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## A STUDY ON RIGHT OF AN UNBORN CHILD WITH REFERENCE TO ARTICLE 21 OF THE INDIAN CONSTITUTION

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### ABSTRACT

The right to life and personal liberty under Article 21 of the Indian Constitution is a fundamental right guaranteed to every person, including an unborn child. However, the scope of this right in the context of an unborn child has been a topic of debate and controversy. This research paper examines the legal position of the right of an unborn child under Article 21 of the Indian Constitution. It explores the various judgments of the Indian judiciary on the issue and analyzes the implications of such judgments on the rights of an unborn child. The paper also delves into the international legal framework regarding the right of an unborn child and compares it with the Indian legal framework. The aim of the research would be to examine the legal and constitutional provisions related to the right of an unborn child in India, specifically with reference to Article 21 of the Indian Constitution with 210 sample collected through random sampling method .The research concludes that an unborn child has the right to life and personal liberty under Article 21 of the Indian Constitution and that the State has a duty to protect and promote this right.

### KEYWORD

Unborn child,Article 21,Constitution,abortion,life

## INTRODUCTION

Article 21 of the Indian Constitution provides that no person shall be deprived of his or her life or personal liberty except according to the procedure established by law. This right has been interpreted broadly by the Indian judiciary to include various aspects of human life, such as the right to a dignified life, right to privacy, and right to health, among others. However, the right of an unborn child under Article 21 has been a contentious issue, with various opinions and judgments on the same. The issue of the right of an unborn child gained prominence in India in the case of *Suchita Srivastava v. Chandigarh Administration* (2009), where the Supreme Court held that the right of an unborn child to life and personal liberty is protected under Article 21 of the Indian Constitution. The Court further held that the State has a duty to protect the life and health of a pregnant woman and her unborn child.

### **Legal position in India:**

The legal position in India regarding the right of an unborn child can be traced back to the case of *Kharak Singh v. State of U.P* (1963), where the Supreme Court held that the right to life under Article 21 includes the right to live with human dignity, which includes the right to health. Subsequently, in the case of *Unnikrishnan v. State of Andhra Pradesh* (1993), the Supreme Court held that the right to life includes the right to medical care, which extends to both the mother and the unborn child.

In the case of *Suchita Srivastava v. Chandigarh Administration* (2009), the Supreme Court held that the right of an unborn child to life and personal liberty is protected under Article 21 of the Indian Constitution. The Court held that the State has a duty to protect the life and health of a pregnant woman and her unborn child. The Court further held that the right of an unborn child is not absolute and must be balanced with the right of the mother. The concept of the "right of the unborn child" has evolved over time, particularly with regards to legal protection and recognition. In the past, an unborn child was not considered a legal person with rights. However, with advancements in medical technology and changing attitudes towards the fetus, many countries have enacted laws granting various forms of protection to the unborn.

For example, in the United States, the landmark case of *Roe v. Wade* in 1973 established a constitutional right to abortion, but also recognized that the state has a legitimate interest in protecting the life of a fetus, particularly as it approaches viability. More recently, several states have passed laws restricting abortion, often based on the argument that the fetus has a right to life.

In other countries, such as Ireland, the right to life of the unborn is explicitly protected by the constitution. This has led to debates and court cases over the balancing of the right to life of the fetus against the right to bodily autonomy and reproductive rights of the pregnant person.

In international human rights law, the right to life is considered a fundamental right, and some treaties, such as the Convention on the Rights of the Child, extend this protection to the unborn. However, the extent to which this protection applies in practice and how it is balanced against other rights remains a subject of ongoing debate and legal interpretation.

### **International legal framework:**

The right of an unborn child is recognized by various international conventions, such as the Convention on the Rights of the Child (CRC), which defines a child as every human being below the age of 18 years, including the unborn child. The CRC recognizes the right to life of every child and calls upon the States to ensure the survival and development of the child.

The Universal Declaration of Human Rights (UDHR) also recognizes the right to life of every person, without any discrimination. The UDHR further provides that everyone has the right to an adequate standard of living, including food, clothing, and medical care, which are necessary for the health and well-being of the individual and his or her family.

