, Jabalpur for information;
6. The Member Secretary, Madhya Pradesh State Legal Services Authority, High Court of Madhya Pradesh, Jabalpur for information;


24.02.2025

RITURAJ SINGH CHOUHAN
REGISTRAR District Establishment



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 5184 of 2025

IN REFERENCE (SUO MOTU)

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Abhijeet Awasthi – Deputy Advocate General with Shi Anubhav Jain –
Government Advocate for respondents/State.

Reserved on - 11.02.2025
Pronounced on - 20.02.2025

ORDER

Per: Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice:

1. This suo motu writ petition has been registered on account of divergent directions passed by the learned Single Judge, Indore Bench in Writ Petition No.39431 of 2024 (X Vs. The State of Madhya Pradesh & others) vide order dated 12.12.2024, in which certain guidelines have been carved out in order to expedite the cases relating to termination of pregnancy under the Medical Termination of Pregnancy Act, 1971 (for short "the MTP Act"). It was held that these guidelines shall be followed in each and every case whereas the learned Single Judge at Principal Seat,





Jabalpur in Writ Petition No.3491 of 2025 (Prosecutrix X Vs. State of M.P. and others) vide order dated 28.01.2025 regarding matter of termination of pregnancy of rape survivor under the provisions as contained in Section 3 of the Medical Termination of Pregnancy Act, 1971 is of the view that pregnancy may be terminated where the length of pregnancy does not exceed 24 weeks without obtaining the order of the Court. Further held that permission from the Court is only required in cases where the pregnancy is of more than 24 weeks.

2. Taking serious note of procedural delay occurred in the case of rape survivor in Crime No.532/2024 registered at Police Station Mehidpur, District Ujjain and in order to expedite the MTP cases where the time is crucial owing to the provisions as contained in Section 3 of the MTP Act), the Single Bench at Indore in Writ Petition No.39431 of 2024 vide its order dated 12.12.2024 has laid down the procedure in order to ensure that timely legal and medical help reaches to the rape survivor when it is needed the most. The procedure laid down is as follows:-

“Procedure to be adopted by the Police, District Courts and the Registry of this Court:-

It has been directed that henceforth, whenever a case of rape is registered in any police station, the following procedure shall be adopted:-

- (i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant, shall forthwith forward the victim to the concerned District Court;
- (ii) the learned Judge of the District Court, regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the





victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;

- (iii) the District Court, after obtaining the said medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the High Court;
- (iv) the Registry of this Court, in turn, shall register such reference as a Writ Petition under Article 226 of the Constitution, Suo Moto, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by this Court without any undue delay.”

3. Subsequently, the learned Single Judge, Principal Seat at Jabalpur in Writ Petition No.3491 of 2025 vide order dated 28.01.2025 while dealing with matter listed before the Bench in compliance with the directions of aforesaid order dated 12.12.2024 passed in Writ Petition No. 39431 of 2024 by Single Bench at Indore, has held at para no. 5 read with para no.6 that woman, who are survivors of sexual assault or rape or incest, can get their pregnancy terminated upto 24 weeks and order from the Court is not required for termination of pregnancy and pregnancy can be terminated under the provisions of the MTP Act. The learned Single Bench at Jabalpur further held that permission is only required in cases where pregnancy is more than 24 weeks old as termination of such pregnancy is not permissible under Medical Termination of Pregnancy Act, 1971 and in said case, High Court has to exercise its jurisdiction under Article 226 of the Constitution of India for passing orders for termination of pregnancy. The relevant paras of judgment are as follows:-





"2. On going through Provisions of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred as MTP Act 1971), it is found that Section 3 is enabling provision to terminate pregnancy of conditions mentioned in said section. Section 3 protects Doctor who terminates pregnancy from any prosecution. Section 3(2)(A) of MTP Act, 1971 pregnancy can be terminated by registered Medical Practitioner where length of pregnancy does not exceed twenty weeks. Section 3(2)(B) of MTP Act, 1971, pregnancy may be terminated where length of pregnancy does not exceed 24 weeks by two registered Medical Practitioners (RMP). Termination under 3(2)(A) and 3(2)(B) shall only take place, if opinion is formed under Section 3(2)(i) or under Section 3(2)(ii), which are quoted as under:-

