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Still a long way for termination as an unconditional right

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

ANUBHA RASTOGI

The issue of abortion is in the news again, internationally. This, therefore, appears to be a good time to pen down a summary and analysis of the legal status of abortions in India.

Under the general criminal law of the country, i.e. the Indian Penal Code, voluntarily causing a woman with child to miscarry is an offence attracting a jail term of up to three years or fine or both, unless 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 under this provision apart from the person causing the miscarriage, which in most cases would be a medical practitioner.

Amendments and expansion

In 1971, after a lot of deliberation, the Medical Termination of Pregnancy (MTP) Act was enacted. This law is an exception to the IPC provisions above and sets out the rules – of when, who, where, why and by whom – for accessing an MTP. This law has been amended twice since, the most recent set of amendments being in the year 2021 which has, to some extent, expanded the scope of the law. However, the law does not recognise and/or acknowledge the right of a pregnant person to decide on the discontinuation of a pregnancy.

The law provides for a set of reasons based on which an MTP can be accessed: the continuation of the pregnancy would involve a risk to the life of the pregnant woman or result in grave injury to her physical or mental health. The law explains that 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, the anguish caused by the continuation of such a pregnancy would be considered to be a grave injury to the mental health of the pregnant woman. The other reason for seeking an MTP is the substantial risk that if the child was born, it would suffer from any serious physical or mental abnormality.

The existence of one of these circumstances (at least), along with the medical opinion of the medical practitioner registered under the MTP Act is required. A pregnant person cannot ask for a termination of pregnancy without fitting in one of the reasons set out in the law. The other set of limitations that the law provides is the gestational age of the pregnancy. The pregnancy can be terminated for any of the above reasons, on the opinion of a single registered

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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 which the rules define as either a survivor of sexual assault or rape or incest, minors, change of marital status during the ongoing pregnancy, i.e. either widowhood or divorce, women with major physical disabilities, mentally-ill women including mental retardation, the ground of foetal malformation incompatible with life or if the child is born it would be seriously handicapped, and women with pregnancy in humanitarian settings or disaster or emergency situations as declared by the government.

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, as per the law. No termination of pregnancy can be done in the absence of the consent of the pregnant person, irrespective of age and/or mental health.

The law, as an exception to all that is stated above, also 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. This, as stated, is the exception and is understood to be resorted to only when the likelihood of the pregnant woman dying is immediate.

Seeking judicial permission

While India legalised access to abortion in certain circumstances much before most of the world did the same, unfortunately, even in 2020 we decided to remain in the logic of 1971. This, despite the fact that by the time the amendments to the MTP Act were tabled before the Lok Sabha in 2020, just before the lockdown following the novel coronavirus 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 (broadly on reasons of either the pregnancy being as a result of sexual assault or there being foetal anomalies incompatible with life). 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, and therefore non-negotiable. Similarly, a number of courts had also viewed the cases at hand in the realm of the facts of the case and decided not to set the interpretation of the law straight.

This was also after the landmark right to privacy judgment of the Supreme Court of India in which it was 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. 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, to name a few. The amendments also did not make any attempts to iron out the conflations between the MTP Act and the Protection of Children from Sexual Offences (POCSO) Act or the Drugs and Cosmetics Act, to name a few.

While access to abortion has been available under the legal regime in the country, there is a long road ahead before it is recognised as a right of a person having the capacity to become pregnant to decide, unconditionally, whether a pregnancy is to be continued or not.

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As per the **Indian Penal Code, 1860** voluntarily terminating a pregnancy was considered a criminal offence.
The **Medical Termination of Pregnancy (MTP) Act 1971** in India stipulates a ceiling of 20 weeks for termination of pregnancy on certain grounds, beyond which abortion of a foetus is statutorily impermissible.
The **Medical Termination of Pregnancy (Amendment) Act, 2021 amended the Medical Termination of Pregnancy Act, 1971 (MTP Act)** and follows the earlier MTP Bills of 2014, 2017 and 2018, all of which previously lapsed in Parliament.