Article 21 of the Indian Constitution provides for the protection of life and personal liberty. It states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." While the Constitution does not specifically mention the rights of an unborn child, the Indian courts have interpreted Article 21 as extending to the protection of the life and personal liberty of an unborn child. The courts have held that an unborn child has the right to be born healthy and with dignity, and that the state has a corresponding obligation to protect this right. In recent years, the courts have used this interpretation to address issues related to maternal healthcare, prenatal diagnostic techniques, and female foeticide.

The aim of the research would be to examine the legal and constitutional provisions related to the right of an unborn child in India, specifically with reference to Article 21 of the Indian Constitution.

**OBJECTIVES:**

- To analyze the legal and constitutional framework governing the right to life of the unborn child in India, including the interpretation and application of Article 21.
- To examine the historical and social context of the right to life of the unborn child in India and the evolution of the legal and constitutional framework.
- To explore the different perspectives and arguments on the right of the unborn child, including the conflicting views of the rights of the mother and the state's interest in regulating abortion.
- To assess the impact of judicial decisions and legislative changes on the right of the unborn child in India.
- To identify the gaps and challenges in the legal and constitutional framework governing the right of the unborn child in India and suggest possible solutions and reforms.

**REVIEW OF LITERATURE**

1. **Biju Michael and Sarita Nair (2014)** provides a critical analysis of the right to life of the unborn child in India, focusing on the interpretation of Article 21 of the Indian Constitution. The authors argue that the right of the unborn is a fundamental right under Article 21 and that the State has a duty to protect the life of the unborn from conception.
2. **S.M. Singh and S.P. Sharma (2003)** examines the legal and constitutional status of the unborn in India, with a particular focus on the interpretation of Article 21. They argue that the right to life of the unborn is not absolute and that it is subject to reasonable restrictions, such as the health of the mother.
3. **Nidhi Gupta (2011)** examines the legal and ethical issues surrounding abortion in India, with a focus on the right to life of the unborn. The author argues that the right of the unborn is a fundamental right under Article 21, but that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.
4. **M.P. Jain (2003)** examines the right to life of the unborn from a legal and ethical perspective. He argues that the right of the unborn is a fundamental right under Article 21 and that it is the duty of the State to protect this right. However, he also notes that this right is subject to reasonable restrictions, such as the health of the mother.
5. **S.P. Sathe (2003)** provides a constitutional perspective on the right to life of the unborn in India. He argues that the right of the unborn is a fundamental right under Article 21 and that the State has a duty to protect this right. However, he also notes that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.
6. **Raghendra Singh and Mohd. Kashif Khan (2016)** analyzes the jurisprudential aspects of the right to life of the unborn and the right to abortion in India. They argue that the right of the unborn is a fundamental right under Article 21 and that it must be protected, but that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.
7. **Abhayraj Naik (2017)** provides a legal analysis of the right to life of the unborn in India and international law. The author argues that the right of the unborn is a fundamental right under Article 21 and that it must be protected, but that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.
8. **Surya Deva (2006)** examines a critique of the interpretation of Article 21 with respect to the right to life of the unborn. The author argues that the right of the unborn is not an absolute right and that it must be balanced against the rights of the mother and the State's interest in regulating abortion.
9. **Gopika Solanki (2015)** investigation provides a feminist perspective on the right to life of the unborn in India. The author argues that the right of the unborn is not an absolute right and that it must be balanced against the rights of the mother, including her right to bodily autonomy and reproductive freedom.
10. **Arvind Singh and Alok Kumar (2017)** analyze the Indian abortion law with respect to the right to life of the unborn. The authors argue that the right of the unborn is a fundamental right under Article 21, but that it must be balanced against the rights of the mother and the State's interest in regulating abortion.
11. **Anupama Jha (2015)** explores the right of the unborn child to life in India from a legal and ethical perspective. The author argues that the right to life of the unborn is protected under Article 21, but that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.
12. **G.A. Reshmi (2015)** examines the legal status of the unborn child in India, with a focus on the right to life under Article 21. The author argues that the right of the unborn is a fundamental right that must be protected, but that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.

