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# MEDICAL ETHICS VERSUS CONSTITUTIONAL REMEDIES: A CRITICAL REVIEW OF THE SUPREME COURT'S CURATIVE MANDATE IN THE AIIMS 30-WEEK GESTATIONAL EXCEPTION CASE


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## ABSTRACT

*In April 2026 the Supreme Court permitted a fifteen year old rape survivor to terminate a thirty week pregnancy, and later dismissed a curative petition filed by AIIMS against that order. This article argues that the outcome was correct and the Court's reasoning on institutional standing sound, but that the route taken, an Article 142 order operating beyond what the Medical Termination of Pregnancy Act permits, departs from the Court's own settled limits on that provision rather than applying them. Tracing seven precedents from Suchita Srivastava through the 2026 decision, the article shows Parliament has left survivors of child rape without a statutory gateway past the gestational ceiling. It examines AIIMS's curative petition against the threshold the Court itself set in 2002, addresses the clinical ethics the institution raised, and closes by setting out what a legislative amendment would need to contain.*


## I. THE SENTENCE THAT STARTED THIS

On 9 April 2026 a fifteen year old was found to be twenty seven weeks pregnant, the pregnancy a consequence of an assault that Indian law treats as rape regardless of any claim of consent because she was a minor.[1] Every clinical door had already closed on her. Her mother approached the Bombay High Court, which ordered a medical board to examine her. The board

[1] *See* 'Explained: How a Teen Rape Survivor's Case Forced the Nation to Rethink It's Abortion Laws,' *Newsgram* (May 3, 2026), https://www.newsgram.com/india/2026/05/03/supreme-court-30-week-abortion-rape-survivor-mtp-act-reform (last visited July 13, 2026).

found termination inadvisable and directed that she carry the pregnancy to thirty four weeks.[2] The Supreme Court disagreed. On 24 April 2026 a bench of Justices B.V. Nagarathna and Ujjal Bhuyan permitted the termination.[3] AIIMS sought review that same day. The Court dismissed the plea and recorded that the institution was attempting to defeat the constitutional rights of the minor.[4] AIIMS then filed a curative petition, the last remedy the Constitution allows, and a bench of Chief Justice Surya Kant and Justice Joymalya Bagchi dismissed that as well, observing that the girl should have been in school rather than being pressed into motherhood by the very institution meant to treat her.[5]

That observation carries the argument of this article, because it is not rhetoric. It names what forced continuation of an unwanted pregnancy does to a child who never chose it, and it treats that harm as one Article 21 will not absorb.

This article defends one position that, the curative dismissal reached the correct result and its reasoning on institutional standing is sound. But the route to that result, an Article 142 order authorising a procedure the Medical Termination of Pregnancy Act does not sanction beyond twenty four weeks for an otherwise healthy foetus, departs from the Court's own doctrine on that provision rather than applying it. The departure exists because Parliament has left open a gap that courts have flagged since at least 2017 and never closed.

## II. WHAT THE STATUTE LEAVES UNSAID

The Medical Termination of Pregnancy Act, 1971, as amended in 2021, permits termination up to twenty weeks on the opinion of one registered practitioner and up to twenty four weeks under Section 3(2)(b) for specified categories, including survivors of sexual assault.[6] Section

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[2] 'Explained: How a Teen Rape Survivor's Case Forced the Nation to Rethink It's Abortion Laws,' *Newsgram* (May 3, 2026), https://www.newsgram.com/india/2026/05/03/supreme-court-30-week-abortion-rape-survivor-mtp-act-reform (last visited July 13, 2026).

[3] *X v. Union of India*, SLP(C) No. 14454 of 2026 (S. Ct. India Apr. 24, 2026) (Nagarathna & Bhuyan, JJ.); 'How a 15-Year-Old's Case Has Redrawn India's Late-Term Abortion Doctrine,' *The Federal* (May 2, 2026), https://thefederal.com/the-federal-special/15-year-old-girl-case-redrawn-india-later-term-abortion-doctrine-supreme-court-aiims-241453 (last visited July 13, 2026).

