

Single Mother Abortion with Regard to the Right of the Foetus

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Abstract

The most fundamental of all rights is the right to live, which is a rather open-ended concept. In India, Article 21 of the Constitution recognizes the right to life. The right to privacy, which is a subset of the right to personal liberty and derives from the right to life, has acknowledged the right to abortion. But whether or not to treat an unborn kid as a human being and accord them the status of a person is a constant point of debate. Several factors, including religious, ethical, moral, and legal values, govern the issue of the right to an abortion. All religions strongly oppose abortion. Nevertheless, the debate over whether the mother has the right to an abortion or the child has the right to life continues to rage. On the subject of abortion, Ronald Dworkin has conducted a thorough investigation. He rejected the extreme stance espoused by those who oppose abortion, who assert that the fetus is an entirely moral being from the moment of conception. Therefore, abortion is illegal or almost as illegal as murder, and the unborn has a claim to life.

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Introduction

One of the topics that have received a lot of attention at both the national and international level is abortion¹. It has turned into a contentious topic on a global scale. Whether a mother has the right to end her pregnancy whenever she wants or whether an unborn child has a right to live is a contentious issue for everyone.

Prior to the third trimester, a fetus has no interest, claims Dworkin. Due to insufficient brain development before this point, a fetus cannot feel pain until late in pregnancy. According to consensus among scientists, a fetus's brain will be adequately developed to experience pain around week 26. Determining whether abortion is in the best interest of a fetus must therefore be based on whether the fetus has interests in and of itself, rather than whether interests will arise in the absence of abortion. The absence of life means the absence of interest in that thing.²

Understanding of Mothers' Rights Regarding the Unborn Child's Rights under Indian Law

In accordance with Article 21 of the Indian Constitution, the right to personal liberty is one of the most revered, sacred, and unalienable fundamental rights guaranteed to Indian citizens. As a liberty protected by Chapter III of the Constitution and the ancestor of the Right to Life, it has been the subject of several legal interpretations across the nation. It is regarded as including the right to an abortion. India has ratified the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights in terms of international law. Freedom from interference in one's privacy and family life is a safeguard that is extended by Articles 11 and 12 of the Universal Declaration of Human Rights and Article 17 of the Covenant on Civil and Political Rights.³

The minimum age limit for children has been established by the Indian legislature's various laws protecting children's rights, and in particular, the legislature of India is on an equal footing with that of the United States with regard to Clause IV of the United Nations Convention regarding a child's rights while in the womb. The crime of miscarriage is defined in Sections 312 to 312 of the Indian Penal Code. "Whoever knowingly causes a woman to miscarry should, if such miscarriage is not inflicted in good faith for the sake of saving a woman's life, be punished," the law declares. Therefore, it is regarded as a punishable offense throughout the country's territory to cause miscarriage, also known as an induced abortion. Perhaps it is significant to observe the vocabulary that the relevant Code sections have chosen to use. The word "abortion" is not used in it. Instead, the phrase "inducing miscarriage" is used, which implies that the miscarriage was not done freely. The Code expressly permits therapeutic abortion,

which is the termination of a pregnancy when the mother's life is in danger and for no other reason.

In this regard, the case of *Manikuttan vs. M. N. Baby*⁴, in which the Kerala High Court stated that a fetus is another life in the woman who eventually manifests as a baby, may be cited. As a result, it was decided that compensation should be awarded in relation to the loss of two lives since the pregnant woman's death actually results in the loss of two lives. The exact phrases may be repeated as follows to convey the court's profound viewpoints:

The loss of the fetus shouldn't be seen as a harm the pregnant mother experienced in the collision. First off, the fetus is another life inside the woman, and eventually, it gives birth to a baby. Although the fetus develops within the body of a woman, it cannot be compared to or viewed as a component of the woman's body. In actuality, the husband of the deceased pregnant lady loses a child when the fetus is lost as a result of the woman's death. Second, there is no room to consider paying out damages for the victim's physical harm who perished in the car accident. It would be absurd to award compensation if the woman's death in the accident was seen as another bodily injury in addition to the woman's death. If a pregnant woman dies in a car accident, two lives must be lost in order for compensation to be awarded. Due to his wife's death in the accident, the appellant-husband is undoubtedly entitled to make a separate claim for compensation for the loss of his unborn child.⁵

It's critical to clarify the pertinent passages in the Constitution in order to comprehend the separate acknowledgment of rights for both the mother and the unborn.