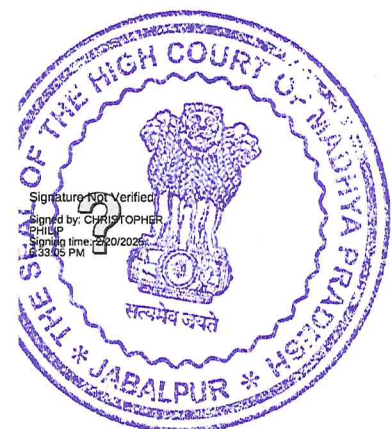
"(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality."

3. Further explanation 2 of Section 3(2) of MTP Act, 1971 lays down that any pregnancy which is alleged by pregnant woman to have been caused by rape, the anguish caused by pregnancy shall be presumed to constitute a grave injury to mental health of a pregnant woman.

4. Considering the Provisions of MTP Act 1971, pregnancy can be terminated by RMP without there being an order of the Court, if case falls within purview of Section 3(2)(A) or under Section 5(1) or under Section 3(2)(B) of MTP Act, 1971.

5. Categories of woman has also been mentioned in Rule 3B of Medical Termination of Pregnancy Rules, who can get their pregnancy terminated upto 24 weeks i.e. woman who are survivors of sexual assault or rape or incest are covered.

6. In all aforesaid cases, order from the Court is not required for termination of pregnancy. Pregnancy can be terminated in all aforesaid cases which are covered within the



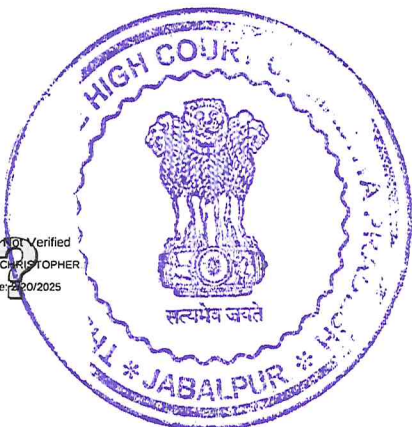


purview of the Act. Permission from the Court is only required in cases where pregnancy is more than 24 weeks old. Termination of such pregnancy is not permissible under Medical Termination of Pregnancy Act, 1971. In said cases, High Court has to exercise its jurisdiction under Article 226 of the Constitution of India for passing orders for termination of pregnancy.”

4. Therefore, it seems that the learned Single Judge at Jabalpur is of the considered view that the woman, who are survivors of sexual assault or rape or incest, can get their pregnancy terminated upto 24 weeks under the provisions of the MTP Act in view of Section 3(2)(A) or under Section 5(1) or under Section 3(2)(B) of MTP Act, 1971 and consequently, order from the Court is not required for termination of pregnancy. The learned Single Judge at Jabalpur is also of the view that permission for termination of pregnancy is only required in cases where pregnancy is more than 24 weeks as termination of such pregnancy is not permissible under the Medical Termination of Pregnancy Act, 1971 and in said case, High Court has to exercise its jurisdiction under Article 226 of the Constitution of India for passing orders for termination of pregnancy.

5. Accordingly, in order to remove the anomaly existing between the learned Single Bench at Indore and Jabalpur in relation to controversy in hand, the questions posed before this Court are :-

(a) what is the permissible procedure for the purpose of termination of pregnancy by the registered medical practitioner under the provisions of Medical Termination of Pregnancy Act, 1971 and rules framed thereunder?; and





(b) whether resort to judicial proceedings under Article 226 of the Constitution of India is necessitated for the termination of pregnancy in each and every case?

