

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition (ST) NO. 36727 OF 2017**

Shaikh Ayesha Khatoon,

Room No.112A, Millate Azad

Welfare Society, Ambuj Wadi,

Azad Nagar, Malwani,

Malad (W), Mumbai – 400 095.

...Petitioner

*Versus*

1. Union of India,

through the Secretary,

Ministry of Law and Justice,

Shastri Bhawan,

“C” Wing, New Delhi-110001.

2. State of Maharashtra,

through the Principal Secretary,

Public Health Services,

Mantralaya, Mumbai 23.

3. Ministry of Health and

Family Welfare,

through its Secretary,

M.H. Division, New Delhi.

..Respondents

....

Ms. Meenaz Kakalia i/b. Kranti L.C., Advocate for the Petitioner.

Mr. N.C. Walimbe, A.G.P, for Respondent No.2 – State.

Ms. Shehnaz V. Bharucha a/w. Ashok Verma, A.A. Ansari, Advocate for Respondent Nos.1 and 3.

....

**CORAM : R.M. BORDE &  
R. G. KETKAR, JJ.**

**DATE : 09<sup>th</sup> JANUARY, 2018**

**ORAL JUDGMENT: [PER R.M. BORDE, J.]**

Heard. Rule. With the consent of the parties, Rule made returnable forthwith and the Petition is taken up for final disposal at the admission stage.

2. The petitioner is a lady undergoing 27<sup>th</sup> week of pregnancy and is praying for issuance of a direction to the respondents to allow her to undergo medical termination of pregnancy at medical facility of her choice and at her expenses. It is the contention of the petitioner that on Sonographical examination of the fetus it was revealed that it (fetus) suffers from several foetal anomalies including a congenital malformation. The report of Sonography dated 18.12.2017 is annexed at Exhibit 'A' to the petition. The Sonologist on examination reported several foetal anomalies as recorded below:

- (a) Inencephaly
- (b) Cerebellar hypoplasia
- (c) Hydranencephaly

- (d) Laryngeal Atresia
- (e) Atrium – Venticular septal defect
- (f) Double outlet single ventricle
- (g) Stomach not visible

3. It is reported that above congenital malformations increased the likelihood of an underlying genetic abnormality which could be ruled out with invasive testing and micro array. It is further reported that considering the number and severity of the malformations; chances of independent intact neonatal survival appear less. In view of the report of the Sonologist, the petitioner has approached this Court seeking relief, as sought above. The petitioner has also requested to refer her for further examination to Medical Committee in order to confirm the diagnosis of the Sonologist and to assist the Court in arriving at a decision as regards the request made by the petitioner in the instant Petition.

4. Considering this, the learned Vacation Bench while directing issuance of notice to the respondents on 2.1.2018 directed respondent No.2 State of Maharashtra to get the petitioner examined by the Medical Board of Sir J.J. Groups of Hospitals, Mumbai consisting of Dean of the hospital, Head of Department (Gynecology), Professor and

Head of Department of Pediatric / Cardiac Surgeon, Professor and Head of Department of Radiology and Psychiatry and any other expert in the field.

5. The petitioner appeared before the Committee and she was medically and radiologically examined on 3.1.2018. The USG impressions recorded in the report are thus :

<b><u>USG Impressions</u></b>	Single live intrauterine gestation of mean gestational age 26 weeks and 5 days with gross polyhydramnios and multiple severe – cranial, complex cardiac and bowel anomalies as described above. Suggest cardiology opinion for the cardiac anomaly and genetic work up for underlying chromosomal anomalies as multiple fetal abnormalities are seen.
-------------------------------	---

6. The observations of Associate Professor of Department of Pediatrics, Professor & Head of Department of Pediatric Surgery, Associate Professor of Department of Neurosurgery as well as the observations of Professor & Head of Department of Radiology and Professor & Head of Department of Psychiatry are as narrated below:

◆ **Observations of Dr. Subhash Walinjar (Associate Professor of Department of Pediatrics) ::**

USG report suggest single live intrauterine gestation of mean gestational age 26 weeks and 5 days with gross polyhydramnios and multiple severe – cranial, complex cardiac and bowel anomalies. In view of this grossly abnormal USG report is a high chance of fetal Morbidity and Mortality.