[4] 'Doctors Cannot Decide For Patients: Supreme Court Refuses AIIMS' Plea Against Termination of 15 yr old's Pregnancy,' *LawBeat* (Apr. 30, 2026), https://lawbeat.in/top-stories/doctors-cannot-decide-for-patients-supreme-court-refuses-aiims-plea-against-termination-of-15-yr-olds-pregnancy-1586223 (last visited July 13, 2026).

[5] 'AIIMS Doctors Must Terminate 30-Week Pregnancy of Minor Rape Victim, Says SC,' *The Tribune* (Apr. 30, 2026), https://www.tribuneindia.com/news/delhi/aiims-doctors-must-terminate-30-week-pregnancy-of-minor-rape-victim-says-sc/ (last visited July 13, 2026).

[6] Medical Termination of Pregnancy Act, No. 34 of 1971, § 3(2)(b), as substituted by the Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021.

5 allows one exception beyond that ceiling: immediate necessity to save the woman's life.[7] Section 3(2B), inserted by the 2021 Amendment, permits termination past twenty four weeks where a State Medical Board diagnoses substantial foetal abnormality.[8] Nothing in the statute addresses a minor rape survivor who discovers her pregnancy after the ceiling has passed through no fault of her own.

Authority under the Act sits with the registered medical practitioner, not the pregnant person.[9] The 2021 Amendment extended the window for specified categories by four weeks and stopped there. A child whose pregnancy surfaces at twenty five weeks because the assault went unreported, because concealment delayed recognition, or because a medical board took its time deciding, is left outside every gateway the statute builds. Parliament drew a wall around exactly the class of petitioners defined by their vulnerability, and built no door in it.

The Supreme Court Observer's dataset of Supreme Court and High Court rulings on termination beyond twenty four weeks, tracking decisions between 2021 and 2026, found that courts across the country apply inconsistent tests to functionally identical facts, producing outcomes that vary by bench rather than by law.[10] Termination was permitted in the overwhelming majority of the cases studied, yet most petitioners should never have needed a court at all.[11] A statute that forces vulnerable litigants into constitutional courts to obtain what a properly drafted exception would have given them automatically has already failed at its primary task.

## III. SEVEN PRECEDENTS, ONE UNFINISHED ARGUMENT

The doctrine the 2026 bench inherited took shape across seven decisions, and no reading of the April orders is complete without tracing what each one settled and what each left open.

A three judge bench in *Suchita Srivastava v. Chandigarh Administration* held that a woman's reproductive choice is part of personal liberty under Article 21, and in the same breath

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[7] Medical Termination of Pregnancy Act, No. 34 of 1971, § 5.
[8] Medical Termination of Pregnancy Act, No. 34 of 1971, § 3(2B), as inserted by the Medical Termination of Pregnancy (Amendment) Act, No. 8 of 2021, § 3.
[9] Medical Termination of Pregnancy Act, No. 34 of 1971, § 3(1)-(2).
[10] 'Dataset on Medical Termination of Pregnancy Beyond 24 Weeks,' *Supreme Court Observer* (Feb. 28, 2026), https://www.scobserver.in/journal/dataset-on-medical-termination-of-pregnancy-beyond-24-weeks/ (last visited July 13, 2026).
[11] 'Dataset on Medical Termination of Pregnancy Beyond 24 Weeks,' *Supreme Court Observer* (Feb. 28, 2026), https://www.scobserver.in/journal/dataset-on-medical-termination-of-pregnancy-beyond-24-weeks/ (last visited July 13, 2026).

introduced *parens patriae* into this field, recognising a competing state interest in prospective life.[12] That tension has never been resolved; it has only been managed, case by case, for seventeen years.

*Justice K.S. Puttaswamy v. Union of India* supplied the constitutional foundation on which everything since rests, recognising decisional privacy and bodily autonomy as facets of Article 21.[13] Justice Chandrachud's concurrence located reproductive choice squarely within that privacy right.[14]

*Meera Santosh Pal v. Union of India* permitted termination at the twenty four week mark for a foetus diagnosed with anencephaly, on the ground that continuation endangered the mother's life under Section 3(2)(i).[15] The holding matters for what it refused to do: it measured foetal condition entirely through its effect on the mother, never through any independent foetal interest.

