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A Critical Analysis on the Property Rights of Unborn Child

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Abstract

A child is viewed as a gift sent by God to people. A child is otherwise called one more type of god at the same time, in some cases individuals are barbaric to such an extent that they end the existence of the child in the actual belly. The meaning of the baby is a human organic entity being developed until birth. It is realized that a youngster's heart begins thumping between the second and third week of pregnancy which means it deserves rights as anyone else and property rights as well. The type of research conducted for this research is empirical study. The sampling method employed here is a convenient sampling method. The sample size of the study is 210 respondents. The study aims to find if unborn children in India have property rights and to deduce why unborn child deserve property rights and find if the laws are ambiguous for unborn child's property rights. Any savagery or not giving the right to life to the child ought to be made illegal. Because of the vulnerability of the law with respect to the unborn baby, there are numerous wrongdoings which are made and slip through the cracks due the vulnerability of the law. The unborn child merits each right which an ordinary individual merits. The unborn baby ought to be considered as a typical individual and ought to be made qualified for each right which an ordinary individual is qualified for. Every unborn deserves property rights with unambiguous decisions.

Keywords

Unborn, Child, Property, Rights, Laws

INTRODUCTION

Children are viewed as our most significant assets for a long time. Regulation has been safeguarding an unborn child from unlawful abortion since an extremely lengthy time. Law of our territory is vague while guaranteeing the rights of unborn, for example, giving property rights. The world has consistently thought to be an unborn newborn child as an individual in presence. The law has been in capability for hundreds of years from one side of the planet to the other. By the mid of the nineteenth hundred years, the world could comprehend that the child before and after birth required exceptional consideration. The main acknowledgment for the prerequisite of exceptional requirements to the children was tracked down in the 1924 Geneva Declaration of the Rights of the Child. According to the prelude, there ought not be any discrimination between rights of the child before birth and after birth at the same time, according to "Article 21 of the Indian Constitution", an individual is characterized as a person which has emerged from the metra of the mother and it doesn't consider the unborn child or

hatchling personally, which likewise implies that right to life isn't given to the baby. "Principle 1 of the UN Declaration of Rights of the Child 1959 declaration specifies: "Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination." An unborn is not a person or natural personality but a well-proven fact is that it has life, which both medical and legal fields are accepted. But, this non-natural person has some statutory rights provided by law such as right to inherit, to bring an action when born, for damage caused to the child in the womb. Granting these statutory rights concludes that Indian law has a particular belief of the existence of unborn life. Expressing the unborn as non-natural however lawful individuals isn't the end of issues connected with them. The Constitution gives each individual the right to property and right to life and individual freedom. Like organizations and partnerships, any non-natural however legitimate individual has the right to balance under the steady gaze of regulation and the right to have equivalent assurance of regulation. Here the inquiry is, does the unborn have the right to life since we have seen that there is a likely life and regardless, regulation isn't declining to acknowledge the presence of that type of life. An unborn baby, even in the wake of, having the right to full improvement doesn't have protected personhood. Established personhood is for the natural individual and in American ward; a child isn't entitled as an individual.

A natural individual, who has rights, likewise has an obligation to release a basic misdeed idea. This discussion of constitutionalism of unborn children recognizes the bad marks of giving established personhood to an unborn child. One of the significant bad marks is that the state can't give rights to a possible life on the scopes of rights given to a daily existence, which is a very much expressed and perceived individual in the eyes of regulation and the constitution of any country. The regulations are ambiguous to say a lot. Every country except Canada and Brazil gives rights to both Constitutional protection of fetal rights and Recognition of personhood

Objectives:

- To find if unborn children in India have property rights
- To deduce why unborn child deserves property rights
- To find if the laws are ambiguous for unborn child's property rights

REVIEW OF LITERATURE:

("Chapter 10. European Convention (1950) and the Unborn Child," 2009) The study is a systematic review of European conventions on unborn child. The study uncovers that an expansive conventions for inclusion of the child before birth in common liberties security was working generally and without contention in the time of past. So convincing is the proof that it puts the scholarly objectivity and skill of the ongoing European Court of Human Rights in serious uncertainty when that Court keeps on demanding that in the European Convention there is no conclusive right to life security for the child before birth, that singular states are to be permitted "an edge of appreciation" to choose for them-selves when life starts.