◆ **Observations of Dr. D.R. Kulkarni (Professor and Head of Department of Pediatric Surgery) ::**

USG report suggest single live intrauterine gestation of mean gestational age 26 weeks and 5 days with gross polyhydramnios and multiple severe – cranial, complex cardiac and bowel anomalies. In view of this grossly abnormal USG report is a high chance of fetal Morbidity and Mortality.

◆ **Observations of Dr. Sachin Giri (Associate Professor of Department of Neurosurgery) ::**

USG finding at Sir J.J. Hospital on 03/01/2018. USG at Sir. J.J. Hospital on 03/01/2018 shows Gross hydrocephalus with paper thin cortex. The lateral ventricles and the third ventricles are dilated. The posterior fossa is Hypoplastic. The head appears large due to excessive fluid. There are associated cardiac & intra-abdominal as well as thoracic anomalies. These findings suggest that there is high chance of morbidity & mortality

◆ **Observations of Dr. Shilpa Domkundwar (Professor & Head of Department of Radiology) ::**

**OBSTETRICS**

PRESENTATION	CEPHALIC PRESENT	AT	UMBILICAL CORD	3 VESSEL NO CORD AROUND NECK,
CARDIAC ACTIVITY	SEEN 145/MIN		FETAL MOVEMENTS	PRESENT
PLACENTA	POSTERIOR		CERVICAL, LENGTH	ADEQUATE, 4 CM
PLACENTAL, THICKNESS	NORMAL, NO RETROPLACENTAL CLOTS		INTERNAL OS	CLOSED

**FINDINGS :**

**Congenital Scan :**

ENTITY	REMARK	ENTITY	REMARK
SKULL	ABNORMAL	B/L KIDNEYS	NORMAL
CVJ	NORMAL	GASTRIC BUBBLE	NOT SEEN
SPINE	NORMAL	BLADDER BUBBLE	PRESENT
BRAIN PARENCHYMA	THINNED OUT	LIMBS VISUALISSED	FOUR
HEART	COMPLEX ABNORMALITY	VESSELS IN CORD	THREE

**Fetal Biometry :**

**AFI : 20CM, POLYHYDRAMNIOS**

BPD	77 mm	31 weeks	0 days
HC	284 mm	31 weeks	1 days
AC	220 mm	26 weeks	4 days
FL	48 mm	26 weeks	1 days
TIB	41 mm	26 weeks	6 days
FIB	39 mm	24 weeks	5 days
HUM	45 mm	26 weeks	5 days
RAD	36 mm	25 weeks	6 days
ULN	40 mm	26 weeks	1 days
MGA		26 weeks	5 days
EFW		1019 +/- 149 gms	EDD 05/04/2018

Gross hydrocephalus is seen with paper thin cortex. The lateral ventricles and the third ventricles are dilated. The posterior fossa is Hypoplastic. The head appears large due to excessive fluid.

There is a small cystic structure with gut signature that shows repeated filling and emptying retrocardiac in location with infradiaphragmatic extension mostly suggestive of stomach herniation into the Mediastinum.

The bowel is not well seen ? Compressed ? Cause. Anal pit is appreciated.

Gross fetal hepatomegaly is seen with abnormal multiple intrahepatic venous channels.

The fetal heart shows complex abnormalities. The LA is Hypoplastic. There is a functional single ventricle with RV configuration and a single atrioventricular valve is appreciated. ASD is seen. The ventricle has double outlet with parallel outflow tracts with ? Functional transposition. The SVC is prominent. Abnormal venous channel is seen to drain into the SVC from the contralateral side with pulmonary venous drainage to it.

The infradiaphragmatic IVC is not appreciated.