Time since conception	Requirement for terminating the pregnancy	
	MTP Act, 1971	MTP (Amendment) Act, 2021
Up to 12 weeks	Advice of 1 doctor	Advice of 1 doctor
12-20 weeks	Advice of 2 doctors	Advice of 1 doctor
20-24 weeks	Not allowed	2 doctors for some categories of pregnant women
More than 24 Weeks	Not allowed	Medical Board in case of substantial foetal abnormality
Any time during the pregnancy	One doctor, if immediately necessary to save a pregnant woman's life.	

Marine heatwave causes mass bleaching in Great Barrier Reef

CANBERRA, May 11: Mass coral bleaching in Australia's iconic Great Barrier Reef has been linked to a "marine heatwave", according to a report.

In the report, government scientists found that coral bleaching affected 91 per cent of 719 reefs assessed along the Great Barrier Reef over the summer of 2021-22, reports Xinhua news agency.

Coral bleaching is a phenomenon that occurs when coral become stressed due to changing conditions and expel the algae that live inside their tissue, causing the coral to become white. Bleached coral face a higher risk of starvation and disease.

The summer of 2021-22 marked the sixth mass bleaching event on the Great Barrier Reef since 1998, four of which have occurred since 2016. The report from the Commonwealth Scientific and Industrial Research Organisation (CSIRO), Australian Institute of Marine Science (AIMS) and Great Barrier Reef Marine Park Authority revealed the reef's mean sea surface temperature was 0.4 degrees Celsius above average in some parts.

"Above-average water temperatures led to a mass coral bleaching event late in the summer," it said.

"Compared to previous summers, cumulative impacts were limited this summer, with one major pressure, a marine heatwave, dominating."

The bleaching occurred despite Australia experiencing a milder summer than usual due to a 'La Nina' event.

The report noted that climate change "remains the greatest threat to the reef".

"The events that cause disturbances on the reef are becoming more frequent, leaving less time for coral recovery," it warned. – Agencies

- Marine heatwaves are **periods of extremely high temperatures** in the ocean.
- These events are linked to **coral bleaching**, **seagrass destruction, and loss of kelp forests**, affecting the **fisheries sector** adversely.
  - Study showed that **85% of the corals** in the **Gulf of Mannar** near the Tamil Nadu coast got bleached after the **marine heatwave in May 2020.**

Great Barrier Reef:

- It is the **world's most extensive** and spectacular **coral reef ecosystem** composed of over 2,900 individual reefs and 900 islands.
- The reef is located in the **Coral Sea (North-East Coast)**, off the coast of Queensland, Australia.

SC slams govt. claim that only President has pardon power

It reserves order in Perarivalan case

LEGAL CORRESPONDENT
NEW DELHI

A claim by the Centre that the President, and not the Tamil Nadu Governor, has "exclusive power" to decide on the plea for pardon by the Rajiv Gandhi assassination convict A.G. Perarivalan drew flak from the Supreme Court on Wednesday before it reserved the case for judgment.

A three-judge Bench, led by Justice L. Nageswara Rao, said the government's argument, if taken on face value, would leave Article 161 (the constitutional power of Governors of States to grant pardon) a "dead letter".

"So, according to you, the power to grant pardon is exclusively that of the President... Well, in that case, pardons granted by Governors throughout the history of this nation across States are all null and void?" Justice B.R. Gavai quizzed Additional Solicitor-General K.M. Natraj, appearing for the Centre.

A.G. Perarivalan

The court said then by the Centre's logic, every murder case convict would have to move the President for pardon.

"The end result of your submissions is that all pardons granted for IPC offences by Governors all these years are unconstitutional... If we try to accept your submissions, it would mean the President would have the exclusive power to grant pardons... So, over the period of 70-75 years, all pardons granted under Article 161 by Governors for the IPC are unconstitutional," Justice Rao exclaimed at the nature of the Centre's submissions.

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Article 161 deals with the Pardoning Power of the Governor.

- The Governor can grant pardons, reprieves, respites and remissions of punishments or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
- The pardoning powers defined in the Constitution are-
  - **Pardon**: it means completely absolving the person of the crime and letting him go free. The pardoned criminal will be like a normal citizen.
  - **Commutation**: it means changing the type of punishment given to the guilty into a less harsh one, for example, a death penalty commuted to a life sentence.
  - **Reprieve**: it means a delay allowed in the execution of a sentence, usually a death sentence, for a guilty person to allow him some time to apply for Presidential Pardon or some other legal remedy to prove his innocence or successful rehabilitation.
  - **Respite**: it means reducing the quantum or degree of the punishment to a criminal given some special circumstances, like pregnancy, mental condition etc.
  - **Remission**: it means changing the quantum of the punishment without changing its nature, for example reducing twenty-year rigorous imprisonment to ten years.