(Joseph, 2009) The study is a doctrinal one, where it states that Though the child cannot be provided with the benefit of rights as same as the born children as when it is a fetus, it does not mean that the fetus is not subject to receive any of the rights.

(Dorscheidt & Dorscheidt, 1999) The review expresses that everybody is qualified for every one of the privileges and opportunities put forward in that, without qualification of any sort, like race, variety, sex, language, religion, political or other assessment, public or social beginning, property, birth or other status, regardless of whether the child is unborn.

(Ibegbu, 1999) The aim of this study is to fill the lacuna which exists in worldwide regulation concerning the freedoms of the unborn child. This book is a docification and moderate improvement of International regulation in this field with the end goal of proposing a Convention on the Human Rights of the Unborn Child. The review accentuates on the freedoms of the unborn beginnings from the Conception itself.

(Wall, 1983) The study states that every child, before as well as after birth: has the inherent right to life; has the right to be free from all forms of discrimination; has the

right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

(Cabar & Binotti, 2021) The study aims to define maternal autonomy and the rights of the unborn child. It is an empirical study conducted among law students. The study found that mothers have discretion to keep or abort the child. But that violates the right to life for the unborn child.

(Legge, 1996) The study states that a fetus is defined as a human being in the process of being developed. The heart of the child starts beating from between 18 to 24 days of the pregnancy of the mother. The beating of the heart signifies that a person is alive and therefore, we can state that a baby gets a life between 18 to 24 days in the uterus of the mother.

(Penovic, 2011) The existing property laws are dismissed as disingenuous, conspiratorial, pretentious, exceptionally devious, perverse, ideologically zealous, ignorant, academically dishonest, extravagantly revisionist, scheming, confused, or radical feminists.

(Smits, 1992) The right to life, the inherent dignity, worth and equal and inalienable rights of all members of the human family must be protected in law. No one is to have his or her rights and freedoms, as set forth in those treaties, curtailed for any reason. Everyone has the right to recognition everywhere as a person before the law.

(Mulugeta, 2012) The researcher states that both international human rights law and states law provide some level of protection for the life of the unborn child. There is also a duty on part of the government of nations to enforce such protections available for the life of the unborn child.

(Bajpai, 2006) This book presents significant regulation and decisions on youngster privileges in India. Every part incorporates established arrangements, and legal and decisional regulation. It likewise focuses on different significant local and worldwide systems and global guidelines of conduct towards kids, and a large group of deficiencies parents in law and methodology. It refers to certain models and talks about specific methodologies of current nongovernmental associations' (NGOs) mediations and systems in the field to improve and safeguard the privileges of the children.

(Porrini & Ramello, 2012) The study states that there is a great need for sound economic theorizing in making the policies clear and definitive.

(Albertus, 2021) This book draws on wide-ranging original data and charts new conceptual terrain to reveal the political origins of the property rights gap.

(Walsh, 2021) This research looks at the work of protected property freedoms in intervening confidential proprietorship and civil rights. It consolidates bits of knowledge from property hypotheses with edifying doctrinal examination of the connection between property freedoms and civil rights in the established and more extensive lawful setting. It contends that supremacy may definitely stand to political conclusions about the suitable intercession of property privileges and civil rights, implying that the political effect of constitutionalisation should be unraveled from its severe lawful impacts.

(Penner, 2020) This chapter concerns the justification of property rights, and makes the argument that we do have 'natural' or 'pre-legal' rights to the use of things, a kind of usufructuary right.

(Cook, 1983) This paper specifically revolves around the legal aspect of unborn under different statutes such as the constitution of India, transfer of property act, Hindu succession act Indian penal code and many more, refer international convention and the rights of the child, before as well as after, birth are protected by numerous treaties, including the Universal Declaration on Human Rights, the ICCPR and the Convention on the Rights of the Child would also emphasize on the landmark cases across the globe. And this study interprets the ambiguous laws and Convention on Human Rights, which establishes that life, shall be protected in general, from the significance of conception.

(Singh, 2009) The Transfer of Property Act, 1882 arrangements just with the exchanges of property between living people. An unborn person means a person not in existence even in the mother's womb. A child in the mother's belly is viewed as an equipped transferee. Thusly, the property can be moved to an unborn in mother's belly on the grounds that the kid is existing around then yet not to an unborn individual who

isn't in any event, existing in mother's belly. Each exchange of property includes move of interest. When the property is moved, the transferor is stripped of that interest and the interest is vested in the transferee.