6. Before dwelling upon the aforesaid questions, it would be appropriate to delineate the statutory provisions of Section 3 of the MPT Act, 1971:-

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

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

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

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

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

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

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish





caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

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

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

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

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

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

- (a) a Gynaecologist;*
- (b) a Paediatrician;*
- (c) a Radiologist or Sonologist; and*
- (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be.*

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

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen





years, is a 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.”

7. At this stage of the case, it would also be apposite to consider the statutory provisions of Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (as amended in Year 2021) which may be read as under:-

“3B. Women eligible for termination of pregnancy up to twenty-four weeks.—

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

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





8. The aforesaid Rule 3B(a) of the Medical Termination of Pregnancy Rules, 2003 provides that survivors of sexual assault or rape or incest are considered eligible for termination of pregnancy under clause (b) of sub section (2) Section 3 of the Act, which exceeds 20 weeks but does not exceed 24 weeks.

9. Similarly, a pregnancy may be terminated where the length of the pregnancy does not exceed twenty weeks by a registered medical practitioner and where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as prescribed in aforesaid Rule 3B(a) of the Medical Termination of Pregnancy Rules, 2003, by two registered medical practitioners, when he/they is/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;

10. It is also relevant to quote the relevant provisions of Rule 6 of the Protection of Children from Sexual Offences Rules, 2020:-

“6. Medical aid and care.-

(1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, such officer, or as the case may be, the local police shall, within 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care: Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.





(2) *Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.*

(3) *No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.*

(4) *The registered medical practitioner rendering medical care shall attend to the needs of the child, including:*

(a) *treatment for cuts, bruises, and other injuries including genital injuries, if any;*

(b) *treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;*

(c) *treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;*

(d) *possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,*

(e) *wherever necessary, a referral or consultation for mental or psychological health needs, or other counseling, or drug de-addiction services and programmes should be made.*

(5) *The registered medical practitioner shall submit the report on the condition of the child within 24 hrs to the SJPU or Local Police.*

(6) *Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.*

(7) *If the child is found to be pregnant, then the registered medical practitioner shall counsel the child, and her parents or guardians, or support person, regarding the various lawful*





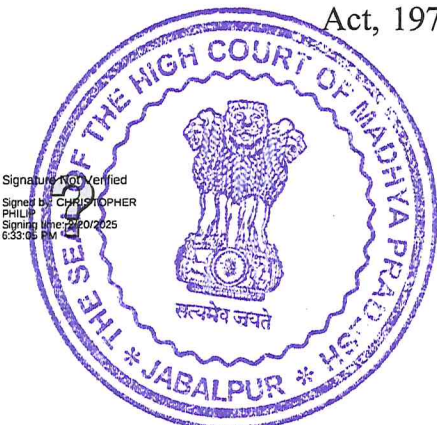
options available to the child as per the Medical Termination of Pregnancy Act 1971 and the Juvenile Justice (Care and Protection of Children) Act 2015 (2 of 2016).

(8) If the child is found to have been administered any drugs or other intoxicating substances, access to drug deaddiction programme shall be ensured.

(9) If the Child is a divyang (person with disability), suitable measure and care shall be taken as per the provisions of The Rights of Persons with Disabilities Act, 2016 (49 of 2016).”

11. In view of aforementioned legal provisions, this Court is of the considered opinion that in case of survivors of sexual assault or rape or incest, the pregnancy upto 20 weeks may be terminated by a registered medical practitioner and where the pregnancy exceeds 20 weeks but does not exceed 24 weeks, by two registered medical practitioners in accordance with the provisions of Section 3 of the Medical Termination of Pregnancy Act, 1971 and rules framed thereunder without taking resort to judicial proceedings before the High Court under Article 226 of the Constitution of India. It is also relevant to mention herein that Rule 6(3) of the Protection of Children from Sexual Offences Rules, 2020 also enjoins upon the medical practitioner, hospital or other medical facility center rendering emergency medical care to a child not to demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

12. This Court is of the considered opinion that in case of survivors of sexual assault or rape or incest, where the pregnancy exceeds 24 weeks, permission from the High Court is required and termination of such pregnancy is not permissible under Medical Termination of Pregnancy Act, 1971. In such cases, High Court may exercise its jurisdiction under





