

## Right to life of fetus

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### **Abstract:-**

*The right to life is a fundamental right under article 21 of The Indian Constitution. Whenever Child takes birth in this new world on that time actually life starts and till his last breath it continues. . Now, question arose when right to life starts actually, when child exists in mother's womb or after that? Every human being has existence before birth. This existence starts when fetus existing in mother's womb. Still today, when right to life starts is unanswered, because our law makers see the life after birth only and they not much concentrate on right to life's starting point of mother's womb. Our law makers totally ignore the right to life of fetus! There is not any specific law or not specific provisions in build up laws. Apart from that judicial pronouncements are not constant from these issues. Here question arose before us which rights available to fetus. Is this including right to life? Or this right is not available before birth to these fetus children? These questions are battling before the Society and law. These are indirectly heat Female feticides. Today Female feticides are always firing facing Problem in Indian society. India is moving towards a gender-imbalanced society.*

**Key words-** womb, fetus, right to life, human being, female feticides, unborn child.

### **Introduction:**

***"Birthing is the most profound initiation to spirituality a woman can have."*-Robin Lim.**

Whenever child takes birth in this world on that time child come under the concept of person and some rights has been available to child. **Article 21** of Indian Constitution shows us, **"No person shall be deprived of his life or personal liberty except according to a procedure established by law."** Right to life is a fundamental right under article 21 of Indian Constitution. But when we keenly observe the existence of life starts from before birth. Mother's womb is the place, where actually life starts and after completion of certain period in mother's womb child takes birth. This shows us that the existence of life arose before birth. 'No person' including in this concept of article 21 including fetus in mother's womb, and this fetus not deprived of life and personal liberty. But when we study right to privacy there have been some rights which show that right not to give birth is come under right to privacy and right to privacy also included as an intrinsic part of right to life. We observe that under one head of right to life there arose some overlapping on each right. When right to privacy including as right to life then chose to abort is right to privacy. Under this right of abortion is permissible, then what about the right to life of fetus child? Whether they have right to life when their existence in mother's womb? Globally, different nations allow the life after birth only they are not considering life before birth. In this regard they not give any attention to life of fetus child. . Now, here question arose when right to life starts actually, when child exists in mother's womb or after birth? Neither specific law exists on these issues, or specific provisions in any laws shows on these issues. Apart from that judicial pronouncements are also not conclusive.

The problem is become more complicated when we observes in society that ratio of male is more than female. Indian parents are responsible for this .Female fetus killed by their parents in fetus itself. Unfortunately! Again question creates before us, really in Indian society some female fetus who aborted because they were female fetus had right to life? The difference between birth rate of male and female ratio make question before us! In India, right to life only gives to male fetus baby? And what is wrong with female

fetus baby? Why this difference arose between ratios? Whether society's view point is reason for this? When it will be changed? Female fetuses had killed in mother's womb rapidly and this is very regretful situation before Indian society.

#### **Definition of fetus-**

“A living entity that comes into being as the result of the fertilization (in vivo or in vitro) of a human egg by sperm and that develops in the separated from a woman's body, but is capable of surviving outside the uterus to some extent.”<sup>1</sup>

“Fetus: An unborn offspring, from the embryo stage (the end of the eight week after conception, when the major structures have formed) until birth.”<sup>2</sup>

#### **Does Fetus Has Right to Life-**

Here two views shows about the question- does fetus has right to life? First view is that life starts from mother's womb. Second view is that life begins only on birth.

When we consider first view that life starts from the point when fertilisation of sperm starts to develop towards 'ovum.' Again this further shifted 'embryo' and in near about second month converted into 'fetus.' Now which stage of development right to life give to fetus child? On which exactly development part right to life provided to womb child? What type of right give to them when existence is not shows directly? Existence in hidden then it's become impracticable to give these rights.

When we consider Second view that life begins only on birth, and then also questions arose before us, if right to life starts after birth, then no right given to fetus child. Right to life also not available to them and at any stage of development of fetus child they ruined up. If this is done then abortion of any gender fetus not become offence and many fetus children killed in fetus itself! This actually affects country like India because here female fetus killing ratio has higher than male feticides. Which indirectly affect imbalance to society between man and women.

