

COURT RELAXES RULES FOR WOMAN TO ABORT FOETUS SUFFERING FROM CONGENITAL ANOMALY

Context:

- ✚ The Delhi High Court has relaxed the law governing termination of pregnancy to allow a 27-year-old woman to abort her 25-week foetus diagnosed with a congenital anomaly which made it “impossible for the child” to remain alive after birth.

Background:

- ✚ Abortion in India is legal in certain circumstances.
- ✚ It can be performed on various grounds until 20 weeks of pregnancy.
- ✚ In exceptional cases, a court may allow a termination after 20 weeks.
- ✚ Before 1971, abortion was criminalized under Section 312 of the Indian Penal Code, 1860.
- ✚ Except in cases where abortion was carried out to save the life of the woman, it was a punishable offense and criminalized women/providers, with whoever voluntarily caused a woman with child to miscarry facing three years in prison and/or a fine, and the woman availing of the service facing seven years in prison and/or a fine.
- ✚ Government of India instated a Committee in 1964 led by **Shantilal Shah** to come up with suggestions to draft the abortion law for India.
- ✚ The recommendations were accepted in 1970 and introduced in the Parliament as the Medical Termination of Pregnancy Bill. This bill was passed in August 1971 as the Medical Termination of Pregnancy Act.
- ✚ **The Medical Termination of Pregnancy (MTP) Act, 1971** provides the legal framework for making Comprehensive Abortion Care (CAC) services available in India. Termination of pregnancy is permitted for a broad range of conditions up to 20 weeks of gestation.
- ✚ As per the provisions of the MTP Act, only the consent of woman whose pregnancy is being terminated is required. However, in case of a minor i.e. below the age of 18 years, or a mentally ill woman, consent of guardian is required.
- ✚ The MTP Act 1971, was amended in 2002 to facilitate better implementation and increase access for women especially in the private health sector.

Issues:

- ✚ The MTP Act does not have a definition of termination of pregnancy. For this purpose, it has been recommended to include a definition for termination of pregnancy.
- ✚ It has been recommended to replace the term “registered medical practitioner” with “registered health care provider”.
- ✚ This would cover the expanded provider base being suggested, by bringing in Nurses and ANMs as well as Ayurveda, Unani, Siddha and Homoeopath practitioners as legitimate providers of abortion service.
- ✚ The MTP Act 1971 provides the legal framework for provision of induced abortion services in India.
- ✚ However, to ensure effective roll-out of services there is a need for standards, guidelines and standard operating procedures.

Conclusion:

- ✚ The mother, in her plea, had challenged certain sections of the Medical Termination of Pregnancy (MTP) Act.
- ✚ Assistance of medical experts from All India Institute of Medical Sciences (AIIMS) to determine the condition of the foetus
- ✚ The experts observed that in a case where the condition of the foetus is incompatible with life, the rigour of Section 3(2) of the MTP Act deserves to be relaxed.