Article 226 of the Constitution of India for passing orders for termination of pregnancy;

13. Taking note of the orders passed by the Indore Bench and the Principal Seat, Jabalpur in the aforesaid petitions, we are inclined to lay down the following procedures covering both the situations viz. when the pregnancy is upto 24 weeks and where the pregnancy is more than 24 weeks in order to streamline the procedure to ensure timely legal and medical help to such victims:-

(a) **SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is upto 24 Weeks:-**

Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is not more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;

(ii) The learned Judge of the District Court, preferably Special Judge/POCSO, regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously examine the case of the victim for termination of pregnancy in the light of the statutory mandates as engrafted in Section 3(2)(a) or Section 3(2)(b) of the Medical Termination of Pregnancy Act 1971 & The





Medical Termination of Pregnancy Rules, 2003 framed thereunder;

(iii) The concerned medical officer/Board is expected to examine the case so referred expeditiously and accordingly terminate the pregnancy, if the same is permissible in consonance with the aforesaid statutory provisions of Medical Termination of Pregnancy Act 1971 and rules framed thereunder, in a time bound manner preferably within three days from the date of making such referral after obtaining consent of victim or guardian as required by Section 3(4) of the MPT Act;

(iv) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention, medical facilities and other specialist doctors, if required, will be made available to the victim;

(v) The post operative care, upto the extent required, will be extended to the victim;

(vi) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

It is, however, clarified that the concerned medical officer/Board rendering such emergency medical care to rape survivor, is enjoined not to demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care in the same manner as the said necessity is obviated in the case of child rape survivor under the statutory mandates of Rule 6(3) of Protection of Children from Sexual Offences Rules, 2020;





(b) **SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is exceeding 24 Weeks:-**

Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-

- (i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;
- (ii) The learned Judge of the District Court preferably Special Judge/POCSO), regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;
- (iii) The District Court, preferably Special Judge/POCSO, after obtaining the said medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the High Court;
- (iv) The Registry of High Court, in turn, shall register such reference as a Writ Petition under Article 226 of the Constitution, Suo Motu, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by the High Court without any undue delay;
- (v) If directed by the High Court that termination of pregnancy is required then, the procedure of termination of





pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors;

(vi) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to the victim;

(vii) The post operative care, upto the extent required, will be extended to the victim;

(viii) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

14. Needless to mention here that nothing in the aforesaid SOPs shall be construed as to abridge or limit the power of the concerned medical officer/Board to terminate the pregnancy in the cases where the termination of pregnancy of woman is necessitated in accordance with the provisions of the Section 3(2B) and Section 5(1) or other applicable provisions of the Medical Termination of Pregnancy Act, 1971.

15. It is also directed that any forensic evidence/foetus collected in the course of termination of pregnancy must be preserved for DNA profiling or other investigative purposes in the same manner as provided under Rule 6(6) of the Protection of Children from Sexual Offences Rules, 2020.





16. It is further directed that the privacy of the victim be maintained strictly in view of statutory provisions of Section 5A of the Medical Termination of Pregnancy Act 1971.

17. In view of above, all the concerned are directed to ensure strict compliance of the aforesaid guidelines in letter and spirit, failing which shall amount to contemptuous act on the part of the erring officer and the contempt proceeding shall be initiated against the erring officer under the Contempt of Courts Act, 1971.

18. Let a copy of this order be circulated to the Registrar General, Principal Seat Jabalpur and its Benches at Indore and Gwalior, District Courts of State of Madhya Pradesh, Office of the Advocate General, Principal Secretary of Medical and Health Centre and the Director General of Police, Bhopal, who in turn circulate to all the Police Stations for its proper compliance.

19. In view of aforesaid directions, this reference petition stands disposed of.

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(SURESH KUMAR KAIT)
CHIEF JUSTICE

sd-

(VIVEK JAIN)
JUDGE

