



Abortion Law in India

For Prelims: Abortion Law, Medical Termination of Pregnancy MTP (2021)

For Mains: Medical Termination of Pregnancy MTP Act (2021) and its Significance

Why in News?

Recently, the **Supreme Court of India allowed an unmarried woman to end her pregnancy** at 24 weeks, after the Delhi High Court refused to allow it, citing the provisions of the **Medical Termination of Pregnancy (MTP) Act**.

What was Delhi High Court's Position?

- It taken the view that she was unmarried and since the Medical Termination of Pregnancy Act allowed only married women to terminate the pregnancy after 20 weeks, she would not be eligible to get an abortion,
 - It mentioned **Rule 3B of the Medical Termination of Pregnancy Rules, 2003**, as it **speaks of change in marital status of woman, as the woman was in a live-in relationship and was not married.**

What was Supreme Court's Ruling?

- It took an expansive view of the issue and interpreted MTP Act 2021, **as the word partner instead of husband**, exhibiting the intention of the **law of the land to not confine it to only marital relationships.**
- It also said that the petitioner **cannot be denied the benefit of the law, on the ground that she was unmarried**, and that doing so would be contrary to the **'object and spirit' of the legislation.**
- Further, the bench directed the **director of the All-India Institute of Medical Sciences (AIIMS) to set up a medical board** of two doctors to examine the woman (as per the provisions of the MTP Act) to determine if it was safe and not a risk to the life of the mother to terminate the pregnancy.
 - If it is their opinion that it is safe to do so, then AIIMS can conduct the procedure on her.

What is India's Abortion Law?

- **Historical Perspective:**
 - Until the 1960s, **abortion was illegal in India** and a woman could face three years of imprisonment and/or a fine under **Section 312 of the Indian Penal Code (IPC).**
 - It was in the mid-1960s that the government set up the **Shantilal Shah Committee** and asked the group, headed by **Dr Shantilal Shah**, to look into the matter of abortions and decide if India needed a law for the same.
 - Based on the report of the Shantilal Shah Committee, a **medical termination bill** was introduced in Lok Sabha and Rajya Sabha and was passed by Parliament in August 1971.

- The [Medical Termination of Pregnancy \(MTP\) Act, 1971](#) came into force on 1st of April 1972 and applied to all of India except the state of Jammu and Kashmir.
- Also, **Section 312** of the Indian Penal Code, 1860, **criminalises voluntarily “causing miscarriage”** even when the miscarriage is with the pregnant woman’s consent, except when the miscarriage is caused to save the woman’s life.
 - This means that the woman herself, or anyone else including a medical practitioner, could be prosecuted for an abortion.
- **About:**
 - [Medical Termination of Pregnancy \(MTP\) Act, 1971](#) act allowed pregnancy **termination by a medical practitioner in two stages:**
 - A single **doctor's opinion was necessary for abortions up to 12 weeks after conception.**
 - For pregnancies **between 12 to 20 weeks old, the opinion of two doctors** was required to determine if 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 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” before agreeing to terminate the woman’s pregnancy.
- **Recent Amendments:**
 - In **2021, Parliament altered the law** to allow for abortions based on the **advice of one doctor for pregnancies up to 20 weeks.**
 - The modified law needs the **opinion of two doctors for pregnancies between 20 and 24 weeks.**
 - Further, **for pregnancies between 20 and 24 weeks, rules specified seven categories of women who would be eligible for seeking termination under section 3B of rules prescribed under the MTP Act,**
 - Survivors of sexual assault or rape or incest,
 - Minors,
 - Change of marital status during the ongoing pregnancy (widowhood and divorce),
 - Women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016
 - Mentally ill women including mental retardation,
 - The foetal malformation that has a substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped, and
 - Women with pregnancy in humanitarian settings or disasters or emergencies may be declared by the Government.

What are the issues related to the MTP Act?

- While the law recognizes changes in a pregnant woman's marital status with her spouses — such as divorce and widowhood — **it does not address the situation for unmarried women.**
- It is a highly regulated procedure whereby the law transfers the decision-making power from the pregnant woman to the **Recognized Medical Practitioner (RMP)** and provides great discretion to the RMP to determine whether abortion should be provided or not.

Way Forward

- India's legal framework on abortion is largely considered progressive, especially in comparison to many countries including the United States where abortion restrictions are severely restricted — both historically, and at present.
- Further, there is a need for a serious rethink in public policy making, also accommodating all the stakeholders to focus on women and their reproductive rights, rather than drawing red lines those medical practitioners cannot cross while performing abortions.

[Source: TH](#)

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