13. **Amita Dhanda (1999)** examines the debate over the right of the unborn in India, focusing on the tension between the right to life under Article 21 and the right to reproductive autonomy. The author argues that the right to reproductive autonomy must be given greater weight than the right of the unborn, and that the State must provide women with access to safe and legal abortions.
14. **Asha Bhat and Megha Mehta (2015)** analyze the legal framework governing abortion in India, with a focus on the right to life of the unborn under Article 21. The authors argue that the right of the unborn is a fundamental right that must be protected, but that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.
15. **Anjali Kumar (2014)** This article provides an overview of the legal framework governing the right of the unborn child in India, with a focus on the right to life under Article 21. The author argues that the right of the unborn is a fundamental right that must be protected, but that this right must be balanced against the rights of the mother and the State's interest in regulating abortion.
16. **Nishtha Nirmal and Srishti Khare (2018)** compare the legal frameworks governing the right to life of the unborn child in India and the United States. The authors argue that the right of the unborn is a fundamental right under Article 21, but that it must be balanced against the rights of the mother and the State's interest in regulating abortion.
17. **Neeti Singh (2018)** critical appraisal of the Indian abortion law with respect to the right to life of the unborn. The author argues that the right of the unborn is a fundamental right under Article 21, but that it must be balanced against the rights of the mother and the State's interest in regulating abortion.
18. **Aishwarya Bhati (2016)** analyzes the legal and human rights framework governing the right to life of the unborn child in India and international law. The author argues that the right of the unborn is a fundamental right under Article 21, but that it must be balanced against the rights of the mother and the State's interest in regulating abortion.
19. **Pavan Kumar Bhati (2017)** examines the role of the Indian courts in protecting the right to life of the unborn. The author argues that the right of the unborn is a fundamental right under Article 21, but that it must be balanced against the rights of the mother and the State's interest in regulating abortion.
20. **Renuka Mishra and Niharika Gupta (2019)** analyze the legal and ethical considerations involved in balancing the right to life of the unborn with the right to reproductive autonomy. The authors argue that the right of the unborn is a fundamental right under Article 21, but that it must be balanced against the rights of the mother and the State's interest in regulating abortion.

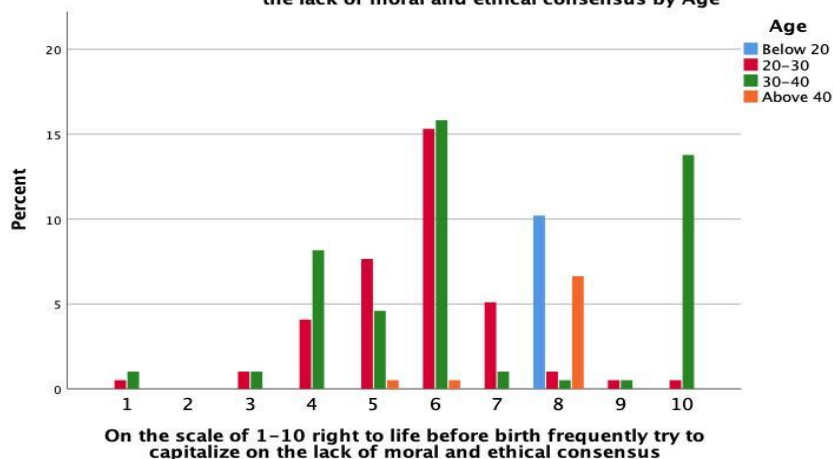
## METHODOLOGY

The research method followed here is descriptive research. A total of 200 samples have been taken out of which is taken through convenient sampling. The data was collected through an online survey. The SPSS software by IBM was used to calculate the descriptive statistics. Independent variables are age, gender, marital status, educational qualification, occupation, and monthly income. Dependent variables are rights of the unborn, protection of unborn child. The statistical tool used by the researcher is graphical representation.

## ANALYSIS

**Fig 1**

**Clustered Bar Percent of On the scale of 1–10 right to life before birth frequently try to capitalize on the lack of moral and ethical consensus by Age**