Today the right to life of fetus has differed from different statute law. Apart from that judiciary not static on this question and differ his verdicts from case to case.

#### **Right to Life and Female Feticides-**

##### ***“Save the girl from the grave”***

To become a daughter in Indian society is actually a curse. From womb to grave the journey of women is pitiful. Her existence in family like unwanted for home. Not any glory of birth not any happiness or hope for family from female child. Indian society is male dominated society. That's why much more domination arose in these families from males. So, men are always preferred in Indian society.

When any women pregnant in Indian family then till birth of child she always prays for son. Son has much more preference than daughter. For religious, spiritual, family work son has greater value. When, Son actually takes birth the atmosphere of family is different from girl child's birth. This atmosphere never changes to female till her last breath. So when women became pregnant she too praise for son. Reason behind this is that actually she feels that fetus will not to treat as like inferior to her in society. Considering of this reason women always praise to god when she is pregnant that, hey God! Please bless to her not to give female child. She herself suffers a lot because she is female. Now, not again this question arose before her to give birth to female child. Women very well know that female fetus is really a question mark before her family as well as society. So, it's better to give birth to Son child.

Society has two wheels, one is man and another is women. If one is become less number then how can society run smoothly? Girl children's will become tomorrow's

<sup>1</sup> Gupte S, Rights of the fetus in Legal Angle of Gynec Practice, Eighth Issue, Publishers Maharashtra Law Agency, Nashik, 2008, 1-2.

<sup>2</sup> William C. Shiel, Definition of Fetus,' Reviewed on 12/12/2018, [https://www.rxlist.com/fetus/...](https://www.rxlist.com/fetus/)

sister, daughter, wife, and mother. If societal attitude kills them in fetus itself then how make balance between these relations ratio. Apart from that if we consider only male's society, can men live without women in society? Man cannot do alone, live alone in society. Every family make perfect when men and women have shows their presence in family. If we would think family without women this is horrible thinking according to me. On that time everyone need to remember that man cannot do without women. Today everywhere we read and see one slogan I.e. 'Betti Bachao' but whom? Female fetus not safe with their parents itself! Their parents are the killer of female baby in womb, but sadly not much concentration is made on this issue. Society doesn't change his attitude towards female children.

***“No girl- No mother- No life”***

### **Right to Life of Fetus and Mother's Freedom of Choice**

Right to life of fetus means whatever requires for fetus till birth mother provide to her child in her womb. So the baby becomes healthy in physically as well as mentally. It is parent's duty to take care when child is in her mother's womb and to provide all necessary nutrition and facilities for developing in womb. This is available when mother wants to give child birth. But what about that right when mother has right to choice to give birth to child or not? Whether right to choice to give birth or not is come under right to privacy? And mother not wants to give birth to fetus? Then which right prevails right to life or right to choice of women to abort, which come under right to privacy? This question always hit by daily routine problem. General view is that abortion is sin but when it affects the life of women then it's permissible. According to Dworkin, 'we should not cause destruction to other rights and harm with other people'.<sup>3</sup> So, although a woman have right to privacy but when exercise of such a right? And if exercise this right what happen with fetus right to life?

Under section 312 of Indian Penal Code 1860, shows, 'causing miscarriage' is an offence. 'Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

Explanation – A woman who causes herself to miscarry, is within the meaning of this section.

The Medical Termination of Pregnancy Act, 1971 which is enforced on 10 August, 1971, this act provide for the termination of pregnancies by registered medical practitioners<sup>4</sup> and for matters connected therewith or incidental thereto.

Under section 3(2) of Medical Termination of Pregnancy Act, shows that a pregnancy may be terminated by a registered medical practitioner –

(a) Where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

<sup>3</sup> Ronald Dworkin, "Taking Rights Seriously", Universal Publishing Company, New Delhi (1<sup>st</sup> Indian Reprint 1996), pg. 184-205.

<sup>4</sup> Sec.2 (d), The Medical Termination or Pregnancy Act, 1971, 'registered medical practitioner means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act,1956, whose name has been entered in a state Medical Register and who has such experience of training in gynaecology and obstetrics as may be prescribed by rules made under this act.'