Different Legal Contexts that Recognize a Pregnant Woman's Rights

The human right to live with dignity, protected by Article 21 of the Indian Constitution, gives mothers the freedom to decide whether or not to have children.

The primary Act establishing guiding guidelines in this regard is the Medical Termination of Pregnancy Act, of 1971. In a nutshell, it discusses legislation pertaining to the termination of pregnancies, who is allowed to do it, where abortion can be done, and the penalties for breaking the Act's rules.⁶ While the National Health Mission actively tries to ensure equitable access to abortion, the aforementioned Act has legalized abortion in India. Both are a part of the country's overall plan to lower the rate of maternal mortality. It states unequivocally that a woman's right to have an abortion is to be recognized as an independent choice that is sufficient in and of itself. The Medical Termination of Pregnancy Act, 1971,

Section 3 states that a woman does not need to get her husband's permission before using her right. She must also be an adult and legally mentally healthy in order to exercise this right. The formal approval of a guardian is only required if the lady is a juvenile or mentally disturbed. Additionally, a rape victim does not need to ask the court for authorization to end a pregnancy that was brought on by rape. Abortion is permitted up to 20 weeks of pregnancy under Section 3(2)(b).⁷ Courts have, however, disregarded this Act-mandated time limit and allowed pregnancy termination for rape victims.

When and how abortions may be performed are clearly outlined in The Medical Termination of Pregnancy Act of 1971, including situations where the mother has suffered physical or mental harm, when the fetus has been diagnosed as handicapped, when contraception has failed, and when rape victims are pregnant. Perhaps different courts have used a hybrid strategy in a number of cases. Some courts continue to hold the view that a woman must have her husband's consent in order for her to abort the fetus; otherwise, the abortion will not be allowed. In other words, it can be argued that such a viewpoint places the father, not the mother, as having the first claim to the fetus. This fact can be contested as being not only incredibly unfair and discriminatory, but also demeaning to the existence of a woman. For instance, the court declares in *S.K. Verma v. Usha*⁸ that an abortion performed without the husband's consent would be cruel. The Medical Termination of Pregnancy Act, 1971's provisions were not taken into account by the court in the aforementioned case. It is often believed that having the freedom to use one's limbs and abilities implies having control over one's reproductive options or processes. A person has total control over his or her "person," the Supreme Court ruled in the case of *Kharak Singh v. State of U.P.*⁹. As a result, the right to an abortion is a separate right that results from the right to life.

Different legal contexts that acknowledge a developing child's rights

According to Section 6 of the Limitation Act of 1963, a person who is eligible to file a lawsuit or make an application for the execution of a judgment but is a minor at the time the prescribed period is to be calculated may file the lawsuit or make the application within the same timeframe after the disability has ended. Furthermore, the section's explanation makes it clear that "minor includes a child in the womb.

According to Section 20 of the Hindu Succession Act of 1956, a child who is still in the womb at the time of the intestate's death and then gives birth after the intestate has passed away is entitled to inherit in the same way that he would have

been had the child given birth prior to the intestate's passing. In this situation, the inheritance will be considered to have become effective as of the date of the intestate's death.

The relevant parts of The Transfer of Property Act, 1882—Sections 13 and 20—concerning the transfer of a property—make provisions for the creation of an interest in the property for the benefit of an immaterial person. When an unborn person has such an interest created for him, he gains a stake in the child's birth.

Section 112 of The Indian Succession Act of 1925: This section emphasizes the rights of a person who is born after the testator dies.

According to Section 7 of The Indian Succession Act, 1925, a person's domicile of origin is the nation in which their father was born or, in the instance of a child born after their father's death, the country in which he passed away.