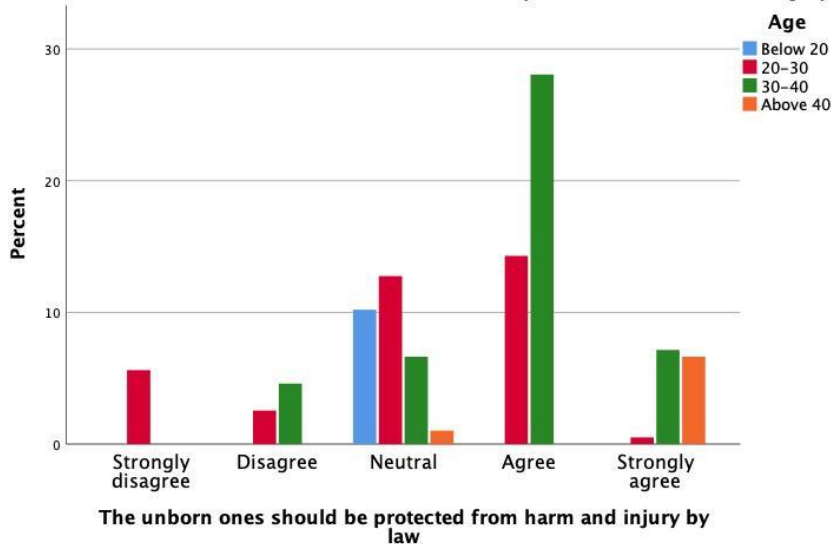


**LEGEND**

The graph represent correlation between age and right of life before birth capitalized, because of moral, and ethical consensus

**Fig 2**

**Clustered Bar Percent of The unborn ones should be protected from harm and injury by law by Age**



**LEGEND**

The graph represents correlation between age and protection, from harm and injury by law to unborn.

**Fig 3**

**Clustered Bar Percent of A child in its mother's womb is capable of acquiring gifts and inheriting property by Age**

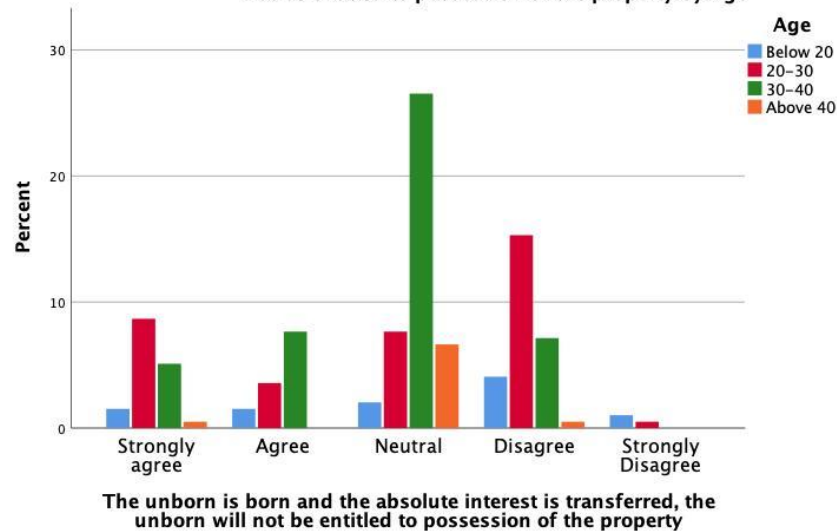


**LEGEND**

The graph represents correlation between age and unborn child capable of inheriting property or gift.

Fig 4

Clustered Bar Percent of The unborn is born and the absolute interest is transferred, the unborn will not be entitled to possession of the property by Age

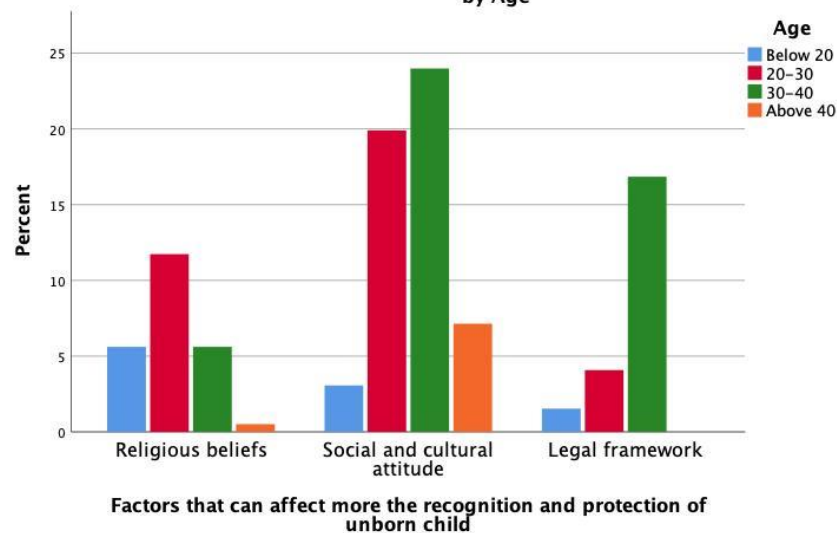


**LEGEND**

The graph represents correlation between age and absolute interest of the unborn.