How Pardoning Power of Governor is different than President's power?

Scope of pardoning power of the President under Article 72 is wider than that of the Governor under Article 161 in two ways:

1. Court Martial: President have the power to grant pardon extends to cases where punishment or sentence is by Court Martial. But no such power is available to governor.
2. Death sentence: As of now, only President had the power to pardon in all cases including that in death sentence cases. Such power was not available to Governor. However, this provision for Governor has been reversed by Supreme court recently.

- Governor can pardon the prisoners even before they have completed minimum 14 years of prison sentence.
- Bench also held that, Governor's power to pardon overrides a provision given under Section 433A of Code of Criminal Procedure.
- Section 433A mandates that sentence of prisoner can be remitted only after 14 years of jail.
- Bench observed that, Section 433-A of the Code cannot and does not affect the constitutional power of President or Governor to grant pardon under Articles 72 or 161 of Constitution.
- Such power is in exercise of power of the sovereign. However, Governor will have to act on the aid and advice of State Government.
- Court noted, sovereign power of Governor to pardon prisoner under Article 161 is exercised by the State government and not the Governor on his own, in reality.

SC puts sedition law on hold

NEW DELHI, May 11: In a path-breaking order, the Supreme Court on Wednesday put on hold the colonial-era penal law on sedition till an "appropriate" government forum re-examines it and directed the Centre and States not to register any fresh FIR invoking the offence.

Besides the lodging of FIRs, ongoing probes, pending trials and all proceedings under the sedition law across the country will also be in abeyance, a bench headed by Chief Justice of India NV Ramana ruled.

In its significant order on the law that has been under intense public scrutiny for its use as a tool against expressions of dissent, including on social media, the bench spoke of the need to balance the interests of civil liberties and citizens with that of the State.

"This court is cognizant of security interests and integrity of the State on one hand, and the civil liberties of citizens on the other. There is a

requirement to balance both sets of considerations, which is a difficult exercise.

"The case of the petitioners is that this provision of law... predates the Constitution itself, and is being misused...," the bench, also comprising Justices Surya Kant and Hima Kohli, said.

The court listed the matter in the third week of July and said its directions shall continue till further orders.

Sedition, which provides a maximum jail term of life under Section 124A of the Indian Penal Code for creating "disaffection towards the government", was brought into the penal code in 1890, 57 years before Independence and almost 30 years after the IPC came into being. In the pre-Independence era, the provision was used against freedom fighters, including Bal Gangadhar Tilak and Mahatma Gandhi.

Over the years, the number of cases has been on the rise, with Maharashtra politician couple Navneet and Ravi Rana, author Arundhati Roy, student activist Umar Khalid and journalist Siddique Kappan among those charged under the provision.

CJI Ramana, writing the order, referred to the attorney general earlier giving instances of "glaring misuse of this provision, like in the case of recital of the Hanuman Chalisa".

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The sedition law, enshrined in **Section 124A of IPC**, was **introduced by the British government** in **1870** to tackle dissent against colonial rule.

- The **original draft of the IPC**, which was enacted in 1860, **did not consist** of this law and the Section was drafted by **Thomas Babington Macaulay** in 1837

In the landmark **Kedar Nath versus Union of India case** (1962), the SC **upheld the constitutional validity** of the sedition law while trying to curtail its misuse.

- The Court upheld the law on the basis that this **power was required by the state** to **protect itself**.

Recently, A bench headed by Chief Justice N.V. Ramana said all pending cases, appeals and proceedings with respect to charges framed for sedition should be kept in abeyance.

