

RIGHTS OF THE UNBORN CHILD IN INDIA: LEGAL PROTECTIONS AND ETHICAL CONSIDERATIONS

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The legal status of an unborn child has been a subject of debate across cultures, religions, and legal systems. In India, the question of the unborn child's rights is complex and multifaceted, particularly because it intersects with issues of personal autonomy, medical ethics, and societal values. While Indian law does not recognize an unborn child as a full legal person, it does grant certain rights and protections, albeit in a limited context. The legal framework that governs the rights of an unborn child in India is found in statutes, judicial decisions, and constitutional principles, reflecting a delicate balance between safeguarding fetal interests and respecting the autonomy and rights of the mother.

This article aims to provide a detailed analysis of the rights accorded to the unborn child in India, examining property and inheritance laws, criminal law, and medical jurisprudence. Additionally, it explores the ethical dimensions surrounding these rights, particularly in light of the advances in medical technology and reproductive rights.

1. Legal Status of the Unborn Child in India

The unborn child, or fetus, does not have a fully recognized legal personality under Indian law until it is born alive. However, certain laws grant the unborn child specific rights contingent upon live birth. These contingent rights typically arise in matters of inheritance and succession. In legal parlance, the fetus is regarded as a person "in being" for some purposes, particularly if it is to its benefit.

a) Doctrine of Nasciturus

One of the key legal doctrines that play a role in protecting the rights of an unborn child is the nasciturus doctrine. This Roman law principle suggests that an unborn child is deemed to exist for the purposes of certain rights if it is subsequently born alive. In the Indian context, this doctrine has been implicitly adopted in various legal provisions related to inheritance and property law. The unborn child's rights, however, remain conditional until birth, as we will explore in the following sections.

2. Rights of the Unborn Child in Property and Inheritance

a) Hindu Succession Law

Under Hindu law, which governs the majority of the Indian population, the unborn child is granted significant property rights. The Hindu Succession Act, 1956, recognizes the rights of a child in the womb (provided the child is born alive) to inherit property from the deceased ancestors.

In a joint Hindu family governed by the Mitakshara law, an unborn child has a notional share in the ancestral property. If a family member dies, leaving behind a pregnant widow, the child she carries is entitled to inherit a share of the joint family property, assuming the child is born alive. Thus, the unborn child is considered a co-parcener and can claim a share in the ancestral property. This principle is also reflected in Section 20 of the Hindu Succession Act, which states that a child who is in the womb at the time of the death of a person shall have the same rights of inheritance

as if he or she were born before the death of the person.

b) Transfer of Property Act, 1882

The Transfer of Property Act, 1882, also extends some protections to the unborn child. Section 13 of the Act allows for the transfer of property to an unborn person. This provision allows property to be held in trust for a future beneficiary (i.e., the unborn child), provided certain legal requirements are met. The property, however, only vests in the child if the child is born alive. This ensures that a fetus can benefit from property transactions made during its gestation, though these rights are contingent upon live birth.

c) Muslim Law of Inheritance

Under Muslim personal law, inheritance rights arise at the time of conception. Islamic law, which governs the succession rights of Muslims in India, recognizes that an unborn child has a right to inherit provided the child is born alive. This right is especially relevant when the division of an estate takes place after the death of a person while his widow is still pregnant. If the child is subsequently born alive, it is entitled to a share of the inheritance, just like any other legitimate heir.

d) Christian and Parsi Law of Inheritance

Under Indian Succession Act, 1925, which governs the inheritance rights of Christians and Parsis in India, an unborn child can inherit property provided the child is alive at the time of birth. Similar to other succession laws in India, the unborn child's rights are not absolute but contingent upon live birth.

3. Medical Termination of Pregnancy (MTP) Act, 1971

The Medical Termination of Pregnancy (MTP) Act, 1971, plays a crucial role in the legal framework surrounding the unborn child in India. The Act governs the circumstances under which a pregnancy may be legally terminated. While it provides protection for the life and health of the pregnant woman, it also

addresses the question of the unborn child's life, albeit from a medical and ethical standpoint.

Under the MTP Act, abortions are permitted up to 20 weeks of gestation under certain conditions. However, the Medical Termination of Pregnancy (Amendment) Act, 2021 extended this limit to 24 weeks for certain categories of women, such as survivors of rape or incest, minors, and women with substantial fetal abnormalities.

The law recognizes the necessity of balancing the rights of the unborn child with the rights of the pregnant woman, especially in cases where the pregnancy poses a risk to the mother's physical or mental health, or where there is a substantial risk of the fetus being born with severe abnormalities. Importantly, the law does not confer any legal personality on the fetus and prioritizes the autonomy and well-being of the mother over the life of the fetus, particularly in the early stages of pregnancy.

a) Exceptions for Late-Term Abortions

One of the critical ethical issues raised by the MTP Act concerns the rights of the fetus in cases of late-term abortions. The 2021 amendments provide for the termination of pregnancies beyond 24 weeks if a medical board determines that there is a substantial risk to the life of the mother or the fetus. In such cases, the law seeks to protect the health of the woman and also recognizes the fetus's potential for life, but not at the cost of the woman's life or well-being.

b) Ethical Dimensions and Debate

The legal and ethical debates surrounding the MTP Act focus on the question of fetal viability and the point at which an unborn child's rights should outweigh a woman's right to choose. The amendments to the Act reflect a growing awareness of the rights of women, particularly those who face difficult or dangerous pregnancies. However, the law remains rooted in the principle that the unborn child does not have absolute rights independent of the mother, especially before the fetus reaches viability outside the womb.