Fig 5

Clustered Bar Percent of Factors that can affect more the recognition and protection of unborn child by Age

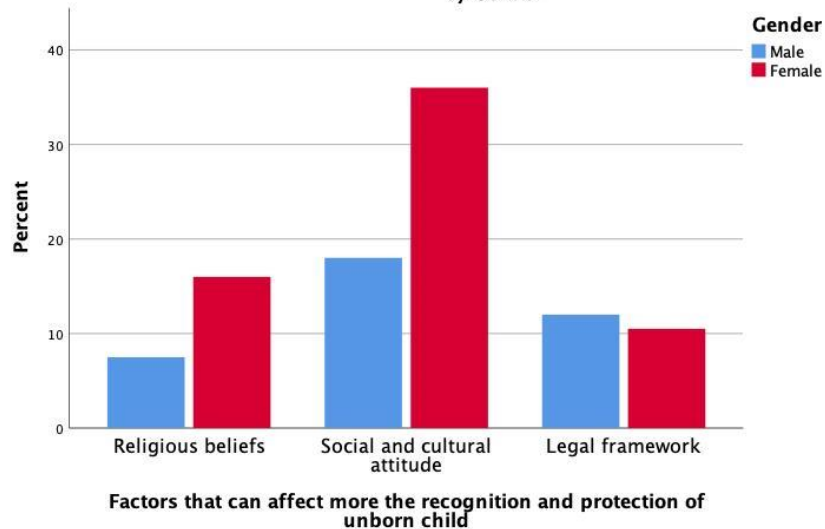


**LEGEND**

The graph represents correlation between age and the factors that affect recognition and protection of unborn children.

Fig 6

Clustered Bar Percent of Factors that can affect more the recognition and protection of unborn child by Gender

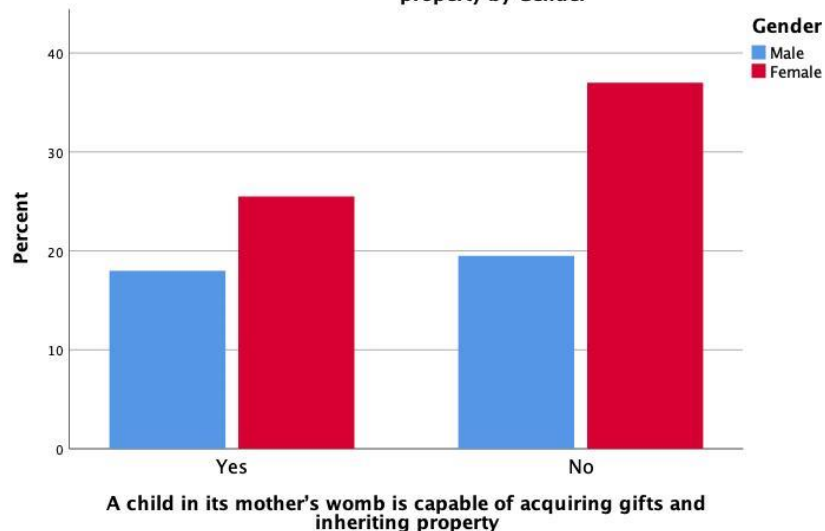


**LEGEND**

The graph represents correlation between factors that affect recognition and protection of unborn children.

Fig 7

Clustered Bar Percent of A child in its mother's womb is capable of acquiring gifts and inheriting property by Gender