Impression : Single live intrauterine gestation of mean gestational age 26 weeks and 5 days with gross polyhydramnios and multiple severe – cranial, complex, cardiac and bowel anomalies as described above. Suggest cardiology opinion for the cardiac anomaly and genetic work up for underlying chromosomal anomalies as multiple fetal abnormalities are seen.

◆ **Observations of Dr. V. P. Kale (Professor & Head of Department of Psychiatry) ::**

No Evidence of any Psychopathology at present.  
She can take her own decision.

7. The Committee has recorded its opinion as narrated below :

“ **COMMITTEE OPINION**

UPON EXAMINATION & AFTER CAREFUL STUDY OF MULTIPLE SONOGRAPHY REPORTS, IT IS CONFIRMED THAT THE FETUS SUFFERS FROM SERIOUS NEUROLOGICAL, CARDIAC & BOWEL ABNORMALITIES WITH A VERY HIGH CHANCE OF MORBIDITY & MORTALITY.

THE WOMAN WAS BEEN EXPLAINED ABOUT THE OUTCOME IN THE LANGUAGE SHE UNDERSTANDS.

THE CONDITION OF THE FETUS FULFILLS THE CRITERIA OF “**SUBSTANTIAL RISK OF SERIOUS PHYSICAL HANDICAP**” IN THE FETUS.

THE PREGNANT WOMAN HAS VOLUNTARILY EXPRESSED HER DESIRE TO TERMINATE THE PREGNANCY AND IS WELL INFORMED ABOUT THE NATURE OF THE CONDITION OF FETUS AND ITS OUTCOME. SHE IS EXTREMELY ANGUISHED WITH THE CONDITION OF THE FETUS INUTERO.

THE PREGNANCY HAS ADVANCED TO 27 WEEKS AND IS BEYOND 20 WEEKS CUT OF THE MEDICAL TERMINATION OF PREGNANCY ACT. HENCE SHE HAS APPROACHED HONOURABLE COURT FOR TERMINATION OF PREGNANCY.

AT THIS STAGE OF A PREGNANCY, THE RISK OF TERMINATION REMAINS THE SAME AS THAT OF NATURAL LABOUR AT TERM.



THUS IF THE COURT PERMITS THE PREGNANCY CAN BE TERMINATED AS DESIRED BY THE WOMAN.”

8. There is a little doubt that there are foetal anomalies reported and the chances of survival of the fetus appear less and there is a substantial risk of severe physical handicap. The learned Counsel appearing on behalf of the petitioner, therefore, urges that this a fit case for according permission to the petitioner to undergo medical termination at the center of her choice.

9. The Medical Termination of Pregnancy Act, 1971 is enacted with a view to providing for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. When the pregnancy is to be terminated by registered medical practitioners has been prescribed in Section 3 of the Act. Sub-section (2) of Section 3 provides that 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 twelve weeks, if such medical practitioner is, or (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are,

of 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 be suffer form such physical or mental abnormalities as to be seriously handicapped.

10. Section 3(2)(b)(i) & (ii) as well as Section 5(1) of the Act of 1971 read thus:

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

(1) xxxx

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

(a) xxxx

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of 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 form such physical or mental abnormalities as to be seriously handicapped.”

**“5. Sections 3 and 4 when not to apply.-- (1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.”**

11. Section 3 of the Act of 1971 thus prescribes the outer limit of 20 weeks in the matter of termination of pregnancy in certain circumstances enumerated in Clauses (i) & (ii) of sub-section 2(b) of Section 3. Section 5 carves out an exception to Sections 3 & 4. It is provided that the provisions of section 4, and **so much of the provisions of sub- section (2) of section 3 as relate to the length of the pregnancy** and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. It is contended relying on the provisions of sub-section (1) of Section 5 by the petitioner that the bar contained in sub-section (2) of Section 3 laying