4. Criminal Law and the Unborn Child

India's criminal law provides certain protections to the unborn child, although these are primarily focused on preventing harm to the mother that might result in the death or injury of the fetus. The Indian Penal Code (IPC) contains several provisions that criminalize acts resulting in the death or harm of a fetus, though these provisions generally revolve around the protection of the pregnant woman.

a) Section 312-316 of the Indian Penal Code

Sections 312-316 of the IPC deal with offenses related to miscarriage and the death of an unborn child. These sections provide criminal penalties for causing a woman to miscarry without her consent or causing the death of a child before it is born.

- Section 312 makes it an offense to cause a miscarriage, except in cases where the miscarriage is performed in good faith to save the life of the woman. This provision, however, does not apply to lawful abortions carried out under the MTP Act.
- Section 315 criminalizes acts intended to prevent a child from being born alive or to cause its death after birth. This includes intentional harm to a fetus that results in its death either before or shortly after birth.
- Section 316 deals with "causing death of a quick unborn child by an act amounting to culpable homicide." It provides punishment for causing the death of a fetus that has reached a stage where it could be considered "quick" (typically after the first trimester, when the fetus begins to move).

These provisions highlight the limited recognition of the unborn child's right to life under Indian criminal law. The focus remains on preventing harm to the mother and ensuring that pregnancies are not terminated without consent.

5. Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994

Another significant law protecting the unborn child is the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, which was enacted to combat the growing practice of female feticide in India. The Act prohibits sex determination tests and the misuse of diagnostic techniques to abort female fetuses.

a) Female Feticide and the PCPNDT Act

In India, the cultural preference for male children has led to widespread instances of female feticide, a practice that has significantly skewed the country's sex ratio. The PCPNDT Act was introduced to prevent this by banning the use of pre-natal diagnostic techniques for sex selection.

The Act imposes strict penalties on medical practitioners and clinics that engage in illegal sex determination and selective abortion. It also provides for the registration of ultrasound clinics and imposes stringent monitoring mechanisms to ensure compliance. By preventing sex-selective abortions, the PCPNDT Act indirectly protects the rights of unborn female children, recognizing their inherent right to life regardless of gender.

b) Enforcement Challenges

Despite the provisions of the PCPNDT Act, its implementation has faced numerous challenges. The deeply ingrained societal preference for male children continues to drive demand for sex-selective abortions, particularly in certain parts of the country. While the law has made significant strides in curbing the practice, the enforcement of the Act remains inconsistent, and female feticide continues to be a major issue in India.

6. Right to Health and Protection from Harm

In addition to legal protections related to inheritance, criminal law, and reproductive rights, Indian law also indirectly protects the health and well-being of the unborn child

through maternal health initiatives. The government has introduced several programs aimed at improving maternal and fetal health, particularly in rural and underprivileged communities.

a) National Health Programs

Programs such as the Janani Suraksha Yojana (JSY) and Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA) focus on providing better healthcare facilities to pregnant women, ensuring safe deliveries, and reducing maternal and infant mortality rates. By promoting maternal health, these initiatives indirectly protect the rights of the unborn child to be born in a healthy and safe environment.

7. Rights in Tort Law

Indian tort law has also begun to recognize the rights of unborn children in cases of negligence or harm. While these cases are rare, courts have awarded compensation to families for injuries caused to the fetus due to medical negligence. These legal decisions are based on the principle that a fetus, though not a legal person, still has the potential for life and should be protected from harm.

8. Judicial Interpretations and Expanding Jurisprudence

The Indian judiciary has played a pivotal role in expanding the legal protections afforded to the unborn child. In several landmark cases, the Supreme Court of India has interpreted constitutional provisions to include the protection of fetal rights, particularly in matters concerning the right to life and health.

a) Right to Life under Article 21

Article 21 of the Indian Constitution guarantees the right to life and personal liberty. While this right has traditionally been interpreted as applying to persons born alive, the courts have occasionally extended its ambit to include the unborn child, particularly in cases concerning reproductive rights and medical termination of pregnancy. However, this extension is not absolute, and the courts have consistently

upheld the woman's right to make decisions concerning her own body and health, particularly in the context of abortion.

b) Balancing Competing Rights

In cases involving the rights of the unborn child, the Indian judiciary has sought to strike a balance between competing interests. While recognizing the potential for life inherent in the fetus, the courts have consistently upheld the woman's autonomy and her right to make decisions concerning her pregnancy, particularly in cases of medical complications or fetal abnormalities.

Conclusion

The rights of the unborn child in India are governed by a complex and evolving legal framework that seeks to balance the interests of the fetus with the rights of the pregnant woman. Indian law recognizes the unborn child's rights in matters of inheritance, property, and protection from harm, while also providing for the termination of pregnancies under certain conditions.

While legal protections for the unborn child exist, they are conditional and limited in scope, with the law prioritizing the health and autonomy of the pregnant woman. Ethical debates surrounding the rights of the fetus, particularly in the context of abortion and reproductive rights, continue to shape Indian jurisprudence, and future legal developments will likely reflect the ongoing tension between fetal rights and personal autonomy.

As medical technology advances and societal views on reproductive rights evolve, the legal landscape concerning the unborn child in India will continue to develop. The challenge for lawmakers and the judiciary will be to ensure that the rights of the unborn child are protected without infringing on the rights and dignity of women, particularly in a country as diverse and complex as India.