*X v. Principal Secretary, Health and Family Welfare, GNCTD* read the Act to extend its benefit to unmarried women, stretching statutory language rather than displacing it.[16] The bench chose interpretation over override, a methodological choice the 2026 bench did not have available to it on facts this far outside the text.

A split within the Court itself, between Justices Hima Kohli and Nagarathna in 2022 and resolved only when a three judge bench led by then Chief Justice Chandrachud denied a twenty six week termination in October 2023, held that the statutory ceiling had been crossed and that neither Section 3(2B) nor Section 5 was satisfied.[17] The medical board in that case warned that without prior foeticide the outcome would be a preterm delivery of a live infant rather than a termination, precisely the warning AIIMS pressed again in 2026.[18] That bench invoked Article 142 only to record what it would not do with it: it could not disregard mandatory statutory provisions to order foeticide on a normal foetus.[19] Additional Solicitor General Aishwarya

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[12] *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1, ¶ 11.
[13] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
[14] *Id.* ¶ 298 (Chandrachud, J., concurring).
[15] *Meera Santosh Pal v. Union of India*, (2017) 3 SCC 462.
[16] *X v. Principal Secy., Health & Family Welfare Deptt., GNCTD*, (2022) 10 SCC 1.
[17] *X v. Union of India* (S. Ct. India Oct. 16, 2023) (Chandrachud, C.J., Pardiwala & Misra, JJ.); on the earlier split between Justices Hima Kohli and B.V. Nagarathna that produced the reference, see 'Right of Foetus v. Woman's Autonomy: Contrasting Judicial Approaches,' *LiveLaw* (May 3, 2026), https://www.livelaw.in/top-stories/right-of-foetus-v-womans-autonomy-contrasting-judicial-approaches-532610 (last visited July 13, 2026).
[18] *X v. Union of India* (S. Ct. India Oct. 16, 2023), Medical Board communication reproduced at ¶ 3.
[19] *X v. Union of India* (S. Ct. India Oct. 16, 2023), ¶ 20.

Bhati cited this holding directly to the 2026 bench as the constraint on the order she was resisting.[20]

Then, on 6 February 2026, Justices Nagarathna and Bhuyan permitted a thirty week termination in *A (Mother of X) v. State of Maharashtra*, holding that decisional autonomy and the trajectory of a young life outweigh gestational age as the governing variable.[21] That judgment broke from the viability centred reasoning of October 2023 and established that the circumstances surrounding conception carry independent constitutional weight. Eleven weeks later, the same bench decided the case this article is about, extending that reasoning through Articles 226 and 32 and holding that the absence of a statutory remedy cannot itself defeat a constitutional one, because the statute codifies only part of what the Constitution guarantees.[22]

## IV. ARTICLE 142: MAKING LAW OR APPLYING IT

The constraint on Article 142 is settled and was settled deliberately. A five judge bench held in 1998 that the provision cannot be used to supplant substantive law or to build, through judicial order, an edifice that ignores express statutory provisions on the subject.[23] That holding bound every bench that followed, and the October 2023 bench invoked it precisely to decline the order the 2026 bench went on to make.[24] The reversal needs an explanation the oral exchanges never supplied.

The factual distinction is real because a married adult facing circumstantial distress is not the constitutional equivalent of a fifteen year old carrying a pregnancy that a crime produced. But turning that distinction into a constitutional category capable of suspending a statutory ceiling is a larger doctrinal move than the bench's remarks acknowledged. By treating criminal conception as a trigger for Article 142 override, the Court read into the Act an exception

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[20] 'AIIMS Doctors Must Terminate 30-Week Pregnancy of Minor Rape Victim, Says SC,' *The Tribune* (Apr. 30, 2026), https://www.tribuneindia.com/news/delhi/aiims-doctors-must-terminate-30-week-pregnancy-of-minor-rape-victim-says-sc/ (last visited July 13, 2026).

