

Rights Of Unborn Child

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Abstract

Children are considered a sacred gift to humans. Children are also considered gods, but some are very evil and kill them while still in the womb. Abortion is legal in the United States, but it is controversial whether the fetus should be given a "right to life." A fetus is a developing human being that exists until birth. The baby's heart begins to beat between the second and third weeks of pregnancy, indicating that humans are developing. The fetus is not protected by Article 21 of our Constitution of India. This means that Indian fetuses are not eligible for Article 21 protection until they are born when the child is born from the womb. The fetus cannot benefit from Article 21, but this does not mean that the fetus has been deprived of its rights. Some of the rights highlighted in the study apply to the fetus. The importance of the fetus and why it should be entitled to Article 21 are also discussed in this article.

Keywords: - Womb, Foetus, Article 21, Unborn Child

INTRODUCTION

There is a general misunderstanding that brain and body development begins when a child is born or leaves the uterus. (Legal rights of the fetus, 2019) The fetus, as mentioned in the summary, is a human being who is still developing. According to our Constitution, "no one should be killed unless permitted by law." Between the 18th and 24th days of the mother's pregnancy, the baby's heart begins to beat.

(Parental fetus and right to social and legal restrictions: Birth of a new debate, 2008) The baby's organs do not fully develop in the womb until the 8th week of pregnancy, but the baby's heart begins to beat from the 2nd to the 3rd week of pregnancy. The World Medical Association states: "Human life begins with conception and ends with death." When the baby's heart begins to beat in the womb, it is clear that the baby lives in the mother's room. However, the "Article 21 of the Constitution of India" defines a person as a human coming out of the womb and does not consider the fetus or fetus as a human, so the fetus does not have the right to life.

Why is the fetus not recognized as a human in our Constitution, and why does the fetus have no right to life?

The United Nations states that fetuses and newborns should not be treated separately, but I am concerned about the Indian "law of life" of infants and the legal loopholes that exist in our country regarding fetal rights. Laws have traditionally prohibited abortion of a fetus without consent.

HISTORICAL BACKGROUND

In the mid-19th century, the world learned that children need to pay special attention before and after birth. The 1924 Geneva Declaration of Children's Rights was the first to address the special needs of children. As a result of World War II, the Declaration of Geneva was updated with two additional points. Prejudice against children by nationality, caste, or religion must not exist before or after birth.

Under the Treaty 4 of Geneva, children are fully recognized before birth and are recognized as a basic humanitarian obligation. The Universal Declaration of Human Rights of 1948 guaranteed equal protection for babies before and after birth.

Under Geneva Protocol 2, pregnant women or mothers with young children will not be sentenced to death. Pregnant women and mothers with young children did not die because the law could not kill an innocent child in the womb of a guilty woman. Based on previous norms, the fetus is clearly comparable to a normal child and has the same right to life as other people. On the other hand, in India, the law to protect the rights of the fetus is difficult.

Indian law is still ambiguous and leads to many difficulties, as there is no certainty that the fetus is a normal child.

Abortion was only permitted in cases that threatened the life of the child or mother. Legislators fear that allowing a woman to have an abortion in order for a newborn to grow and begin to function in the womb between the 3rd and 4th week of pregnancy is considered murder. Allowing a mother to have an abortion constitutes a murder because the child begins to grow the moment she becomes pregnant.

The fetus breathes and does everything like a normal baby, so it has all the rights that a normal human has, but whether our country's law should now consider a baby as a normal human.

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DIFFERENT RIGHTS OF AN UNBORN CHILD IN INDIA

Law is considered the most important element of a country. The law makes life easier. There are some flaws in the law, as nothings absolute. Many are wondering if the fetus should be given human rights. The rights of the few fetuses are emphasized.

Limitation Act 1963

Children in utero are considered minors under Section 6 of the 1963 Limitations Act.

"If a person eligible to file a proceeding or application for the enforcement of an order is a minor, mentally ill, or ridiculous at the time of attribution, he may file a proceeding or application within the same period. Period after the cessation of disability as would otherwise be allowed from the time specified in column 3 of the schedule."

"For the purposes of this regulation, children in utero are considered minors."

Indian Succession Act 1925

Minors are defined as persons under the age of 18 under Section 2 (e) of the Indian Succession Act of 1925. Therefore, in this case, the fetus is considered a fetus. (Fetal rights, 2021)

"People who are subject to the Indian Majority Act of 1875 (9 of 1875) and have not reached a majority within the meaning of that law, and others under the age of 18, are within the meaning of s. It is a minor.) And the minority means the position of such a person. "

Indian Penal Code, 1860

According to Sections 312 to 316 of "Indian Penal Code", anyone who prevents the birth of a living child or causes the death of an unborn child will be punished appropriately. As you can see, great attention is also given to the fetus. "A person who knowingly has an abortion shall be sentenced to imprisonment for a term of not more than three years or a fine or both, unless it is done in good faith for the purpose of saving a life. If a woman has an affair with a child, she will be sentenced to imprisonment for a term of up to seven years, or both. (Ranchhoddas, Thakore, Thomas and Rashid, 2014)

Hindu Succession Act, 1956

Children's rights in utero are recognized in Section 20 of the Hindu Succession Act of 1956. With regard to legal succession, the child in the womb is treated the same as the child born. From this we can conclude that the fetus has the same rights as the born child.

