Mother Unborn Conflict in the Sphere of Medical Care – the right to refusal of medical treatment by pregnant woman

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ABSTRACT:

Every individual has got the right to access on quality and affordable medical care. The individual right to access is coupled with a right to access of medical treatment and the right to refusal of such medical treatment. The paper aims to address the issues with regard to refusal of medical treatment by pregnant women. The right to refuse medical treatment is closely related to informed consent. A comparative study on the refusal of treatment as a right in different legal systems particularly among the developed countries has been made. Under the common law the right to refuse medical treatment is based on the concept of bodily autonomy. The right to refusal of treatment by pregnant women is exercised on the basis of religious, privacy reasons etc. The English Law has got clear picture on the right to refuse medical treatment, which was laid down in Cruzan v. Missouri Department of Health. The Indian position in this regard is still vague because of some existing principles regarding bodily autonomy and abortion laws. The state interest in the Maternal – Fetal conflict has been identified. The Courts have recognized the four counter availing measure for the , states interest that may be used to override a patient right to refuse treatment on the basis of prevention of suicide, preservation of life, protection of third parties, lastly the preservation of ethical integrity of medical profession. The Courts evolved the States interest in fetal life as a justification for compelled treatment.

Keywords: informed consent, comparative study, concept of autonomy, maternal – fetal conflict, state interest, compelled treatment

I. INTRODUCTION

Motherhood is a stage in a woman’s life, where she may experience a sense of happiness and joy by giving birth to a new life. But there are situations where we could find a conflict of interest between the unborn child and the mother. Conflict of interest between the unborn and mother arises when the pregnant mother exercises right to refusal of treatment is the main research theme of this paper.

The right of an individual to refuse medical treatment is entrenched initially in the common law and subsequently in statutory law. A child en-ventre-sa mere (meaning in its mother womb), however, an unborn is not recognized by the law as a person and only enjoys prospective rights contingent upon a live birth and separate existence from its mother. Motherhood is valued in our society and most women traditionally and they will do all that is necessary to see the healthy birth of their children.[1] In this context, the cases and literature create a state of confusion. If the State's interest in protecting life is so compelling, arguably pregnant women may ultimately be required to submit to various forms of fetal surgery during pregnancy for the better health of child. Some have gone as far as to suggest that the same rationale may be used to compel a woman to submit to

[1].KnopoffK.A, *Can a Pregnant Woman Morally Refuse Fetal Surgery*?, 79 California Law Review 66-68 (1991).

Caesarean surgery, ultimately see a wide range of maternal behavior controlled by the courts and the State; pregnant women might increasingly be legally accountable for their food, alcohol and drug consumption. Although courts have shown a preparedness to intervene in the 'life and death' situations of a woman in connection with her fetus, several good policy reasons exist to prevent a court from overriding a competent pregnant woman's decisions. If and when that time comes, it is hoped more attention will be paid to these policy arguments in balancing the rights of a pregnant individual to make her own decisions with that of the potentially competing interests of the State in seeking the birth of a healthy child. Sometimes the interference of the State in this context become too oppressive, it is likely that not only will women be less inclined to procreate, but those who do so might be less inclined to use the medical system at all. This would have the undesirable effect of putting the health of more children at risk. Difficult as it might sound, it may be that the life of a fetus endangered by the actions of its mother is the price to be paid for the integrity of all women and all human beings to be able to refuse unwanted medical treatment.

II. Refusal of medical treatment by a Pregnant Woman

It is rare for a pregnant woman to refuse a recommended medical intervention to protect the life of her viable fetus; still a few obstetricians might have come across this problem in their career. A number of cases of such a refusal have gone to court for resolution, and some have even reached the apex courts of various legal systems.The Supreme Court of United States pronounced many landmark decisions in this regard[2]. In England such disputes have always been resolved at or below the Court of Appeal. In United States, federal and state laws are not unanimous on whether the mother’s refusal to accept treatment should always prevail whenever there is a maternal-fetal conflict of interest. In English law the matter is at present firmly settled in favor of a competent mother’s right to refuse, on the grounds that respecting her autonomy must always trump the protection of any fetal interest. This is argument is firmly rooted on the concept of bodily autonomy where one decides what should be done with his body and for this they don’t want the state interference. The focal point of the conflict revolves around the question whether a mother’s refusal to undergo a recommended treatment should be overridden in favor of her viable fetus is fundamentally one of balancing maternal rights against any fetal interests that are recognized by law, or recognized in ethics. But here it is most important to recognize that what may be required or allowed by law may not be required or allowed in an ethical context.