down the conditions for according permission to terminate the pregnancy is not absolute bar and in appropriate cases such permission can be accorded. Section 5 of the Act of 1971 carves out an exception in relation to the outer limit provided under sub-section (2) of Section 3 of the Act of 1971 i.e. 20 weeks in case where the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. It is the contention of the petitioner that firstly the trauma that the petitioner is likely to suffer is life threatening and it shall be construed that exercise of a choice in the event there are foetal abnormalities found and the chances of survives of the baby, if allowed to take birth, are minimum, is a matter to be considered within the parameters of Section 5 of the Act of 1971. Apart from this, the petitioner contends that the provisions of sub-section (2) including clauses (i) & (ii) of sub-section (2)(b) of Section 3 are required to be read in Section 5 except the outer limit of twenty weeks that has been provided in sub-section (2)(b) of Section 3 of the Act of 1971.

12. The petitioner thus contends that if there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped, it will be open for the Court to accord permission to terminate the pregnancy by taking

recourse to Section 5 of the Act of 1971. It is further contended that the concluding portion of Section 5 prescribing the limitation in permitting such a choice or issuing direction in respect of termination of the pregnancy only in the event to save the life of the pregnant woman shall have to be interpreted harmoniously and looking to the object of the provision. It also needs to be considered that a pregnant woman has a right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. In this context reliance can be placed on the observations of Hon'ble Supreme Court in the matter of *Suchita Srivastava vs. Chandigarh Administration* reported in *2009 (9) SCC 1*. In paragraph-11 of said judgment, it is observed by the Hon'ble Supreme Court as narrated below :

सत्यमेव जयते

“11. A plain reading of the above-quoted provision makes it clear that Indian law allows for abortion only if the specified conditions are met. When the MTP Act was first enacted in 1971 it was largely modelled on the Abortion Act of 1967 which had been passed in the United Kingdom. The legislative intent was to provide a qualified 'right to abortion' and the termination of pregnancy has never been recognised as a normal recourse for expecting mothers. There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's

right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling state interest' in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.”

13. It is further observed that ordinarily a pregnancy can be terminated only when a medical practitioner is satisfied that a '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' [as per Section 3(2)(b)(i) of the Act of 1971] or when 'there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped' [as per Section 3(2)(b)(ii) of the Act of 1971]. It is true that Clauses (i) & (ii) of sub-section 2(b) of Section 3 are attracted in the case where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks. However, as has been recorded above Section 5 permits termination of

pregnancy by a registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman. It shall also have to be construed that Section 5 brings within its ambit the provisions of Section 4 and so much of the provisions of sub-section (2) of Section 3 of the Act of 1971 except the limitation in respect of length of the pregnancy of 20 weeks as provided in sub-section (2)(b) of Section 3 of the Act of 1971. It would thus be logical to conclude that the contingencies referred in Clauses (i) & (ii) of sub-section (2)(b) of Section 3 will have to be read in Section 5 of the Act of 1971 and it would be relevant to consider the threat perception and substantial risk involved if the child were to be born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The contingencies laid down in Clauses (i) & (ii) of sub-section (2)(b) of Section 3 shall therefore equally apply to the request of a pregnant woman seeking permission to terminate the pregnancy beyond 20 weeks and accordingly Section 5(1) will have to be construed, to meet the object and purpose of enactment and to promote cause of justice.

14. As has been recorded above, the freedom of a pregnant woman of making choice of reproduction which is integral part of

“personal liberty”, whether to continue with the pregnancy or otherwise cannot be taken away. It shall also be taken into consideration that besides physical injury, the legislature has widened the scope of the termination of pregnancy by including “a injury” to mental health of the pregnant woman. Thus, if continuance of pregnancy is harmful to the mental health of a pregnant woman, then that is a good and legal ground to allow termination of pregnancy if all the conditions incorporated in legal provision are met. In the instant matter the petitioner claims that it would be injurious to her mental health to continue with the pregnancy since there are severe foetal abnormalities noticed and it would also be violative of her “personal liberty” to deny her the choice to terminate the pregnancy. The provisions of Section 5 of the Act of 1971 shall have to be interpreted in the manner for advancing the cause of justice. In this context it would be appropriate to refer to the judgment of Division Bench of this Court in the matter of *High Court on its own motion vs. the State of Maharashtra*, reported in *2017 Cri L.J. 218*. In paragraph-13 of the judgment, it is observed thus:

“13. A woman irrespective of her marital status can be pregnant either by choice or it can be an unwanted pregnancy. To be pregnant is a natural phenomenon



for which woman and man both are responsible. Wanted pregnancy is shared equally, however, when it is an accident or unwanted, then the man may not be there to share the burden but it may only be the woman on whom the burden falls. Under such circumstances, a question arises why only a woman should suffer. There are social, financial and other aspects immediately attached to the pregnancy of the woman and if pregnancy is unwanted, it can have serious repercussions. It undoubtedly affects her mental health. The law makers have taken care of helpless plight of a woman and have enacted Section 3(2)(b)(i) by incorporating the words "grave injury to her mental health". It is mandatory on the registered medical practitioner while forming opinion of necessity of termination of pregnancy to take into account whether it is injurious to her physical or mental health. While doing so, the woman's actual or reasonable foreseeable environment may be taken into account."

15. While interpreting the provisions of Section 5 of the Act of 1971, it must be borne in mind the principle that the section must be construed as a whole whether or not one part is a saving clause and similarly **elementary rule of construction of section is made of all the parts together** and that **it is not permissible to omit any part of it; the whole section must be read together**. The words of Statute are first understood in their natural, ordinary and popular sense and phrases and sentences are construed according to their grammatical meaning unless there be something in the context, or in the object of the statute

in which they occur or in the circumstances in which they are used, to show that they were used in special sense different from their ordinary grammatical meaning. The basic principle that while interpreting the provisions of a Statute one can neither add nor subtract even a single word, has to be kept in mind. A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, it is not open to the Court to add and amend, or by construction, make up for the deficiencies, which has been left in the Act. **The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven.** The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same produces an intelligible result. [Vide *Nalinakhya Bysack v. Shyam Sunder Halder and ors.*, AIR 1953 SC 148; *Sri Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459; *M. Pentiah and Ors. v. Muddala Veeramallappa and Ors.*, AIR 1961 SC 1107; *The Balasinor Nagrik Co-operative Bank Ltd. v.*

Babubhai Shankerlal Pandya and Ors., AIR 1987 SC 849; and Dadi Jagannadham v. Jammulu Ramulu and Ors., (2001) 7 SCC 71].

16. In the matter of *New India Assurance Company Ltd. v. Nusli Neville Wadia and another*, (2008) 3 SCC 279, the Hon'ble Supreme Court while referring to the analysis of purposive construction has observed in paragraph-52 as narrated below:

“52. Barak in his exhaustive work on 'Purposive Construction' explains various meanings attributed to the term 'purpose'. It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

“Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably.”

(Aharon Barak, *Purposive Interpretation in Law* (2007) at pg. 87)

17. A statute must be interpreted having regard to the purport and object of the Act. The doctrine of purposive construction must be resorted to. It would not be permissible for the Court to construe the provisions in such a manner which would destroy the very purpose for which the same was enacted. The principles in regard to the approach of the Court in interpreting the provisions of a statute with the change in the societal condition must also be borne in mind. The rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled.

18. The two principles of construction - one relating to *casus omisus* and the other in regard to reading the statute as a whole appear to be well settled. In regard to the latter principle, the following statement of law appears in Maxwell at page 47:

“A statute is to be read as a whole - "It was resolved in the case of Lincoln Colleges case (1595) 3 Co Rep. 58B, at page 59b that the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only by itself. Every clause of a statute is to be construed with reference to the context and other clauses of the act, so as, as far as possible, to make a consistent enactment of the whole statute. (Per Lord Davey in Canada Sugar Refining Co. Ltd. v. R. 1898 Act 735 (Canada)).”

