The Medical Termination of Pregnancy Act

What is the issue?

Despite amendments, the Medical Termination of Pregnancy Act does not establish the prominence of the woman's right to decide.

What is the provision available under the general criminal law?

- Under the Indian Penal Code, voluntarily causing a woman with child to miscarry is an offence attracting a jail term of up to 3 years or fine or both
- An exception has been provided when it was done in good faith where the purpose was to save the life of the pregnant woman.
- A pregnant woman causing herself to miscarry is also an offender apart from the person causing the miscarriage.

What is the Medical Termination of Pregnancy (MTP) Act about?

- The MTP law is an exception to the IPC provisions and allows abortion until 20 weeks of pregnancy.
- **Accessing MTP-** 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 a pregnancy
    - If there is a substantial risk that if the child was born, it would suffer from serious physical or mental abnormality
- Also, the medical opinion of the medical practitioner registered under the MTP Act is required.
- **Gestational limitation**- The pregnancy can be terminated for any of the above reasons, on the opinion of a single registered medical practitioner up to 20 weeks of the gestational age.
- From 20 weeks up to 24 weeks, the opinion of two registered medical practitioners is required.
- This extended gestational limit is applicable to certain categories of women - survivor of sexual assault or rape, minors, change of marital status during the ongoing pregnancy, major physical disabilities, mentally-ill, pregnancy in humanitarian settings or disaster.
- Any decision for termination of pregnancy beyond 24 weeks gestational age, only on the ground of foetal abnormalities can be taken by a Medical Board as set up in each State.
- **Consent**- The termination of pregnancy cannot be done in the absence of the consent of the pregnant person, irrespective of age and mental health.
- **Exception**- The law provides that where it is immediately necessary to save the life of the pregnant woman, the pregnancy can be terminated at any time by a single registered medical practitioner.

To know more about the MTP Amendment Act, 2021, click here

What are the concerns despite legalising access to abortion in certain cases?

- **Increased cases-** Just before the lockdown following the COVID pandemic, courts across the country over the preceding four years had seen close to 500 cases of pregnant women seeking permission to terminate their pregnancy.
- In a number of these cases, the courts had articulated the right of a pregnant woman to decide on the continuation of her pregnancy as a part of her right to health and right to life.
- **Right to privacy and life**- The landmark right to privacy judgment of the Supreme Court even held that the decision making by a pregnant person on whether to continue a pregnancy or not is part of such a person's right to privacy as well and, therefore, the right to life.
- The standards set out in this judgment were also not incorporated in the amendments being drafted.
- **Non-sync with other laws**- The new law is not in sync with other central laws such as the laws on persons with disabilities, on mental health and on transgender persons.
- **Conflation of laws**-The amendments did not make any attempts to remove the conflations between the MTP Act and the Protection of Children from Sexual Offences (POCSO) Act or the Drugs and Cosmetics Act.

Reference

1. https://www.thehindu.com/opinion/op-ed/still-a-long-way-for-termination-as-an-unconditional-right/article65405353.ece

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