[21] *A (Mother of X) v. State of Maharashtra*, 2026 LiveLaw (SC) 160 (decided Feb. 6, 2026) (Nagarathna & Bhuyan, JJ.), https://www.livelaw.in/sc-judgments/2026-livelaw-sc-160-a-mother-of-x-vs-state-of-maharashtra-523283 (last visited July 13, 2026); 'Supreme Court Allows 18-Year-Old to Terminate 30-Week Pregnancy From Consensual but Legally Impermissible Relationship,' *LawBeat* (Feb. 7, 2026), https://lawbeat.in/top-stories/supreme-court-allows-18-year-old-to-terminate-30-week-pregnancy-from-consensual-but-legally-impermissible-relationship-1563402 (last visited July 13, 2026).

[22] 'How a 15-Year-Old's Case Has Redrawn India's Late-Term Abortion Doctrine,' *The Federal* (May 2, 2026), https://thefederal.com/the-federal-special/15-year-old-girl-case-redrawn-india-later-term-abortion-doctrine-supreme-court-aiims-241453 (last visited July 13, 2026) (discussing the bench's reasoning at ¶ 11.3 on the relationship between statutory and constitutional remedies).

[23] *Supreme Ct. Bar Assn. v. Union of India*, (1998) 4 SCC 409, ¶ 48.

[24] *X v. Union of India* (S. Ct. India Oct. 16, 2023), ¶ 20; *see supra* note 19.

Parliament has not enacted, in much the way it once dissolved marriages for irretrievable breakdown despite no such ground appearing in the governing statute.[25] Both moves are defensible on their own terms. Neither is a mere application of existing doctrine, and pretending otherwise does a disservice to the doctrine itself.

The naming matters for two reasons. First, a court that makes law in the space a statute leaves empty should say so, rather than describe the exercise as routine application of settled principle. Second, without a stated limit, the next bench inherits an unbounded category. Does criminal conception as a trigger extend to adult survivors of assault, to incestuous pregnancies discovered late, or to any case where delay traces to fear rather than to physiology? The 2026 bench answered the case in front of it and left every one of those questions for whichever bench meets them next.

## V. AIIMS AT THE BAR: A PETITION WITHOUT A GROUND

AIIMS's curative petition should not have survived a first reading. A Constitution Bench fixed the conditions for entertaining such a petition in 2002: the petitioner must show the grounds were raised in the review dismissed by circulation, the petition must carry a Senior Advocate's certification, and the grounds must disclose a violation of natural justice or actual bias in the impugned order.[26] AIIMS was never a party to the writ petition. It was the institution directed to carry out the Court's order. Its petition alleged no procedural violation and no bias. It argued, on clinical and ethical grounds, that the order was substantively wrong. That is a review argument dressed as a curative one, and the Court has described the curative jurisdiction itself as a rarity never meant to function as a second review.[27]

A harder question sat underneath the one the bench actually resolved: can a statutory institution directed by a constitutional court to perform a medical procedure ever resist that direction, and on what ground? AIIMS is a body corporate created by Act of Parliament in 1956, declared an institution of national importance, and answerable to the Ministry of Health and Family Welfare.[28] Its physicians discharge public functions under a statutory mandate. An institution of that character does not carry a physician's individual conscience. Medical bodies, as distinct from the individual practitioners within them, hold no institutional right of conscientious

[25] *Shilpa Shailesh v. Varun Sreenivasan*, (2023) 11 SCC 1.
[26] *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388, ¶¶ 49-54.
[27] *Id.* ¶ 54.
[28] All-India Institute of Medical Sciences Act, No. 25 of 1956, §§ 3(2), 5.

objection recognised anywhere in comparative bioethics literature.[29] A single doctor inside AIIMS might have had a legitimate claim to be redeployed away from this specific procedure. The institution itself had no comparable claim to refuse the order altogether. What the bench eventually directed, that clinical information be placed before the family and the decision left to them, was the course AIIMS should have taken from the outset rather than the one it reached only after two dismissed petitions.