(Shephard, 1887) This section 13 of the TP Act 1882 corresponds with section 100 of the Indian Succession Act. In the case supposed there must necessarily be a precedent estate; because there can be no grant in favour of unborn persons. The precedent estate may either be an estate limited in time, eg, an estate for life, or an estate defeasible upon some condition. The effect of the section is that this estate will not be determined in the way intended unless the remainder created in favour of the unborn children comprises the whole of the grantor's interest.

(Current Publications, 2020) Section 13 defines as Transfer for benefit of unborn person.- 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 benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

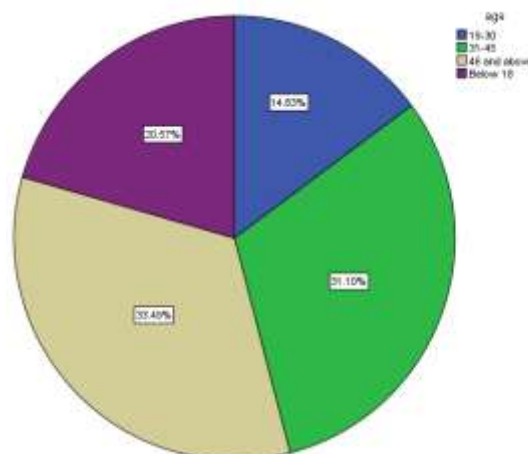
(Gupta, n.d.) The researcher through this paper has made an endeavor to make sense of the arrangements of S. 13 alongside the main cases regarding the matter. The paper additionally frames the connection between Section 13 and other related arrangements of the Transfer of Property Act, 1882. This investigation discovered that there are many uncertain theories, which should be investigated and definitively provisionalised.

METHODOLOGY

The type of research conducted for this research is empirical study. The sampling method employed here is a convenient sampling method. A type of non-probability sampling which involves the sample being drawn from that part of the population that is close to the researcher's hand. The sample size of the study is 237 respondents. The data was collected through questionnaires, which was shared across the interweb. Various independent and dependent variables were employed for the study. The tools used were pie charts, percentage and chi square analysis for interpreting the collected data.

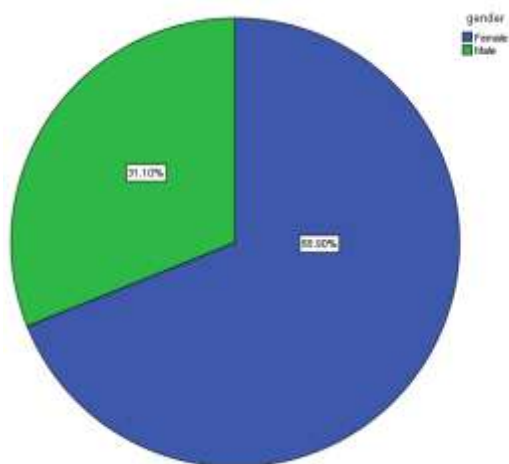
ANALYSIS:

Figure 1:



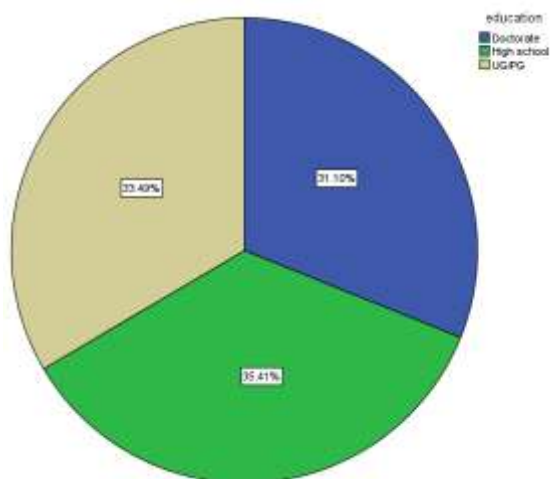
Legend: Shows the age distribution of the respondents

Figure 2:



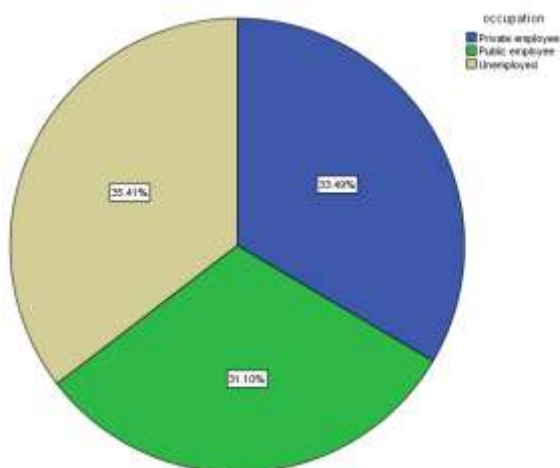
Legend: Shows the gender distribution of the respondents.

