



MTP BILL IS NOT PROGRESSIVE ENOUGH

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(Mains GS1& GS 3: Government Policies & Interventions & Issues Arising Out of Design & Implementation of Policies & Issues Related to Women)

Context:

- Recently, several petitions were submitted to the Courts, seeking permission for aborting pregnancies at a gestational age beyond the current permissible limit on grounds of foetal abnormalities or pregnancies due to sexual violence faced by women.
- The Medical Termination of Pregnancy (Amendment) Bill, 2020 seeks to amend the Medical Termination of Pregnancy Act, 1971 and **increase the upper limit of legal abortions to 24 weeks** for special categories of women.
- The move aims to increase the access of women to safe abortion services, taking into account the advances made in medical technology.

Medical Termination of Pregnancy Amendment bill: Key Features

- The Medical Termination of Pregnancy (Amendment) Bill, 2020 proposes requirement for an opinion from one provider for termination of pregnancy up to 20 weeks of gestation and introducing the requirement of opinion from two providers for termination of pregnancy up to 20-24 weeks of gestation.
- The amended bill proposes increasing the upper gestation limit from 20 to 24 weeks for special categories of women such as vulnerable women including survivors of rape, victims of incest and others such as differently-abled women and minors.
- Under the amendment bill, the upper gestation limit will not apply in cases of substantial foetal abnormalities diagnosed by the Medical Board. The composition, functions and other details of the Medical Board will be prescribed subsequently in Rules under the Act.
- Further, the name and other details of the woman whose pregnancy has been terminated shall not be revealed except to a person authorised by the law.

Critical analysis of the bill:

- The bill is being hailed as a much-needed departure from the existing legal regime under the Medical Termination of Pregnancy Act, 1971 for two reasons.
- First, the bill replaces “any married woman or her husband” with “any woman or her partner” while contemplating termination of pregnancies resulting from contraception failures, thus ostensibly destigmatising pregnancies outside marriage.
- Second, the time limit within which pregnancies are legally terminable is increased.

The prejudices in MTP Act:

- The 1971 Act reeks of moral biases against sexual relationships outside marriage, adopts an ableist approach and carries a strong eugenic emphasis.
- The very Statement of Objects and Reasons of the 1971 Act noted the fact that “most of these mothers are married women, and are under no particular necessity to conceal their pregnancy” as a logical basis for legalisation of termination of pregnancies.
- Further, in addition to preventing danger to the life or risk to physical or mental health of the woman, “eugenic grounds” were recognised as a specific category for legally permissible abortions.
- Thus, the bill’s capacity to fulfil its professed aim of ensuring “dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy” merits close examination.

Increase in gestation period:

- The bill most significantly raises the upper gestational limits for the two categories of permissible abortions envisioned in Section 3(2) of the 1971 Act.
- While the limit for the first category (pregnancies terminable subject to the opinion of one medical practitioner) is raised from 12 weeks to 20 weeks, the limit for the second category (pregnancies terminable subject to the opinion of two medical practitioners) is raised to include those exceeding 20 but not exceeding 24 weeks, instead of the present category of cases exceeding 12 but not exceeding 20 weeks.
- However, the second category is left ambiguous and open to potential executive overreach insofar as it may be further narrowed down by rules made by the executive.
- Further, pregnancies are allowed to be terminated only where continuance of the pregnancy would “prejudice the life of the pregnant woman or cause grave injury to her mental or physical health” or “if the child were born it would suffer from any serious physical or mental abnormality.”

- Section 3(2B), however, makes the upper gestational limits inapplicable to abortions necessitated, in the opinion of the Medical Board, by any “substantial foetal abnormalities”.
- The fact that a woman’s right to abortion is exercisable only in the face of such compelling circumstances renders motherhood the norm, and abortion the exception.
- As such, the bill seeks to cater to women “who need to terminate pregnancy” as against “women who want to terminate pregnancy.”
- By not accounting for the right to abortion at will, the bill effectively forces women to feign “grave injury to physical or mental health” to terminate a pregnancy, thus unequivocally crippling their bodily autonomy.
- Importantly, even while the act requires the woman’s consent to abort in the above-mentioned situations, absent a medical practitioner’s opinion validating her choice, her consent is insufficient.

Societal prejudices against persons with special needs:

- The special classifications of “serious physical or mental abnormalities” and “substantial foetal abnormalities” also reek of societal prejudices against persons with special needs.
- Undoubtedly, a woman’s right to terminate the pregnancy of a child likely to suffer from physical or mental anomalies or one diagnosed with foetal abnormalities, on socio-economic grounds or otherwise, merits recognition.
- However, in treating “physical or mental disability” or “foetal abnormalities” as separate categories amounting to heightened circumstances for termination of pregnancies, the bill reveals its ableist approach.
- This evidences a presumption that certain people are by default societally unproductive, undesirable and somehow more justifiably eliminable than others.

Dichotomy in upper gestation limit:

- This ableism becomes stark when the said 24-week limit, which is purportedly dictated by scientific and legislative wisdom, is completely lifted where the termination of a pregnancy involves “substantial foetal abnormalities”.
- Thus, while the revised upper gestational limit is by itself laudable, when read together with Section 3(2B) of the bill, a strange dichotomy emerges.
- Medical advancement is such that a safe abortion is possible at any point in the term of pregnancy, and hence, the bill permits termination at any stage when “substantial foetal abnormalities” are involved, then allowing termination only in cases of “substantial foetal abnormalities” is a fictitious and moralistic classification

- A 24-week ceiling is scientifically essential and abortions beyond the said limit would pose risks to the health of the pregnant woman or the foetus, then the secondary status of women's safety and the dominant eugenic tenor of the bill once again becomes evident.

Conclusion:

- In the landmark judgment in *KS Puttaswamy v Union of India*, the Supreme Court recognised women's constitutional right to make reproductive choices and the right to "abstain from procreating" was read into the right to privacy, dignity and bodily autonomy.
- The move from "married woman" and "her husband" to "woman" and "her partner" is appreciable.
- However, access to abortion facilities is limited not just by legislative barriers but also the fear of judgment from medical practitioners.
- It is imperative that healthcare providers be sensitised towards being scientific, objective and compassionate in their approach to abortions notwithstanding the woman's marital status.



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