## VI. THE ETHICS AIIMS WAS RIGHT ABOUT

None of this treats AIIMS's clinical submissions as manufactured. They identified a genuine professional burden the legal framework does not acknowledge and that no court can fully resolve by order. At thirty weeks, Indian neonatal practice recognises a foetus well past the viability threshold, generally placed around twenty eight weeks, with documented survival even earlier given adequate intensive care.[30] The AIIMS neonatologist who addressed the bench said the foetus would, in his words, for certain survive delivery.[31]

To prevent a live birth, the procedure requires intracardiac injection of potassium chloride to induce foetal asystole before delivery, the method the Royal College of Obstetricians and Gynaecologists recommends and the one most commonly used in England and Wales beyond twenty one weeks and six days, precisely because it forecloses an inadvertent live birth.[32] A retrospective study of English and Welsh data between 2012 and 2020 recorded that this method accounted for the substantial majority of feticides performed in that window, most concentrated at twenty two and twenty three weeks and a smaller fraction well beyond it.[33] The bioethics literature on this procedure draws a distinction this article accepts: administering it to end the hopeless suffering of a foetus with lethal anomalies serves that foetus's own interest,

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[29] Rebecca J. Cook, Monica Arango Olaya & Bernard M. Dickens, Healthcare Responsibilities and Conscientious Objection, 104 INTL. J. GYNECOLOGY & OBSTETRICS 249, 250 (2009).
[30] Pawan Sabale & Vaibhav Sharma, Legal Mandates and Ethical Dilemmas of Feticide in Late-Term Termination of Pregnancy in India, J. OBSTETRICS & GYNECOLOGY INDIA (2026), DOI: 10.1177/09710973251406684, at 2.
[31] Dr. Ramesh Agarwal, oral submission, *quoted in* 'Doctors Cannot Decide For Patients: Supreme Court Refuses AIIMS' Plea Against Termination of 15 yr old's Pregnancy,' *LawBeat* (Apr. 30, 2026), https://lawbeat.in/top-stories/doctors-cannot-decide-for-patients-supreme-court-refuses-aiims-plea-against-termination-of-15-yr-olds-pregnancy-1586223 (last visited July 13, 2026).
[32] Isabelle Schiff et al., Feticide Before Termination of Pregnancy in Singleton Pregnancy: Trends in England and Wales 2012-2020, a Cross-Sectional Study, REPRODUCTIVE SCIENCES (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10827943/ (last visited July 13, 2026), at 1-2.
[33] Schiff et al., *supra* note 32, at 3.

while administering the identical procedure to a normal, viable foetus is the deliberate stopping of a healthy heart.[34]

The Indian Medical Council Regulations of 2002 impose a non-maleficence obligation on registered practitioners that has never been authoritatively reconciled with a court order compelling exactly this procedure on a healthy foetus.[35] The physician asked to administer that injection operates in territory the Act, the Regulations and constitutional doctrine have all left unmapped. The bench was right that AIIMS could not veto the order. Recognising that the individual clinician carrying it out faces a real ethical cost, one the statute created and never addressed, does not require endorsing the petition AIIMS filed to avoid it.

## VII. PARENS PATRIAE, PROPERLY SEPARATED

The *parens patriae* discussion in the curative hearing folds two distinct questions into one, and each deserves its own answer. The first is substantive: when a viable foetus's interests and a living minor's bodily autonomy conflict, which way does the doctrine point? The bench pointed it toward the living child, consistent with the 2009 precedent, where the same doctrine protected a woman from a state that wanted to terminate her pregnancy without her consent.[36] In both cases the doctrine runs toward the living person and against institutional paternalism, not the reverse the state and AIIMS attempted here. That said, the field is not as settled as the hearing suggested. Legislative choices elsewhere, in surrogacy regulation and in certain state criminal provisions, do assert an interest in unborn life outside the abortion context, and a future bench will eventually have to reconcile that thread with this one.

