Supreme Court's Abortion Ruling

Why in news?

The Supreme Court in a significant judgment ruled that all women, irrespective of their marital status, are entitled to safe and legal abortion.

What is the background of the case?

- A plea was made in the Delhi High Court by a 25-year-old unmarried who wished to terminate her pregnancy as her partner had refused to marry her at the last stage.
- The woman moved to the Supreme Court seeking an abortion after the Delhi High Court declined her plea.
- She argued that the continuation of the pregnancy would involve a risk of grave and immense injury to her mental health.
- However, the **Medical Termination of Pregnancy Rules, 2003,** allowed such change in circumstances **only** for marital relationships.
- The Supreme Court, in an interim order, had allowed the petitioner to terminate her pregnancy.

Unsafe abortions continue to be the third leading cause of maternal mortality. 60% of abortions carried out in India are unsafe.

What does the abortion law say?

- The Medical Termination of Pregnancy (Amendment) Act, 2021 allows termination of pregnancy by a medical practitioner in two stages.
- **For pregnancies up to 20 weeks**- Termination is allowed under the opinion of one registered medical practitioner.
- The MTP can be accessed
    - If the continuation of pregnancy would involve a risk to the life of the pregnant woman or result in grave injury to her physical or mental health.
    - If the pregnancy is as a result of rape or failure of contraceptive used by the pregnant woman or her partner to limit the number of children or to prevent pregnancy.
    - If there is a substantial risk that if the child was born, it would suffer from serious physical or mental abnormality.
- **For pregnancies between 20-24 weeks**- Certain criteria such as who can avail termination, requirement of opinion of two registered medical practitioners etc. had been added.
- As per Section 3B of the Rules, this extended gestational limit is applicable to
    - Survivor of sexual assault or rape

    - Minors
    - Change of marital status during the ongoing pregnancy
    - Women with physical disabilities
    - Mentally ill women
    - The foetal malformation
    - Pregnancy in humanitarian settings or disaster

To know more about The Medical Termination of Pregnancy Act, click here

What is the court's interpretation?

- **Abortion regardless of marital status**- The Court has ruled that there is no rationale for excluding single or unmarried women from the women who could seek abortion care between 20 weeks to 24 weeks.
- **Change in marital status**- It permitted the change in marital status as one of the reasons for which abortion during the extended upper limit of 24 weeks.
- The Court has ruled that even abandonment by the partner could constitute a change in circumstances.
- **Rights of reproductive autonomy**- The Court said that the rights of reproductive autonomy give the same rights to married as well as unmarried women.
- **Decision**- The Court has laid down that an unwanted pregnancy affects a woman's physical and mental health, rendering it important that she alone should decide on whether to undergo an abortion.
- **Marital rape-** The court ruled that under the Act, the definition of rape must include marital rape.
- The significant decision came months after the US Supreme Court overturned the historic *1973 Roe v Wade* decision that made abortion a constitutional right in the country.

What is the effect of the judgment?

- **Rights**- The judgement is anchored on the clauses of equality, right to dignity, privacy and bodily autonomy of women.
- **Discourage illegal abortions**- Legalisation of abortions will discourage the illegal practice of abortions done through untrained, unauthorised paramedics which are hazardous for the child bearer.
- **Social and gender justice**- Access to abortion is critically tied to preserving and upholding the human rights of pregnant women, girls, and others, and hence to attaining social and gender justice.
- **On marital rape**- The inclusion of marital rape under the Act sends a powerful message for recognising marital rape as an offence under Section 375 of the IPC.
- **Case based decision**- While the ruling recognises the right of unmarried women, it leaves the enforcement of the right to be decided on a case-to-case basis.
- This means the decision will be in the hands of the registered medical practitioners and if unsatisfied, the woman can approach the court.

Exception 2 to Section 375 of the IPC removes marital rape from the ambit of

rape.

References

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