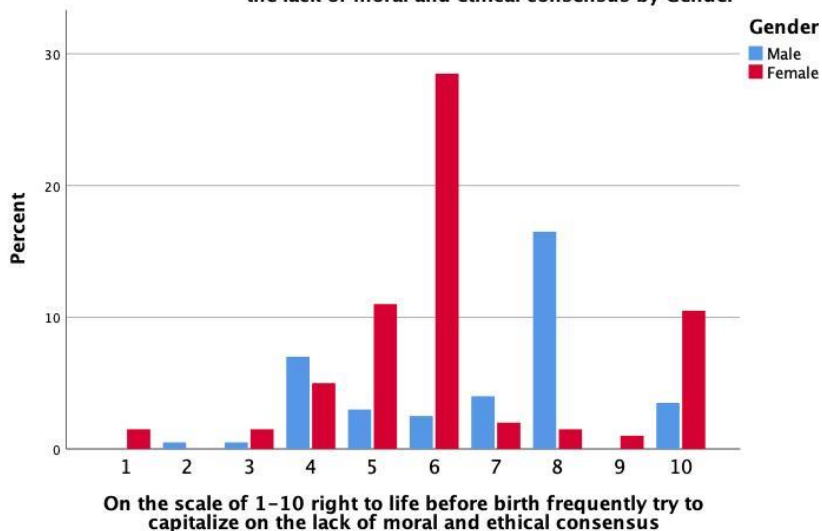


**LEGEND**

The graph represents correlation between gender and child and mother woman is capable of inheriting property.

Fig 8

Clustered Bar Percent of On the scale of 1-10 right to life before birth frequently try to capitalize on the lack of moral and ethical consensus by Gender

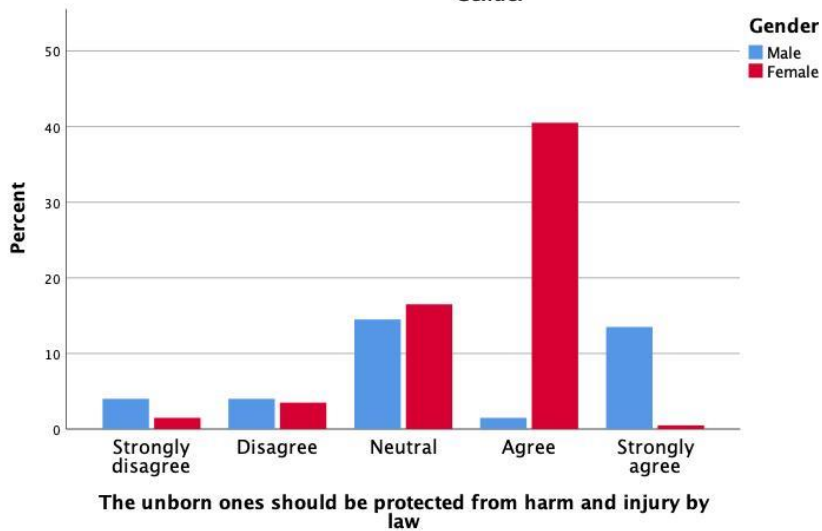


LEGEND

The graph represents correlation between gender and right of life before birth of an unborn child.

Fig 9

Clustered Bar Percent of The unborn ones should be protected from harm and injury by law by Gender



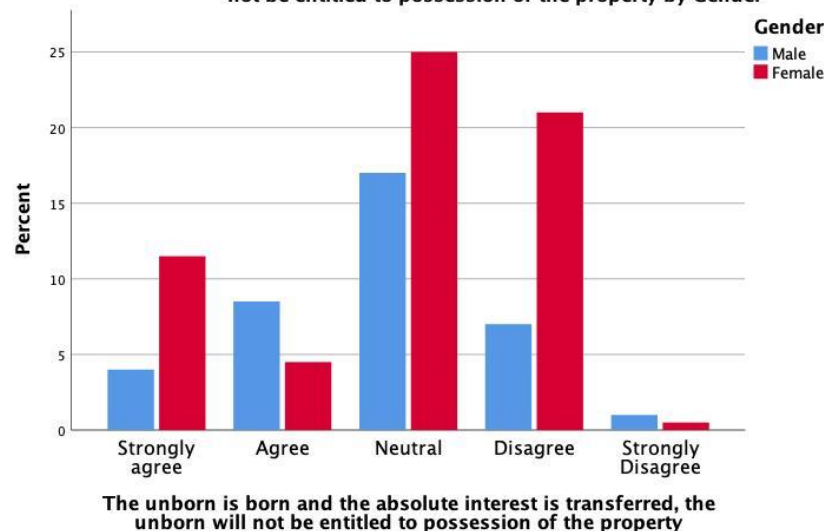
LEGEND

The graph represents correlation between gender and protection, from harm and injury by law unborn.



Fig 10

Clustered Bar Percent of The unborn is born and the absolute interest is transferred, the unborn will not be entitled to possession of the property by Gender



## LEGEND

The graph represents correlation between gender and absolute interest in transfer of property of the unborn.

