



Abortion Rights for Single Women

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

For Mains: Abortion Rights for Single Women, Medical Termination of Pregnancy MTP Act (2021) and its Significance.

Why in News?

Recently, the [Supreme Court](#) has allowed all women in the country, regardless of marital status, can undergo an abortion up to 24 weeks into pregnancy to access **safe and legal abortion care**.

What is the SC's Ruling?

- **Ruled over an Old Law:**
 - It has ruled over a 51-year-old abortion law (The Medical Termination of Pregnancy Act of 1971) which bars **unmarried women from terminating pregnancies which are up to 24-weeks old**.
 - The Medical Termination of Pregnancy Act of 1971 and its Rules of 2003 prohibit unmarried women who are between 20 weeks to 24 weeks pregnant to abort with the help of registered medical practitioners.
 - The latest amendment to the **MTP Act was made in 2021**.
- **Right to Choose under Article 21:**
 - Court held that the **rights of reproductive autonomy, dignity and privacy under Article 21 of the Constitution gives an unmarried woman the right of choice** as to whether or not to bear a child on a similar footing as that of a married woman.
- **Right to Equality under Article 14:**
 - Prohibiting single or unmarried pregnant women with pregnancies between 20 and 24 weeks from accessing abortion while allowing married women with the same term of pregnancy to access the care was **violative of the right to equality before law and equal protection (Article 14)**.
 - A single woman may have suffered the same **“change in material circumstances”** as a married pregnant woman. She may have been abandoned or without a job or been a **victim of violence during her pregnancy**.
- **Not Constitutionally Sustainable:**
 - Artificial distinction between married and unmarried women is not constitutionally sustainable.
 - The benefits of law extend **equally to single and married women**.
- **Extended the Ambit of Reproductive Rights:**
 - The term **Reproductive Right** is not restricted to **having or not having children**.
 - Reproductive rights' of women included a **“constellation of rights, entitlements and freedoms for women”**.
 - Reproductive rights include the right to access education and information about contraception and sexual health, right to choose safe and legal abortion and **right to reproductive health care**.

▪ Views on Marital Rape:

- For the sole purpose of the MTP Act, the meaning of rape must include marital rape to marshal a woman's right to reproductive and decisional autonomy.

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 amended 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 Concerns?

▪ Cases of Unsafe Abortions:

- Unsafe abortions are the third leading cause of maternal mortality in India, and close to **8 women die** from causes related to unsafe abortions each day, according to the **United**

Nations Population Fund (UNFPA)'s State of the World Population Report 2022.

- The women outside marriages and in poor families are left with no choice but to use **unsafe or illegal ways to abort unwanted pregnancies.**
- **Shortage of Medical Expert in Rural India:**
 - According to a 2018 study in the Lancet, 15.6 million abortions were accessed every year in India as of 2015.
 - The MTP Act requires abortion to be performed only by doctors with specialisation in gynaecology or obstetrics.
 - However, the Ministry of Health and Family Welfare's 2019-20 report on Rural Health Statistics indicates that there is a **70% shortage of obstetrician-gynaecologists in rural India.**
- **Illicit Abortions leading to Maternal Mortality:**
 - As the law does not permit abortion at will, it pushes women to **access illicit abortions** under unsafe conditions, thus **result in maternal mortality.**

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: IE

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