Figure 3:



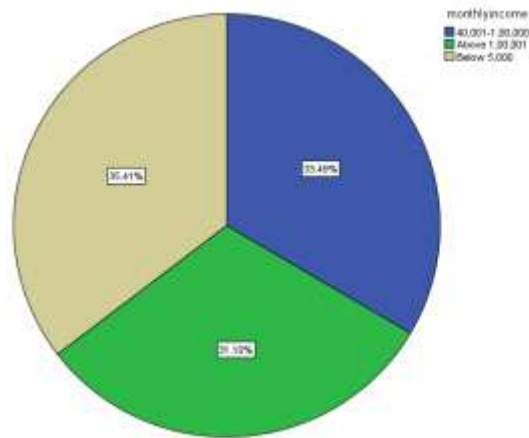
Legend: Shows the educational qualification of the respondents

Figure 4:



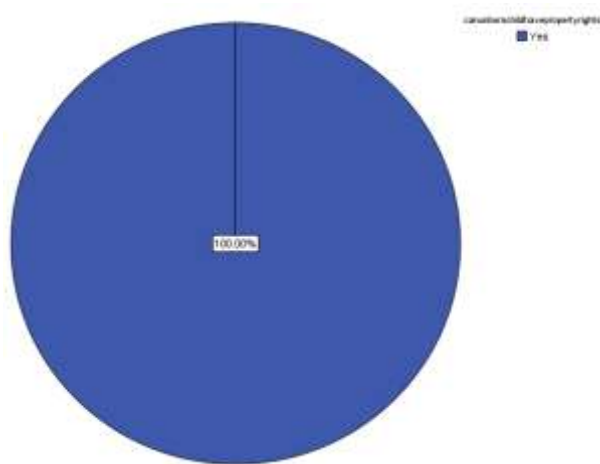
Legend: Shows the occupational distribution of the respondents

Figure 5:



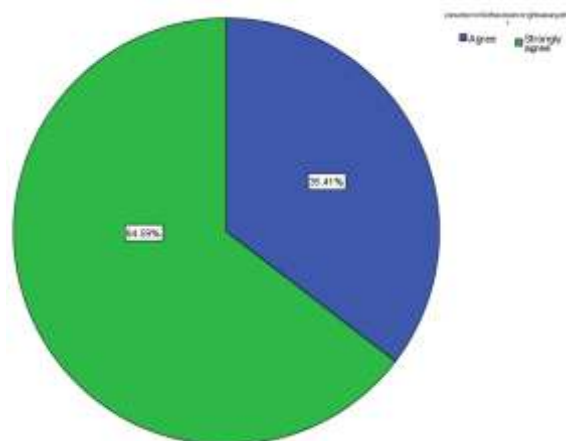
Legend: Shows the respondents' monthly income

Figure 6:



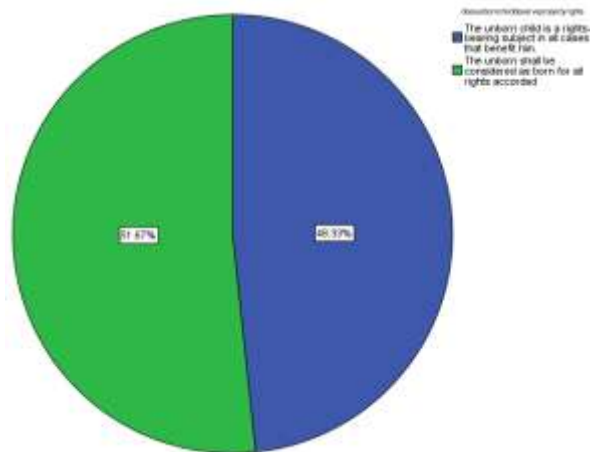
Legend: Shows the responses for the dependent variable 'Can a child in its mother's womb, have property rights?'

