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Fetus as a "constitutional person"–bioethical challenges witnessed through the eyes of an obstetrician

Abstract

Although Medical Termination of Pregnancy has been legalised in most of the countries worldwide, yet fetal and maternal conflicts still remain the most challenging situations in bioethics till date. The fetus does not experience the rights of an adult person and so the legislation itself is confused and keeps making amendments every now and then. Although a nonsentient, nonconscious being like the fetus cannot have a moral standing, but being a future individual, it has to be endowed with some moral rights. This debate tries to drive home the message that the unborn must also get the opportunity to speak up silently for its rights of existence.

Keywords: fetus, constitutional rights, ethical dilemmas

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"The right to control your body does not include the right to destroy somebody else's"

- Anonymous

It is estimated that 15.6 million abortions take place in India every year!.[1] India is the first country in the world to legalize Medical Termination of Pregnancy (MTP) Law way back in 1971.[1] Even till today, fetal and maternal conflicts regarding obstetric interventions has been a tenet of bioethics. At times, fetal consideration debates the autonomy of maternal affirmation, and then, a situation arises where even expert committees find difficult to settle. As far as the law concerns, the Indian Penal Code (IPC) does not treat a fetus as a separate being.[2] While murder amounts to a maximum punishment of lifetime imprisonment (section 302), criminal abortion invites a punishment of upto seven years only (section 312).[2] The legislation itself is confused and thus keeps making amendments every now and then. However, as the fetus gains viability, it starts to enjoy constitutional rights due to which medical termination of pregnancy (MTP) cannot be conducted under law after 24 weeks except in special cases where maternal life is endangered or fetus possesses severe congenital malformations which are incompatible with life.[3]

The mother is the fetus' moral guardian. In this sacred symbiotic relationship, as far as normal pregnancy is concerned, a mother always takes decisions considering the welfare of her unborn child.[4] But, in case of a conflict arising between the two, the competent mother stands the right to autonomy over the lesser rights of her fetus. The fetus is endowed with lesser moral rights compared to the mother.[4] By moral status, we mean attributes provided to entities by virtue of which they gain attention from others around them. The legal and moral status of an unborn still remains a matter of debate. With the advancements in medicine and technology worldwide, status of an unborn has become quite questionable. We can view the moral status of an unborn in three different ways: either the fetus bears equal rights as a child, or it gains moral status with increasing gestation, or it does not possess any right of its own. If the fetus is given full moral rights, then it should be treated as a separate entity and maternal autonomy is likely to be infringed. In the USA, pregnant women are forbidden by law from engaging in binge drinking and smoking which might amount to prolonged imprisonment.[4] Similar is the situation in countries like India, Sri Lanka and Nepal. However, most of the countries have remained silent on this topic. The problem with maternal coercion is that there is no clear dividing line as to what is deemed harmful for the fetus. If addiction to alcohol is associated with fetal alcohol syndrome, can we give a clear cutoff for amount of alcohol consumption per day that would affect the fetus? Similarly, can we punish a pregnant woman for keeping poor glycaemic control during her first trimester which is likely to result in fetal mal-organogenesis?

On the other hand, if the fetus is not given any moral rights, then maternal autonomy would overpower it. Many indecent women would sabotage the sanctity of life by exercising their empiricism over the innocent unborn, which ethically, would amount to a sin. Here comes the dilemma which an obstetrician often faces. He/she has to respect the bodily integrity of a mother yet preserving the life of the fetus within the womb. After birth, however, the newborn is eligible to all the rights of a person.

Some of the most difficult and painful situations arise when pregnancy is the result of a rape in an adolescent girl below 18 years of age. In India, the Protection of Children from Sexual Offences (POCSO) Act tries to bring justice to all adolescent pregnant girls.[5] It effectively addresses the heinous crimes resulting from sexual exploitation.[6]

Marriage and personal intimacy is a sacred entity. Creation of life, in general, implies to be a result of a perfect love story with procreation at its zenith. On the other hand, in some part of the universe, pregnancy also results from the heinous act of rape; an innocent girl being raped either by someone she never met or someone from the family! One can clearly imagine the moment when both came together – one of them in terror but the other procreating!

The POCSO Act has, undoubtedly, championed in making provisions for the enhancement of punishments in order to deter the perpetrators of law.[5] However, one scenario which still remains unanswered is whether to regard the fetus when a POCSO mother gets admitted at an advanced gestational age. For instance, consider a 16-year old mother where pregnancy was a result of a heinous rape. She gets admitted at near-term for delivery. With a non-reassuring status of fetal cardiotocography during labor, the obstetrician faces one of the most challenging situations of his/her career. Abiding by the basic principles of obstetrics, acute fetal distress during the quiescent stage of labor demands maternal resuscitation followed by early delivery which, at most of the times, lands up in an emergency caesarean section. But if the mother denies an operative delivery (to prevent an undue scar of this illegal pregnancy), the doctor cannot overrule her autonomous decision! What a conflicting situation! Although the fetus is completely viable (with no congenital malformations), yet it stands the risk of hypoxia and distress as a result of maternal autonomy overpowering basic obstetric principles. If this baby develops hypoxic ischaemic encephalopathy (HIE) after birth and suffers its sequelae lifelong, who is to be blamed ultimately? Is it the confused obstetrician or the crippled law?

The question arises, are we morally and ethically correct to disregard the life of this unborn human being? If we go by the Catholic concept of two-patient model, then fetal interests attain the prime importance. In case the decision for "no caesarean" is likely to lead to near-certain harm to the unborn baby, then the obstetrician may ethically override her decision for saving the fetus.[7] However, the one-patient model does not advocate overriding of maternal decision as mother enjoys the autonomy of moral rights more than the child which is yet to be born.[7]

Medico-technical advancements in ultrasound and fetal diagnostics have created the bonfire for increasing ethical dilemmas in obstetric practices.[8] With more and more minor anomalies being detected through ultrasound these days, there has been an ambient shift in views about what weightage should be given to fetal welfare against the maternal benefit. Although fetal interests may temporarily approach those of a born child, they are still governed by the de facto circumstance of a potential child.[4] Humans are a part of the *Homo sapiens*, therefore, one can agree that an unborn child is human; however, it is not considered a person, and as a consequence, not fully human. The health of the mother remains the matter of concern over the fetal welfare.

The ethics of reverence for life is too broad; it does not provide a reasonable account of moral standing. The legislation itself gets confused at times. So, a few constructive suggestions can chart the path ahead:

a. Formulation of physician-mother-fetal contract is vital to counsel the patient and her relatives.[9]

b. Primary care physician must proactively participate to become an educator if an emergency conflicting situation arises.

c. Hospitals must formulate guidelines to settle the feto-maternal conflicts and make shared decision making to compassionate the conflict arising thereof. Medical ethics specialist can be sought to settle such matters smoothly.[10] At times, the court may also intervene for general benefit.

d. Law makers must discuss this conflicting situation in detail with medical ethics specialists and formulate guidelines which will help obstetricians to tackle these instances boldly.

Conclusion

The feto-maternal dyad can be conceptualized as an organic whole. Although nonsentient, nonconscious beings cannot have a moral standing, but the fetus being a future individual, has to be endowed with some moral rights. In this normative debate, two views can be distinguished: a "fetalist" view focusing on the moral value of the unborn, and a "feminist" view advocating the interests of women. Although India was the first country to through light into this matter by enacting the MTP law way back in 1971, yet many questions still remain unanswered till date when a conflicting situation does arise at times.

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Conflicts of interest

Authors declare that there is no conflict of interest.

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