Additionally, The Black's Law Dictionary's definition of "The Rights of an Unborn Child" is worth mentioning. It claims that the rights of a fetus have received significant recognition in a variety of legal contexts, including criminal law, where the murder of a fetus is classified as a crime under California Penal Code, Section 187, and transfer of property laws, which recognize the rights of a fetus for the creation of a beneficial interest in the subject matter of the property, such as transfers by will or descent. If a parent's death was caused by negligence, the kid has the right to file a lawsuit after giving birth. In addition, if the child is born, he or she may be able to pursue legal action for any prenatal damage incurred, and in any case, if the fetus is killed, there may be grounds for wrongful death litigation. However, there are differing views on this issue. The fetus should be viable before any legal action is launched in the name of or on behalf of the unborn, according to some jurisdictions, while others believe that any injury caused, even in the early weeks of pregnancy, is sufficient to bring an action.¹⁰

Conclusion

Arguments in favor of liberalizing abortion legislation have gotten a range of reactions. Many worry that legalization will lead to mass abortions of unborn children and constitute a grave injustice to human life. There may be a surge in the murder of young girls. Maybe there are other parts to the problem. Only stringent law enforcement and monitoring organizations like the Pre-Natal Diagnostic Techniques (PNDT) Act and active state authorities can keep the problem under control. Although the laws in India do recognize an unborn kid as a legal person, the child does not receive rights until it is born. In other words, the state cannot step in before the unborn kid reaches viability. Regarding how the law would safeguard an

unborn kid's rights in India and how much liability will be owed to such a child, the situation is still uncertain.

The absence of basic prenatal care in the nation is one of the main factors that puts both the mother and the unborn child at risk. Only when the mother's rights are upheld in the first place and her health is given proper regard is the well-being of an unborn child conceivable. There are several reasons why pregnant women are neglected in our society. Records and reports indicate that the lady is frequently not given proper medical care when she is pregnant. It is crucial that laws and their enforcement are taken seriously in order to hold respective families and medical professionals responsible for any disregard for the law. The fetus's true welfare won't be realized until the problem is treated with the utmost seriousness.

Moving past reliance on the judiciary, proactive state-level policies that guarantee reasonable and equitable access to abortion are needed. More work must be done to safeguard and enhance abortion rights, and unneeded limitations must be loosened. Government involvement in reproductive rights and choices must be kept to a minimum, ensuring that patients and their healthcare providers have the best possible control over access to abortion, birth control, and sterilization. Furthermore, maternity health benefits, including abortion services, must be covered by health insurance plans and policies.

References

1. Dworkin, Ronald. (1999). *Freedom's Law: The moral reading of the American Constitution*. 90. Oxford University Press ed.
2. Grobstein, Clifford. (1988). *Science and the Unborn: choosing Human Futures*. Basic Books.
3. US Supreme Court Reports. Vol 35. The lawyers cooperative publishing co. New York.
4. Baxi, Upendra. (1986-87). Abortion and the law in India. *Journal of the Indian Law Institute*. Vol-28-29. Alice Jacob: New Delhi.
5. Manikuttan, M.N. Baby. (2009). ACJ 1497 Kerala HC.
6. *ibid*.
7. (1971). The Medical Termination of Pregnancy Act. sec. 3.
8. *ibid*.
9. Verma, S.K., Usha, V. F.A.O. No. 251 of 1983.
10. Singh, Kharak. State of U.P.and Others 1963 AIR 1295, 1964 SCR (1) 332.
11. Patal, Santhilal. (2007). Oriental Insurance Company Ltd. (4) ACD 835.

Books

1. LAW RELATING TO WOMEN AND CHILDREN:- BY: MAMTA RAO
2. LAW RELATING TO WOMEN AND CHILDREN :-BY: ANJANI KANT.

Websites

1. www.indiaangloinfo.com
2. www.indiatogether.org
3. www.unfpa.org
4. www.amnestyusa.org
5. www.hrln.org
6. www.indianexpress.com
7. www.cehat.org