## RESULT

Fig 1 represents correlation between age and right of life before birth capitalized, because of moral, and ethical consensus where most of the response is collecting from 20 to 30 and 30 to 48 age groups have a neutral opinion. Where 15% responded from the 20-30 age group and 17% from 30-40 .

Fig 2 represents correlation between age and protection, from harm and injury by law to unborn. Where most of the responses where most of the response is collected from each group 30 to 40 and he agrees with this point wait 28.9% of responses.

Fig 3 represents correlation between age and unborn child capable of inheriting property or gift. and most of the response is collected from age of 20 to 30 where they do not know that an unborn child can inherit in a property where eyes between age 20 to 30 , with 25% of response.

Fig 4 represents correlation between age and absolute interest of the unborn. Where most of the response is collected from the age of 30 to 40 and then you turn on this point which states the unborn child has absolute interest in being transferred, and he's not entitled to possession of the property.

Fig 5 represents correlation between age and the factors that affect recognition and protection of one child. In this graph, most of the responses were collected from the age group 30 to 40 with the opinion that social and cultural attitudes.

Fig 6 represents factors that affect recognition and protection of one child where most of the responses collected from females, and their opinion to what social and cultural attitude affect the recognition and production of an unborn child with 37% of responses.

Fig 7 represents correlation between gender and child and mother woman is capable of inheriting property. The response collected is mostly from females where they disagree with the statement and 37% of responses.

Fig 8 represents correlation between gender and right of life before birth of an unborn child. Read most of the responses collected from the female where the neutral on this point with 38.0% of responses.

Fig 9 represents correlation between gender and protection, from harm and injury by law unborn. Most of the responses collected from females and they agree that the unborn one should be protected from injury by law at any cost with 40% of responses.

Fig 10 represents correlation between gender and absolute interest in transfer of property of the unborn. Most of the responses collected from females and their opinion is neutral with 25% of responses and on the other side 27% of females disagree .

## DISCUSSION

Fig 1 represents correlation between age and right of life before birth capitalized, because of moral, and ethical consensus where most of the response is collecting from 20 to 30 and 30 to 48 age groups have a neutral opinion. Where 15% responded from the 20-30 age group and 17% from 30-40 . Fig 2 represents correlation between age and protection, from harm and injury by law to unborn. Where most of the responses where most of the response is collected from each group 30 to 40 and he agrees with this point wait 28.9% of responses. Fig 3 represents correlation between age and unborn child capable of inheriting property or gift. and most of the response is collected from age of 20 to 30 where they do not know that an unborn child can inherit in a property where eyes between age 20 to 30 , with 25% of response. Fig 4 represents correlation between age and absolute interest of the unborn. Where most of the response is collected from the age of 30 to 40 and then you turn on this point which states the unborn child has absolute interest in being transferred, and he's not entitled to possession of the property. Fig 5 represents correlation between age and the factors that affect recognition and protection of one child. In this graph, most of the responses were collected from the age group 30 to 40 with the opinion that social and cultural attitudes. Fig 6 represents factors that affect recognition and protection of one child where most of the responses collected from females, and their opinion to what social and cultural attitude affect the recognition and production of an unborn child with 37% of responses. Fig 7 represents correlation between gender and child and mother woman is capable of inheriting property. The response collected is mostly from females where they disagree with the statement and 37% of responses. Fig 8 represents correlation between gender and right of life before birth of an unborn child. Read most of the responses collected from the female where the neutral on this point with 38.0% of responses. Fig 9 represents correlation between gender and protection, from harm and injury by law unborn. Most of the responses collected from females and they agree that the unborn one should be protected from injury by law at any cost with 40% of responses. Fig 10 represents correlation between gender and absolute interest in transfer of property of the unborn. Most of the responses collected from females and their opinion is neutral with 25% of responses and on the other side 27% of females disagree .

## LIMITATION

The limitations of research on the right of the unborn child under Article 21 of the Indian Constitution will depend on the specific focus and scope of the research. However, some possible limitations that researchers may encounter could include: Lack of reliable data and statistics on the prevalence of abortion and its impact on the right to life of the unborn child in India. Limited access to legal and constitutional documents and cases related to the right of the unborn child in India, which may restrict the scope of the research. Conflicting and diverse opinions and perspectives on the right of the unborn child, which may make it challenging to reach a consensus and draw conclusive findings. The complex and sensitive nature of the topic, which may make it difficult to conduct research that is ethical, respectful, and unbiased.