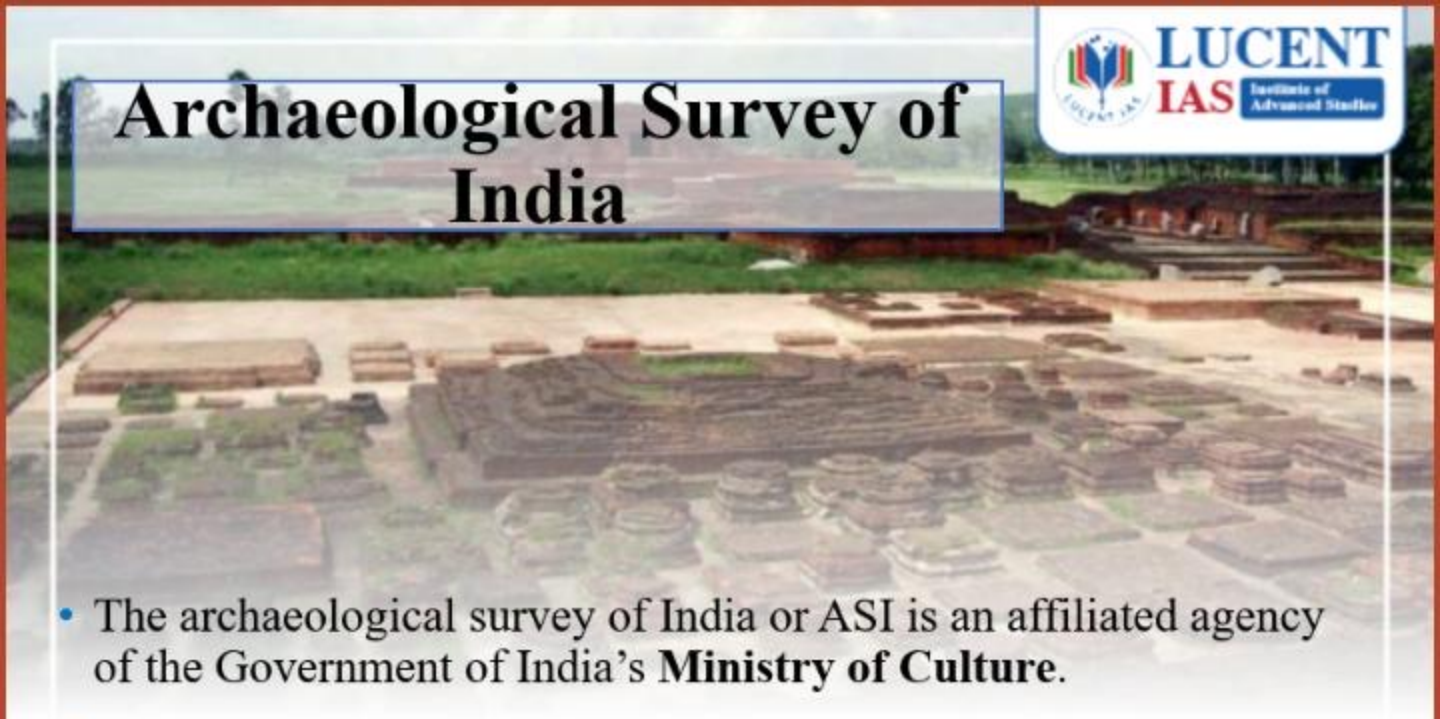
Sedition in other countries

- The global trend has largely been against sedition and in favour of free speech.
- The UK abolished sedition laws in 2009 citing that the country did not want to be quoted as an example of using such draconian laws.
- Despite the conflicting views and the attempts by courts to narrow the scope of sedition, it survives as an offence in the US, though it is very narrowly construed and can even be said to have fallen into disuse.

Martand Sun Temple

- The Martand Sun Temple is a **Hindu temple** located near the city of **Anantnag in the Kashmir Valley of Jammu and Kashmir.**
- It dates back to the **eighth century AD** and was **dedicated to Surya**, the chief solar deity in Hinduism.
- It was **once a thriving place of worship**, commissioned by **Lalitaditya Muktapida.**
- It was **destroyed by Sikandar Shah Miri** in the 14th century.
- The Archaeological Survey of India has declared the Martand Sun Temple as a site of **national importance in Jammu and Kashmir**.