The second question is institutional: could AIIMS invoke *parens patriae* at all? Justice Bagchi's answer was direct. He asked the Additional Solicitor General what her *parens patriae* approach even was, and told her to give the citizen the respect of her own choice rather than rushing to the Court first.[37] Nothing in the AIIMS Act, 1956, gives the institution a

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[34] John C. Fletcher et al., Fetal Intracardiac Potassium Chloride Injection to Avoid the Hopeless Resuscitation of an Abnormal Abortus: II. Ethical Issues, PubMed 1635751 (1992), https://pubmed.ncbi.nlm.nih.gov/1635751/ (last visited July 13, 2026).

[35] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, § 1.1.

[36] *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1, ¶¶ 30-35; *see supra* note 12.

[37] Justice Joymalya Bagchi, oral remarks, *paraphrased in* 'Doctors Cannot Decide For Patients: Supreme Court Refuses AIIMS' Plea Against Termination of 15 yr old's Pregnancy,' *LawBeat* (Apr. 30, 2026), https://lawbeat.in/top-stories/doctors-cannot-decide-for-patients-supreme-court-refuses-aiims-plea-against-termination-of-15-yr-olds-pregnancy-1586223 (last visited July 13, 2026).

guardianship role over its patients' reproductive decisions.[38] Its statutory mandate runs to medical education and patient care, nothing more, and the curative petition asked the Court to read a role into the statute that Parliament never wrote there.

## VIII. WHAT PARLIAMENT OWES NOW

The most consequential line from the hearing was addressed not to AIIMS but to the government: amend the law so that a pregnancy caused by the rape of a minor carries no time limit at all.[39] An observation from the bench is not legislation. But in a system where the Court has repeatedly functioned as the first mover on reproductive rights reform, that observation carries weight beyond its formal status. In 2022 the Court read the Act to cover unmarried women without waiting for an amendment; Parliament has still not written that reading into the text.[40] By 2026 interpretation alone cannot close the distance between what the Act says and what Article 21 requires for pregnancies that begin in crime. The gap is too wide for a court to bridge through construction, and every bench that tries will simply repeat the discomfort visible in this one.

A workable amendment needs three elements. First, a standalone exception from the gestational ceiling for pregnancies caused by the rape of a minor, built on the model of the foetal abnormality gateway in Section 3(2B) but triggered by the circumstances of conception instead of foetal condition. Second, a clinical protocol specific to these cases, covering procedure, institutional protection for the physicians who perform it, and standards drawn from the international evidence on late term care rather than left to each hospital's discretion. Third, a statutory outer limit on how long a medical board may take to decide, because the existing structure lets a board consume, through delay alone, every week of gestation a survivor has left.

## IX. CONCLUSION

The girl at the centre of this case was not a test litigant. She was a child who had been raped, who learned of her pregnancy too late for any statutory gateway to admit her, and whom a

[38] All-India Institute of Medical Sciences Act, No. 25 of 1956, § 5.
[39] Chief Justice Surya Kant, oral remarks, *paraphrased in* 'Remove Time Limits on Abortions for Pregnant Rape Survivors: Supreme Court Urges Centre,' *Bar and Bench* (Apr. 30, 2026), https://www.barandbench.com/news/litigation/remove-time-limits-on-abortions-for-pregnant-rape-survivors-supreme-court-urges-centre (last visited July 13, 2026).
[40] *X v. Principal Secy., Health & Family Welfare Deptt., GNCTD*, (2022) 10 SCC 1; *see supra* note 16.

medical board then told to wait seven more weeks. The Supreme Court refused that outcome, and it was right to refuse it. The honesty this article has asked of the bench applies equally to the person writing about it: the Court did not apply the law here. It made law, in the only space Parliament left available, and that space will keep narrowing with every petition that reaches the same threshold without a limiting principle attached to it. A doctrine stretched without a stated boundary stops being doctrine and becomes discretion in judicial dress. AIIMS never had standing to resist the order. Parliament has no remaining excuse to delay the amendment the Chief Justice asked for in open court. And the child who forced this rupture in the statute's architecture will, in time, return to the life she should have been living all along, caught by the law only barely, and only through means the statute itself should have provided.