

Supreme Court's decision on Abortion

October 1, 2022

In news-The Supreme Court of India in a significant judgment has said that **it is unconstitutional to distinguish between married and unmarried women for allowing termination of pregnancy** on certain exceptional grounds when the foetus is between 20-24 weeks.

What did the court say?

- **A three-judge Bench framed the interpretation of Rule 3B of the Medical Termination of Pregnancy Rules, 2003, as per which only some categories of women are allowed to seek termination of pregnancy between 20-24 weeks** under certain extraordinary circumstances.
- The challenge to the provision was made in July by a 25-year-old unmarried woman who moved the court seeking an abortion after the Delhi High Court declined her plea.
- The woman's case was that she wished to terminate her pregnancy as "her partner had refused to marry her at the last stage".
- She also argued that the continuation of the pregnancy would involve a risk of grave and immense injury to her mental health.
- However, the law allowed such change in circumstances only for "marital" relationships.
- The Supreme Court, holding that the law had to be given a purposive interpretation, had **allowed the petitioner to terminate her pregnancy in an interim order.**
- The court stated that the **whole Rule 3B(c) cannot be read in isolation** but has to be read together

with other sub-clauses under 3B.

- When other sub-clauses do not distinguish between married or unmarried women, for example survivors of sexual assault, minors, etc., only 3B(c) cannot exclude unmarried women, the court held.
 - Rule 3B(c) is based on the broad recognition of the fact that a change in the marital status of a woman often leads to a change in her material circumstances.
 - A change in material circumstance during the ongoing pregnancy may arise when a married woman divorces her husband or when he dies, as recognized by the examples provided in parenthesis in Rule 3B(c).
 - The fact that widowhood and divorce are mentioned in brackets at the tail end of Rule 3B(c) does not hinder our interpretation of the rule because they are illustrative.
- **The court also expanded on Rule 3B(a) – “survivors of sexual assault or rape or incest” – to include married women in its ambit.**
- Although it does not have the effect of striking down the marital rape exception under the Indian Penal Code, the ruling said that even women who have suffered “marital assault” can be included under the provision.
- **It is not inconceivable that married women become pregnant as a result of their husbands having “raped” them.**

What does the law on abortion say?

- **The Medical Termination of Pregnancy Act allows termination of pregnancy by a medical practitioner in two stages.**
- After a crucial **amendment in 2021, for pregnancies**

up to 20 weeks, termination is allowed under the opinion of one registered medical practitioner.

- **For pregnancies between 20-24 weeks**, the Rules attached to the law prescribe certain criteria in terms of who can avail termination. It also **requires the opinion of two registered medical practitioners** in this case.
- **For pregnancies within 20 weeks, termination can be allowed if:**
 1. 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
 2. There is a **substantial risk that if the child was born**, it would suffer from any serious physical or mental abnormality.
- The explanation to the provision states that termination within 20 weeks is allowed “where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman”.
- **The phrase “any woman or her partner” was also introduced in 2021 in place of the earlier “married woman or her husband”.**
- By eliminating the word “married woman or her husband” from the scheme of the MTP Act, the legislature intended to clarify the scope of Section 3 and bring pregnancies which occur outside the institution of marriage within the protective umbrella of the law.
- For both stages within 20 weeks and between 20-24 weeks termination is allowed “where any pregnancy is alleged

by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman”.

- For pregnancies between 20-24 weeks, Section 3B of the Rules under the MTP Act lists **seven categories of women:**
 1. Survivors of sexual assault or rape or incest.
 2. Minors.
 3. Change of marital status during the ongoing pregnancy (widowhood and divorce).
 4. Women with physical disabilities (major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016).
 5. Mentally ill women including mental retardation.
 6. The foetal malformation that has 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
 7. Women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”