19. As has been observed by the Supreme Court in the matter of RBI Vs. Peerless General Finance and Investment Co. Ltd., reported in (1987) 1 SCC 424, the textual interpretation that matches the contextual is known to be best interpretation. It is observed in paragraph 33 of the judgment, thus:

“33. 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 the 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. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place...”

20. Generally speaking, Statutes are classified in fourfold manner. Firstly, the statutes are remedial, secondly they are declaratory, thirdly they are procedural and lastly they are penal or disentitling. One has to find out the character of the statute as to whether it is penal or not, so as to apply principles of strict construction. In the instant matter it cannot be said that the provisions of the enactment which are relevant for consideration are penal in character. In a way, the provision is remedial and procedural. The provision, therefore, cannot be applied the standards as regards interpretation of a Statute which is penal in character.

21. On analysis of the judgments and the narrations, as recorded above, one must while interpreting the provisions of law, bear in mind that the provision as to be interpreted by reading all of its parts together and it is not permissible to omit any part thereof. The golden rule of interpretation is that the provisions of law have to be read as it is without adding or subtracting anything therefrom. In an appropriate case, the Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven.

22. In the instant matter, on reading of Section 5 of the Act of 1971, it does transpire that the contingencies and the parameters laid

down in clauses (i) & (ii) of sub-section (2)(b) of Section 3 shall have to be read in Section 5 except the bar of limitation as provided in Section 3(2)(b) of the Act of 1971. It would not be appropriate to overlook the contingencies laid down in clauses (i) & (ii) of sub-section (2)(b) of Section 3 while considering the request of a pregnant woman for termination of the pregnancy if the conditions laid down in clauses (i) & (ii) of sub-section (2)(b) of Section 3 are satisfied it would provide a good ground for exercise of jurisdiction under Section 5 of the Act of 1971.

23. The Ministry of Health and Family Welfare, Government of Maharashtra has prepared the MTP (Amendment) Bill and the notification in that regard was published on 29.10.2014. The State Government has proposed amendment to Section 3 of the Act of 1973 and clause (C) is proposed to be added which reads thus :

“(C) the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy shall not apply to the termination of a pregnancy by a registered health care provider where the termination of such pregnancy is necessitated by the diagnosis of any of the substantial foetal abnormalities as may be prescribed.”

24. Considering the above proposed amendment, according to us, the interpretation which we have put to Section 5 of the Act of 1971 appears to be a logical and same is in consonance with the proposed changes as suggested by the State in the MTP (Amendment) Bill notified on 29.10.2014.

25. The petitioner has restricted the claim in the petition in respect of prayer clause (b)(ii) of paragraph-56 of the Petition. The other prayers recorded by the petitioner in the instant petition are not pressed. Even otherwise, in view of the interpretation which we have put to Section 5 of the Act of 1971, prayer clause (a), as requested by the petitioner, does not need consideration.

26. For the reasons recorded above, the Writ Petition is allowed. The petitioner is permitted to undergo medical termination of pregnancy at a medical facility of her choice. The petitioner undertakes to report to the approved center for carrying out the procedure of medical termination of pregnancy within two days from today.

27. The Counsel appearing for the petitioner states, on instructions, that the petitioner will bear the medical expenses of the procedure of medical termination of pregnancy at a medical facility of her choice.



28. It is clarified at this stage that the petitioner has been sensitized by the Committee/Medical Board about the risk factors involved and it would be open for the petitioner to undergo the procedure of medical termination of pregnancy at her own risk and consequences. It is further made clear that the Doctors who have put their opinions on record shall have the immunity in the event of occurrence of any litigation arising out of the instant Petition.

29. Rule is accordingly made absolute. There shall be no order as to costs. The operative part of this judgment shall be uploaded today and all concerned parties, including concerned approved Medical Center, to act upon the authenticated copy of the operative order.

**(R. G. KETKAR, J.)**

**(R.M. BORDE, J.)**

Deshmane (PS)