Article 20: Children's rights in utero. A child who was in the womb at the time of the deceased's death and was born alive afterwards has the right to inherit from the deceased as if he had been born before the deceased's death, in which case it is presumed to have inheritance. Affects the day of inviolable death. "

Transfer of Property Act 1882

Under Section 13 of the Property Transfer Act 1882, a fetus is defined as a child or a child in utero. Property can be transferred to a child, even if it has no fetus or is not considered a living thing.

"Section 13: Infection of the Fetus"

If ownership arises in the interests of a person who does not exist at the time of transfer, the interests created for that person's interests may extend to the entire remaining interests of the transferor of ownership of the transferor of ownership. Except, it will not be valid. It is subject to a privileged transfer created by the same transfer. (Fetal rights, 2021)

What about basic right to life if the property can be transferred to the fetus?

Criminal Code, 1973

If a woman sentenced to death is found to be pregnant, Section 416 of the "Criminal Code" provides that the High Court can uphold execution and can reduce the sentence to life in prison. "If a woman on death row is found to be pregnant, the High Court can uphold the sentence and possibly reduce the life sentence."

It should also be noted that the penal code implicitly respects the right to life. (Rights of unborn children under Article 21 of Indian Constitution, 2020)

According to the above provisions, unborn children are considered as normal people and under "Section 21 of the Constitution of India", unborn children have the "right to live" as an ordinary person. The law makes no distinction between an unborn child and a normal human being. Regardless of a child's class, religion, sex or nationality, the "right to life" applies to both the unborn child and the healthy newborn. Therefore, the law should clearly state that unborn children have the same rights to Article 21 as anyone else.

INJURY TO THE UNBORN CHILD

"The way society treats its children is the clearest proof of its core." In India, there are many techniques for killing a fetus. Even in India, parents want to harm their children in different ways for selfish reasons. Men's sterilization surgery is socially unacceptable because it is believed to impair male masculinity.

The provincial government has launched a male and female sterilization campaign to control the country's population. When a woman undergoes surgery, she is often rewarded financially or with incentives. As a result, women cannot become pregnant, and their children's lifespan is shortened for financial reasons. A woman can never become pregnant after tubular resection, so the life of the fetus ends for financial reasons.

In rare cases, pregnant women were forced to work throughout their pregnancy, causing miscarriage and harm to their babies. Female workers in low-income households cannot afford to quit their jobs and can cause miscarriage and harm to the fetus. In this case, the physical and mental health of the pregnant mother can be compromised if forced to give birth to an unwanted child. Parental negligence can endanger the life of the fetus.

Pregnant women who take drugs, alcohol, or other substances during pregnancy can endanger the fetus. Women who drink too much alcohol give birth to babies with fetal alcohol syndrome, endanger their lives and, under certain circumstances, can lead to miscarriage. Even if the father smokes and the pregnant woman inhales the smoke, it can harm the fetus and cause a miscarriage, or the mother can give birth to a harmed child. Failure to give proper care and harm to the mother during pregnancy can lead to miscarriage and the birth of a defective baby.

Therefore, both parents and men need to take proper care to ensure that the lives of newborns and mothers are not endangered and that parents give birth to healthy children. Parental negligence endangers the lives of babies and mothers. Many pregnant women end their pregnancy after knowing that their baby's gender is female because of ignorance and the assumption that girls are incomparable to men. It is shocking that the country still has unethical practices to abort child birth because the fetus is female. Since then, the Government of India has enacted the 1994 Prejudice and Prenatal Diagnostic Procedures Act amended in 2002 (Fetus as a Constitutional Person, 2010) to provide ultrasound equipment for sexually determined children. It is sneaky to distinguish the gender of the fetus and end with only the gender of the female.

STATUS OF LIFE OF FOETUS UNDER INDIAN CONSTITUTION

The question of whether a fetus should be given the same rights as a child has long been and is still being debated. People believe that the fetus is physically present in the womb and therefore needs to be granted a "right to life". It would be unfair to deny access to the right to life, as the fetus is beginning to grow into a human. (Legal rights of the fetus, 2019) It is also argued that the fetus has not yet been born and therefore cannot be considered human until the child is born, and therefore the right to life of the fetus should be denied.

As a result, the fetus is not yet out in the world and cannot be considered a human and therefore has no right to life.

CONCLUSION AND SUGGESTIONS

After reviewing many judgments and regulations on the rights of the fetus from all over India, we came to the conclusion that the fetus must be given a "right to life" and that the child in the womb should be considered human. Unborn children are not considered human until they are born on earth, "the author says. The rights of the fetus are disputed, but the development of the fetus begins with conception, so the law should give the fetus the same rights as a normal human. As a result, it takes time for a child to grow into a normal human being.

Any form of violence or denial of a child's right to life should be considered a crime. The fetus should be treated like a normal human with all the necessary rights. Legislators need to amend the law on fetal rights to make it clear that the fetus has the same rights as others.

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