The limited scope and applicability of Article 21, which may not address all the legal and ethical issues related to the right of the unborn child. The evolving nature of the legal and constitutional framework governing the right of the unborn child, which may require researchers to continuously update and revise their research findings.

## CONCLUSION

In conclusion, the right to life of the unborn child under Article 21 of the Indian Constitution is a complex and controversial topic that requires careful consideration and analysis. The legal and constitutional framework governing the right to life of the unborn child in India has identified the gaps and challenges in this framework. The historical and social context of the right to life of the unborn child in India, compare the legal and constitutional framework with other countries and international human rights standards, and assess the impact of judicial decisions and legislative changes on this right.

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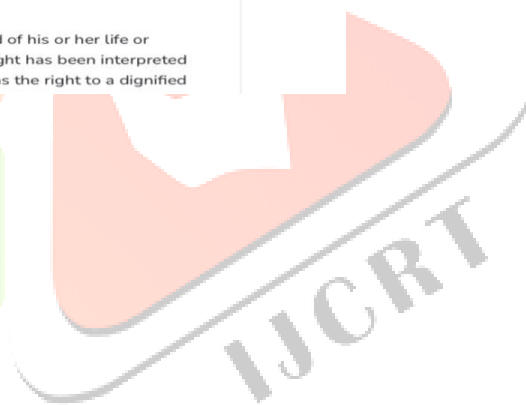
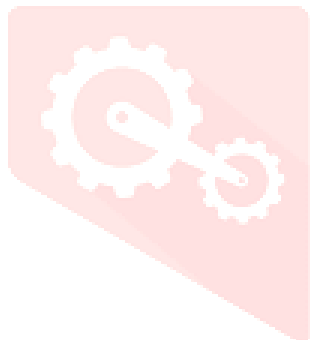
The right to life and personal liberty under Article 21 of the Indian Constitution is a fundamental right guaranteed to every person, including an unborn child. However, the scope of this right in the context of an unborn child has been a topic of debate and controversy. This research paper examines the legal position of the right of an unborn child under Article 21 of the Indian Constitution. It explores the various judgments of the Indian judiciary on the issue and analyzes the implications of such judgments on the rights of an unborn child. The paper also delves into the international legal framework regarding the right of an unborn child and compares it with the Indian legal framework. The aim of the research would be to examine the legal and constitutional provisions related to the right of an unborn child in India, specifically with reference to Article 21 of the Indian Constitution with 210 sample collected through random sampling method. The research concludes that an unborn child has the right to life and personal liberty under Article 21 of the Indian Constitution and that the State has a duty to protect and promote this right.

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#### INTRODUCTION

Article 21 of the Indian Constitution provides that no person shall be deprived of his or her life or personal liberty except according to the procedure established by law. This right has been interpreted broadly by the Indian judiciary to include various aspects of human life, such as the right to a dignified



right of an unborn child to life and personal liberty is protected under Article 21 of the Indian Constitution. The Court held that the State has a duty to protect the life and health of a pregnant woman and her unborn child. The Court further held that the right of an unborn child is not absolute and must be balanced with the right of the mother. The concept of the "right of the unborn child" has evolved over time, particularly with regards to legal protection and recognition. In the past, an unborn child was not considered a legal person with rights. However, with advancements in medical technology and changing attitudes towards the fetus, many countries have enacted laws granting various forms of protection to the unborn.

For example, in the United States, the landmark case of *Roe v. Wade* in 1973 established a constitutional right to abortion, but also recognized that the state has a legitimate interest in protecting the life of a fetus, particularly as it approaches viability. More recently, several states have passed laws restricting abortion, often based on the argument that the fetus has a right to life.

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In international human rights law, the right to life is considered a fundamental right, and some treaties, such as the Convention on the Rights of the Child, extend this protection to the unborn. However, the extent to which this protection applies in practice and how it is balanced against other rights remains a subject of ongoing debate and legal interpretation.

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The right of an unborn child is recognized by various international conventions, such as the Convention on the Rights of the Child (CRC), which defines a child as every human being below the age of 18 years, including the unborn child. The CRC recognizes the right to life of every child and calls upon the States to ensure the survival and development of the child.

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