(b) Where the length of the pregnancy exceeds twelve weeks, but does not exceed twenty weeks, if not less than two registered medical practitioners are, Of opinion, formed in good faith, that

(i) the continuance of the pregnancy would involve a risk to the life of the pregnancy woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Under this act first explanation is given that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. And second explanation is, where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the pregnant woman.

### **International Instruments and unborn child's right:-**

There are some international provisions shows the rights of unborn children and child in mother's womb. We go through these as follows-

#### **1) The Universal Declaration of Human Rights 1948:-**

The universal Declaration of Human Rights is an invigorated for human life. It ratified 10th December 1948. In this declaration preamble deal with, 'whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' which shows that here are rights which are equally distributed of all members and these rights have recognized by this declaration.

Article 3 of universal declaration of human rights says that, 'Everyone has the right to life, liberty and security of person.' In this article the word everyone included in a very broad sense which included fetus child also. According to this declaration right to life recognized to fetus child also. Apart from this right to life, there are liberty and security of person also recognized under this article. Means, security provided to person also provided to fetus child.

Article 7 of this declaration says that, 'all are equal before the law and are entitled without any discrimination to equal protection of the law.' Here the word 'all' included fetus also and he has treated equally before the law and also recognized not to discriminate and equal protection gives to fetus child.

Article 5 of Universal declaration says that, 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment.' Here no one included fetus child also and he not to subjected to torture or to cruel or inhuman treatment when he itself in fetus is recognized under this declaration.

Article 6 of Universal declaration says that, 'Everyone has the right to recognition everywhere as a person before the law.' Here the word everyone included fetus child also. No specific recognition of age provided under this declaration. Everywhere he recognized as a person before the law included as fetus child also.

#### **1) The International covenant on civil and Political Rights 1966:**

The International Covenant on Civil and Political Rights adopted by United Nation General Assembly on 16 December 1966, and in force 23 March 1976. In this Covenant article 6 says us that, 'every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrary deprived of life.' In this article the word every human being conveys very wide meaning. This conveys the meaning starts from womb life. This fetus life must be protected. So, no one shall be arbitrary deprived of life means

if pregnant women have given death punishment, then it should convert for the protection of life of womb child. The life of womb child not to be deprived. So the right to life available to every human being means from womb child he has right to life and no one deprive his right to life though he is in womb.

**2) Convention on the rights of the child, 1989:-**

The Convention adopted, ratified by General Assembly on 29 November 1989 and in force 2 September 1990.

Para 10 of Preamble of this convention says that, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before as well as after birth.**’ This shows us that rights of the fetus child are needed to care before birth also. This right of child as well as womb child should be protected.

Para 5 says us that, childhood is entitled to special care and assistance.’ on this healthy atmosphere, family build up, physically as well as mentally pleasant well being. This healthy buildup child becomes the healthy strength of the nation. But, actually these not start from after birth but before birth when child is in womb. This womb child also need this healthy, pleasant mentally as well as physically atmosphere.

In Part 1, article 1 defines the meaning of child, which shows that, ‘a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’ This meaning does not give meaning how much below age from eighteen years. So broadly we take in mind that this included from womb life of child. And this life for all manners must be given safeguard, protection as well as right to life with dignified manner from womb.

**Laws in India: Right to life of Fetus:-**

There are various laws in India which shows various rights of fetus child in specific laws provisions. Here we see them one by one in brief-

**1) Indian Constitution 1950:**

Indian Constitution is safeguard of all the rights of individuals. Right to Equality, Right to freedom, Right to exploitation, Right to freedom of religion, Cultural and Educational Rights, Right to Constitutional Remedies, etc. rights has been taken protection under Constitution. In this right, right to life is very extensive meaning shows in Indian Constitution. This right is the heart of the fundamental rights. Article 21 of the Indian Constitution says us that, “No person shall be deprived of his life and personal liberty except according to procedure established of law”. But this article not directly says the criteria when person acquire right to life. No specific explanation given on this point in this article. Apart from that this article has very vast meaning which included also to choice of taking birth to child under the head right to privacy, and this right also part of right to life. So this question on one part two personality’s life becomes more complicated before the legislature as well as judiciary. Whether to consider right to privacy or right to fetus life is become thinkable part for us.

