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Even single, unmarried women have the right to safe and legal abortions, rules SC

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What's in News?

In a significant ruling on reproductive rights, the Supreme Court extended the **right to safe and legal abortion up to 24 weeks of pregnancy to unmarried and single women**.

The Medical Termination of Pregnancy Act, 1971:

- Under the **Indian Penal Code, 1860, voluntarily terminating a pregnancy is a criminal offence.**
- The **Medical Termination of Pregnancy Act, 1971** allows for aborting the pregnancy by medical doctors (with specified specialisation) on certain grounds
- A pregnancy may be terminated up to 12 weeks based on the opinion of one doctor, and up to 20 weeks based on the opinion of two doctors
- Termination is permitted only when continuance of the pregnancy would involve a risk to the life of the pregnant woman, cause grave injury to her mental or physical health (including rape and failure of birth control measures), or in the case of foetal abnormalities
- Termination is also allowed at any point during the pregnancy if there is an immediate necessity to save the woman's life.

Medical Termination of Pregnancy (Amendment) Act of 2021:

- **Enhancing the upper gestation limit from 20 to 24 weeks** for special categories of women which will be defined in the amendments to the MTP Rules and would include survivors of rape, victims of incest and other vulnerable women (like differently-abled women, minors) etc.
- This allows abortion to be done on the **advice of one doctor up to 20 weeks, and two doctors** in the case of certain categories of women **between 20 and 24 weeks**.
- The Act sets up **state level Medical Boards** to decide if a pregnancy may be terminated after 24 weeks in cases of substantial foetal abnormalities
- Each Board will have a gynaecologist, paediatrician, radiologist/sonologist, and other members notified by the state government.
- A registered medical practitioner may only reveal the details of a woman whose pregnancy has been terminated to a person authorised by law
- Violation is punishable with imprisonment up to a year, a fine, or both.

News Highlights:

Right of Women:

- Supreme Court have stated that it is the "right of every woman to make reproductive choices without undue interference from the State".
- The **right to decisional autonomy** also means that women may choose the course of their lives.

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- Besides physical consequences, unwanted pregnancies which women are forced to carry to term may have cascading effects for the rest of her life by interrupting her education, her career, or affecting her mental well-being.

Present Statute:

- Now, all women in the country, regardless of marital status, can undergo an abortion up to 24 weeks into pregnancy.
- 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.

Constitutional Rights:

- 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.
- The court declared that 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)**.
- The artificial distinction between married and unmarried women was not constitutionally sustainable.

Need for addressing the issue and MTP Act:

- The Medical Termination of Pregnancy (Amendment) Act of 2021 has addressed the “continuing crisis” of unsafe abortions.
- Close to 8 women die everyday in India due to unsafe abortions.
- 67% of the abortions carried out in the country between 2007-2011 were classified unsafe by studies.
- One of the reasons, the Parliament was aware, was that women outside marriages and in poor families were left with no choice but use unsafe or illegal ways to abort unwanted pregnancies.
- Hence, to address this issue, the 2021 amendments had **included the word ‘partner’**, showing that the law was not just concerned about women who undergo pregnancy within marriage, but outside marriage too.

Reproductive Rights:

- The judgment expanded the ambit of the term “reproductive rights”.
- It was not restricted to have or not children.
- ‘Reproductive rights’ of women included a **“constellation of rights, entitlements and freedoms for women”**.
- Reproductive rights include the

1. right to access education and information about contraception and sexual health.
2. right to decide whether or what type of contraceptives to use.
3. right to choose whether or when to have children.
4. right to choose the number of children.
5. right to choose safe and legal abortion.
6. right to reproductive health care

- Women must also have the autonomy to make decisions on these rights, free from coercion or violence.

Marital Rape:

- The meaning of rape must therefore be understood as including marital rape solely for the purpose of the MTP Act and any other rules and regulations framed thereunder.
- Women need not seek formal legal proceedings to prove the “factum of sexual assault or rape”.

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State's Role:

- State must ensure reproduction and safe sex is disseminated to all segments of the public to avoid unwanted pregnancies.

Way Forward:

- While the judgment specifies its validity only within the purview of the MTP (Amendment) Act, it remains to be seen how this will be implemented, given that marital rape is still not a criminal offence in India.
- Yet, in its recognition of every woman as the arbiter of her own body and in respecting her right to choose.