Figure7:



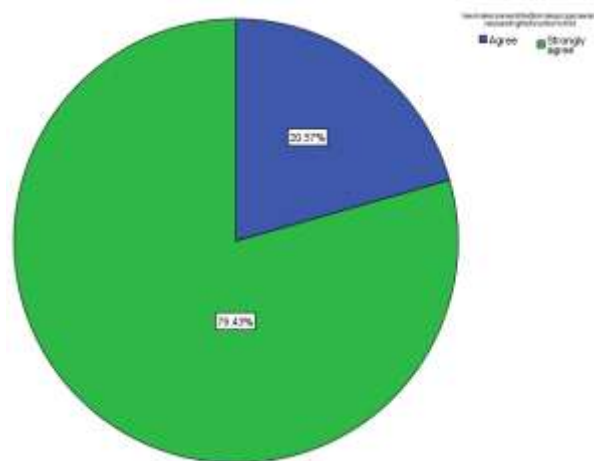
Legend: Shows the responses for the dependent variable 'the unborn infant has the access to the rights of property as same as any other human'

Figure8:



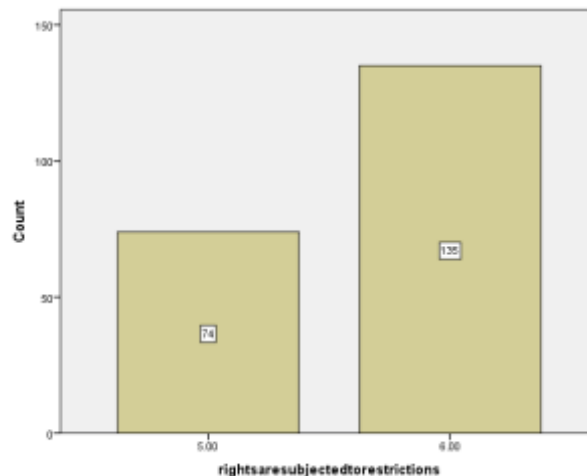
Legend: Shows the responses for the dependent variable 'why does a unborn child deserve property rights?'

Figure 9:



Legend: Shows the responses for the dependent variable 'the lawmakers are obliged to make amendments that effectively bring out that the unborn infants are entitled to all the rights which a normal person does'

Figure 10:



Legend: Shows the responses for the dependent variable 'the unborn child can attain definite rights and inherit the property but only in case he or she is born alive.'

RESULTS

Figure 1 represents the age distribution of the respondents among the sample population. Majority are between the age of 46 and above. **Figure 2** represents the gender distribution of the respondents among the sample population. The females are the majority. **Figure 3** represents the educational qualification distribution of the respondents among the sample population. Majority people who are high school students are majorly distributed. **Figure 4** represents the occupational distribution of the respondents among the sample population. Majority are unemployed. **Figure 5** represents the monthly income distribution of the respondents among the sample population. Dominant part earn 5,000 a month. **Figure 6** represents the result for the notion, 'Can a child in its mother's womb have property rights?'. The total sample population responded yes. **Figure 7** represents the opinion of the respondent's regarding 'The unborn infant has the access to the rights of property as same as any other human'. Majority Of the sample population strongly agreed to this notion. **Figure 8** represents the response for the dependent variable 'Why does an unborn child deserve property rights?'. Majority of the respondents stated that the unborn child deserves rights as the unborn shall be considered as born for all rights accorded. **Figure 9** represents the response for 'The lawmakers are obliged to make amendments that effectively bring out that the unborn infants are entitled to all the rights which a normal person does', where the majority strongly agreed. **Figure 10** represents the responses for the notion, 'The unborn child can attain definite rights and inherit the property but only in case he or she is born alive.' The sample population was neutral about the provision

