

SC Order on Legal Abortion

The Supreme Court recently held that women, regardless of their marital status, are entitled to safe and legal abortion until 24 weeks of pregnancy.

Key facts

- The apex court held that any differentiation between a married or unmarried woman under abortion law was “artificial and constitutionally unsustainable”.
- It held that abortion for unmarried and single woman whose pregnancies are between 20 to 24 weeks cannot be denied.
- The Medical Termination of Pregnancy Act, 1971 does not allow abortion for unmarried pregnant women between 20 to 24 weeks after consensual sex.
- The court held that Rule 3B of the MTP Act is unconstitutional since it deprives unmarried women the right to access safe and legal abortions after 20 weeks if they face a change in their maternal circumstances similar to married women.
- Rule 3B gives only rape survivors, minors, women whose married status changed during the pregnancy, mentally-ill women or women with foetal malformation the right to abortion.
- If the pregnancy involved consensual sex, termination of pregnancy is allowed only until 20 weeks. This distinction was held by Supreme Court as a violation of the Right to Equality.
- The bench held that the right of reproductive autonomy, dignity and privacy is provided by the Article 21 of the Indian Constitution. This provides unmarried women the right to choose whether or not to bear a child, just as married women do.
- This judgement is significant as it is the first ever legal recognition of marital rape, although within the limited purview of abortion. The SC held that the meaning of rape should also include marital rape, solely for the purpose of the MTP Act and related rules.

MTP Act

The MTP Act allows legal abortion in two stages. Termination of pregnancy is allowed up to 20 weeks under the opinion of a registered medical practitioners. For pregnancies between 20 to 24 weeks, the law provides certain criteria to avail termination. It also requires opinion or two registered medical practitioners.