In this article it is not conclusively say that before birth unborn children have right to life. Their existence in fetus, life running indirectly in womb but in Indian Constitution no specific provision is shown on this question, that’s why each and every time this questions are becomes baffling before the courts in India.

Though this not directly says us that right to life gives to fetus but in hidden right not start if womb period of child is not there. So it’s become necessary that right to life also included in fetus child. They have the right to life as well as right not deprive this right to life in womb. These rights are also provided to this fetus child. Apart from this fetus should be provided all necessary potentials which require for better fetus development in womb.

In the light of the above discussion it is agreed that fetus should enjoy the right to life in the mother's womb.

## 2) Indian Penal Code 1860:-

Under Indian Penal Code no specifically says about fetus child. Not any specific definition also provided for this fetus child. But under section 10 says that male or women of any age as a human being come under this concept. In this definition no specific criteria of age is shown. So, it may be included fetus male or female child. Apart from that under section 11 of this act, the definition of person is given but in this definition also not any reference made for the fetus child. But inbuilt the definition of person is very elaborate meaning which become the part of possibility that it include fetus child as a personality.

Under chapter 16 of the Indian Penal Code, 1960 on the head, 'Of offences affection the human body,' there are sections from 312 to 318 which deal with offences related to 'causing of miscarriage, of Injuries to unborn children, of the exposure of Infants, and of the concealment of births.' Under these sections miscarriage without good faith is treated as an offence. This act treated child in mother's womb as existence of human body. The word causing miscarriage also shows the different meaning as, 'abortion.' These provisions of Indian Penal Code directly shows that though the child is in womb but still he has some existence. Those who affect the existence of this womb child are treated as an offence. Whether these miscarriage done voluntarily or by compulsion all are come under this criteria.

Hopefully, in this act provides some provisions related to give safety in mother's womb child. These provisions become useful those womb child who develop very peacefully in mother's womb. If any interruption arose between these developments then this law treated as an offence and some punishment also given to that offender who interrupts without lawfully on the right to life of fetus in her mother's womb.

## 3) Transfer of Property Act 1882 :-

This act relates to transfer of property from one person to another person. Under this act section 5 says that , 'transfer or property means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, (or it himself) and one or more other living persons; and 'to transfer property' is to perform such act.'

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, association or bodies of individuals.

In very elaborative sense the meaning of 'living person' included here. This includes which is existence at the time of transfer. It includes as company, association of person, actually living person or body of individuals. But in this living concept no directly says that fetus child has legal entity which comes under to transfer of property. Then what about that child which existence in fetus, will he acquire property? This question solved by section 13, 14 and 20 of this act.

Section 13 says that, 'where on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the interest of the transferor in the property.' In this section those child unborn and whose existence is actually a possibility that child's interest also secure for the benefit of that child. Means in this section for property right concerning unborn persons has taken into consideration. In legal sense he has some value.

Section 14 shows 'Rule against perpetuity,' this says that no transfer of property can operate to create an interest which is to take effect after the lifetime of one or more

persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period and to whom, if he attains full age, the interest created is to belong. In this section interest of fetus child as well as minor child is secured. When these fetus child or child below eighteen years attains his full age then transfer will be done on his name and he becomes full owner of this property.

Section 20 says that ‘when unborn person acquires vested interest on transfer his benefit’-where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless contrary intention appears. This shows that the existence of child is not shown today but his vested right where that unborn child’s interest created after birth will secure till the time of birth and after that completion of full age. So, under this provision not only fetus child but also not existing child’s interest also secure till his full age.

Here, we briefly seen the provision related to property interest which has been secured of fetus child as well as child which though not existence but on possibility basis that child’s right also secure. This security will available to that child till he attains full age.

#### 4) **Criminal Procedure Code, 1973 :**

In Criminal Procedure Code under section 416 shows that if the death punishment is given to pregnant women then her punishment is not executed and it postpone due to pregnancy. For the purpose of give right to life of child this punishment may commute or converted into life imprisonment. In this way right to life of fetus is secure to that fetus child.

#### 5) **Hindu succession Act:-**

Hindu Succession Act, 1956 relates to intestate succession among Hindus. The person who is Virshaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya samaj and also to person who is Budhist, Jaina or Sikh by religion come under this concept.