Archaeological Survey of India



- The archaeological survey of India or ASI is an affiliated agency of the Government of India's **Ministry of Culture**.
- It was **created in 1861 by Alexander Cunningham, Father of Indian Archaeology,** a British Army engineer with a particular interest in Indian archaeology.
- It is the **premier organization** for **archaeological researches** and **protection of the cultural heritage** of the nation.
- **Aim:** Maintenance of ancient monuments and archaeological sites and remains of national importance.
- It regulates all **archaeological activities** in the country as per the provisions of the **Ancient Monuments and Archaeological Sites and Remains Act**, 1958.
- It also regulates **Antiquities and Art Treasure Act**, 1972.

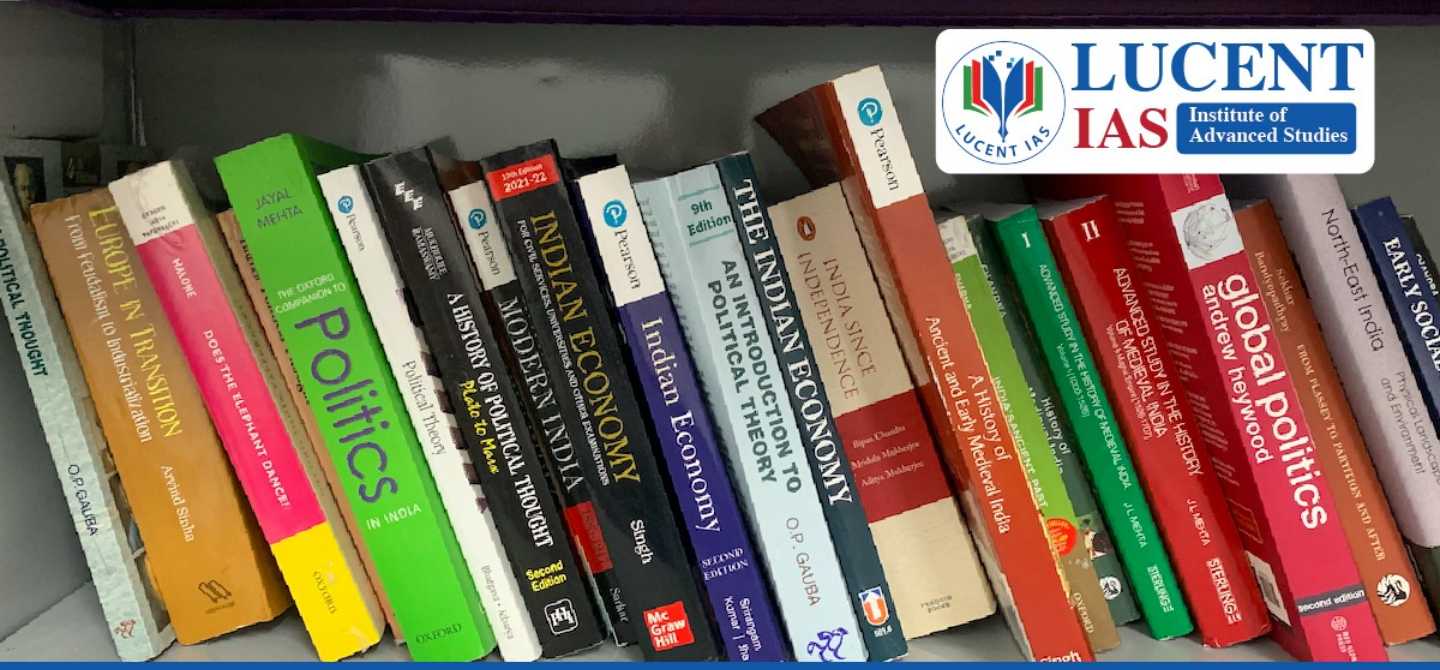
Daily MCQ for APSC CCE

World Press Freedom Index is released by

A. Transparency International
B. Reporters Without Borders
C. Freedom House
D. International Federation of Journalists

Correct Answer: B. Reporters Without Borders

The World Press Freedom Index(WPFI) is published annually by The Paris based Reporters Without Borders (RSF) to evaluate the level of freedom available to the media in 180 countries. In the first WPFI report in 2002, India's rank was 80. Subsequently the rank of India has fallen to 142 in 2020 and followed by 150 in 2022.



General Studies (GS)- I

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