DISCUSSION

In **Figure 1**, the respondents were people of 46 and above as they are in a better position to explain contemporary and historical issues. Majority are the age of 46 and above are 33.49%. Next to it 31.10% of respondents are the age of 31-45. 20.57% of the respondents population is under 18 and the least is held 14.83% by the 19-30 age group. In **Figure 2**, the gender of the respondents are dominantly females. The females are the majority 68.90% and male 31.10%. In **Figure 3**, Undergraduates and postgraduates are dominant members in responding as they are in a better position to explain contemporary issues. High school students are 35.41% and respondents who have completed undergraduate and postgraduate courses are 33.49% and doctorate professionals 31.10% distributed. In **Figure 4**, Unemployed are major respondents. Majority are unemployed 35.41% Whereas private employees 33.49% distributed and public employees 31.10% distributed. In **Figure 5** Majority respondents earn below 5,000 a month as it was conducted in a rural area. The Dominant part earns 5,000 a month 35.41% and 40,000 to 1,00,000 earners are 33.49% and above 1,00,001 earners are 31.10%. In **Figure 6**, the total sample population responded yes 100.00%. As per the property law, the unborn child can attain definite rights and inherit the property but only in case he or she is born alive, as the unborn child cannot be considered as a person yet his/her rights can be vested in the hands of his/her trustees under the law. Transfer of property Act which obviously state under section 13 that arrangements with transfer of property to unborn child. A child in its mom's belly is for some reasons viewed by a lawful fiction as currently conceived, as per the saying *nasciturus pro jam nato habetur*, and that implies that the legitimate limit of the *natus* not entirely set in stone by alluding back to when he was still *nasciturus* (unborn) yet present in belly. In **Figure 7**, Majority Of the sample population strongly agreed to this notion 64.59% whereas the rest 35.41% agreed to this. The unborn infant has started developing itself to become a human being and therefore, the fetus should be granted the access to the right to life and rights like property. It treats the child in the womb in the same way as a born child for the inheritance of intestate of a dead person. So we can conclude from here that an unborn child should have the same right that a born child had.

In **Figure 8** 51.67% of the respondents stated that the unborn child deserves rights as the unborn shall be considered as born for all rights accorded. 48.33% have responded

that the unborn child is a right bearing subject. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception. The unborn shall be considered as born for all rights accorded within the limits established by law. Even the sciences of an unborn can be disclosed, and it definitely is a human life, not a mere potential hypothesis. It is more than logically comprehensible that when a baby is born, it has a thumping sensitivity and recognized mind impression. In **Figure 9** the majority strongly agreed to this 79.43% and 20.57% agree. The lawmakers are obliged to make amendments that effectively bring out that the unborn infants are entitled to all the rights which a normal person does. Although the Indian laws recognize the existence of an unborn as a legal person, rights are not granted until the birth of the child. Further, while a child in a mother's womb is considered as a person for many purposes, the extent of the unborn child's personal or proprietary rights has not been categorically determined. The unborn is regarded by legal fiction as already born for creation of interest in a property. In **Figure 10**, the whole sample population is neutral by responding 5.00(74) and 6.00(135) in rating scale. The unborn child can attain definite rights and inherit the property but only in case he or she is born alive or it can attain definite rights and inherit the property when in the womb itself. The scope of section 13 needs to be broadened.

LIMITATION:

One of the major limitations of the study in the sample frame. There is a major constraint in the convenient sampling method, the survey was conducted through questionnaires by Google forms to collect responses from the people. Another limitation is the sample size of 237

CONCLUSION

As the laws seems ambiguous and uncertain in giving the unborn child the right of pretty and life, this study aims to find if unborn children in India have property rights and to deduce why unborn child deserve property rights and find if the laws are ambiguous for unborn child's property rights. The type of research conducted for this research is empirical study. The sampling method employed here is a convenient sampling method. The sample size of the study is 210 respondents. It is comprehended that the issue looked by the unborn child today because of questionable regulation can likewise be caused to our kids and other's youngsters some time or another and subsequently, to safeguard the unborn newborn child's freedoms in future and refine the legitimate privileges of the unborn child, it is critical that the law is changed and "Right to Life" is conceded to an unborn child alongside the freedoms which a typical individual is allowed. The regulations which have been working in the country for the unborn baby ought to be made more severe and the denounced ought to be rebuffed with the strictest discipline conceivable so the kid is protected from any sort of danger and can foster itself in a protected climate coming about the child to be conceived sound. The legislators ought to make revisions in the law connecting with the privileges of the unborn baby and make it distinctive enough that the unborn newborn child is qualified for every one of the freedoms which a typical individual does. The law ought to be revised and it ought to express that the hatchling is permitted to foster itself in a solid climate and there ought not be any damage to the existence of the baby.

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