Under section 20 says that, ‘Right of child in womb: - A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been from the date of the death of the intestate.’

This section protects the fetus intestate right though he not born at that time of intestate. But his existence in womb is available. So protect his future right this section is very crucial for fetus child.

#### 6) **Pre-Natal Diagnostic Techniques (Regulation of Misuse) Act 2002:-**

This act is further amendment of Pre- natal Diagnostic Techniques (Regulation and prevention of Misuse) Act, 1994. Under section 2 this act provide the prohibition of sex selection, before or after conception, and for regulation of pre- natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or sex linked disorders and for the prevention of their misuse for sex determination leading to female feticide and for matters connected therewith or incidental thereto.’

Under this act section 4 shows the development of fetus stages different definitions. These are as follows-

“**Conceptus**”- means any product of conception at any stage of development from fertilisation until birth including extra embryonic membranes as well as the embryo or fetus;”<sup>5</sup>

“**Embryo**” means a developing human organism after fertilisation till the end of eight weeks (fifty- six days);<sup>6</sup>

<sup>5</sup> Sec. 4(ba) of Pre-Natal Diagnostic Techniques ( Regulation and Prevention of misuse ) Amendment Act, 2002.

“ **Foetus**” means a human organism during the period of its development beginning on the fifty- seventh day following fertilisation or creation ( excluding any time in which its development has been suspended and ending at the birth.<sup>7</sup>

These are important definitions given under this act which clear the development stage of womb child and particular on that development stage the exact meaning.

If we see today’s situation most of the families in India prefer son child. That’s why when child in womb with advanced technology parents wanted to know child’s gender. By unfortunately if this fetus belongs to female gender then it will ruin up easily. So curtail this figure in society for female fetus this act is very important. This act prohibits sex selection before or after conception.

#### **7) Medical Termination of Pregnancy Act:-**

This act permits the miscarriage of womb child but under certain circumstances only. When there is Physical or substantial risk then it may be permissible. Apart from that rape cases it may be permissible. Under certain good faith circumstances only for the benefit of mother or some legally genuine circumstances this termination of child in womb is permissible. Section 3(4) of MTP Act, 1971: “No Pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is a mentally ill person, shall be terminated except with the consent in writing of her guardian”.

Here we see legal provisions related to rights of fetus. How law protected to fetus by different acts. Not only international conventions but also our constitution, and various act implemented by legislature gives protections to fetus.

#### **Conclusion:-**

The time comes in every woman’s life when she wonders a child in her own womb. Both parents want a baby in their family. However in some cases for health reasons Doctor recommended an abortion. A raped woman does not want pregnancy, so on that unavoidable situations personalities asked for abortions. This time it’s ok to abort child. But apart from that for want of male child for society recommendation or parents demand to male child when female fetus in womb is wrong. For this demand many of the time they brutally killed their own child in womb. Without any fault not to know the world female fetus killed in womb.

All lives are important. That must be nourished and preserved. Everyone here has one mother and father, Because of them we come in this world. Most of us are the future parents, and we all maintain the balance in our society. There are two necessary wheels of the society one is man and second is women. To maintain ratio in society is our responsibility .For this responsibility everyone should aware that daughter is not useless for society but she is well manager of family, society, nation. For this, every parent should aware to save female child in mother’s womb. Not to kill them they have right to life but some parents for their desire of son kill female fetus.

Child is a precious gift given by god. God gives this gift with hope that we take care of this with care and caution. But man is very wise, now he deserves the capacity to choose son or daughter to be born. Many laws made to curb these issues but yet not satisfactory result shown to us. Law is only medium and there are some loopholes in

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<sup>6</sup> Sec. 4 (bb) of Pre-Natal Diagnostic Techniques ( Regulation and Prevention of misuse ) Amendment Act, 2002.

<sup>7</sup> Sec. 4(bc) of Pre-Natal Diagnostic Techniques ( Regulation and Prevention of misuse ) Amendment Act, 2002.



these acts which son preferential parents adopt easily. For today's date it's necessary that apart from law fear, people should aware the necessity of girl child in society. Girl child is a pillar of strength of family and society. Give them life as well as all healthy needs of livelihood.

***“God has given us daughters so we can preserve the human spices on earth.”***

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