The cases of maternal-fetal conflict that have come before the courts fall into five principal categories:

i. Caesarean sections.

[2]Union Pacific Railway Co. v. Botsford 141 US 250 (1891), Schloendroffv. Society New York Hospital 105 NE 92(NY 1914) , Cruzan v. Director, Missouri Department of Health 497 US 261,270(1990), Re Brown 470 S0 2d 1033,1040(1985), Cruzan v. Harmon 760 S.W 2d 408,417(1988).

ii. Blood transfusions.

iii. HIV treatment.

iv. Drug and alcohol abuse.

v. Other Cases of medical intervention

Apart from these, the Modern era is witnessing the fifth or a new category that has been developed through all these ages and scholars have named it as the right to refuse treatment by pregnant women.

III. RIGHT TO REFUSE MEDICAL TREATMENT

In a number of cases, conflict between the right of a woman to refuse medical treatment and the interests of the fetus or the State to ensure the existence and healthy birth of a child. The judgments in those cases, and the resultant literature, highlight the following issues which form the basis of the right of a pregnant woman to refuse medical treatment: reasons for the exercise of this right are Doctrine of Informed Consent, Right to privacy, Autonomy principle and Religious and Cultural reasons

Doctrine of Informed Consent: The doctrine of Informed Consent implies that the consent of the patient must be obtained prior to treatment or any sort of surgery[3]. If the consent of the patient is not obtained who is competent to give a valid consent, then such treatment without consent shall be deemed to be an invasion of person's bodily autonomy. The United States has historically grounded the right to refuse medical treatment on the doctrine of informed consent. This doctrine is recognized as being firmly rooted in American tort law. The doctrine requires a physician to inform a patient on the risks involved with medical treatment.[4]

However, in the English case of In re T (Adult: Refusal of Treatment)[5]Lord Donaldson of Lymingtonstated that English law did not accept the American concept of 'informed consent' and accordingly would reject the concept of 'informed refusal'. Failure to warn might lead to negligence but does not vitiate consent or refusal. Still in United Kingdoma dilemma stands as to the role of informed consent plays in the right of a patient to refuse medical treatment.

The Right to Privacy: The next ground for refusal of treatment is based on the principle of Right to Privacy. The concept of right to privacy has been accepted by the Courts in a series of decisions. The United States Constitution protects an individual's right to bodily integrity. A number of courts have expressly recognized this constitutional right of privacy. For example, the Massachusetts Supreme Judicial Court, in Superintendent

[3]Cruzan v. Director, Missouri Department of Health 497 US 261-270(1990).
[4]Schloendorffv Society of New York Hospital 211 NY 125-129(1914).
[5]Re T (Adult: Refusal of Treatment) 3 WLR 782 (l992).

ofBelchertown State School v. Saikewicz[6] stated: "Arising from the same regard for human dignity and self-determination, it is the unwritten constitutional right of privacy. As this constitutional guaranty reaches out to protect the freedom of a woman to terminate her pregnancy under certain conditions…, so it encompasses the right of a patient to preserve his or her right to privacy against unwanted infringements of bodily integrity in appropriate circumstances".

The United States Constitution implicitly grants this right of privacy in the Fourth Amendment.[7]The function of the Fourth Amendment "is to protect personal privacy and dignity against unwarranted intrusion by the State". The Fourth Amendment also protects the expectations of individuals that in certain places, and at certain times, they have, the right to be left alone; and this is one of the most valued right an individual has. A pregnant woman has just as strong an interest in protecting her bodily integrity as a non-pregnant woman, and the constitutional guaranty of the right of privacy should reach her as well. However, while the pregnant woman's right of privacy is strong, the question that remains is whether it is strong enough to withstand the challenge of compelled medical treatment when the health of her fetus is at risk.

In re Baby Doe, the Appellate Court of Illinois applied the Fourth Amendment's guaranty of the right of privacy to pregnant women[8].The court held that a pregnant woman retains the same right to refuse medical treatment that she can exercise when she is not pregnant. In recognition of a pregnant woman's rights, the court "explicitly rejected the view that the woman's rights could be subordinated to fetal rights". The court, in Doe, following the lead of the Illinois Supreme Court, went on to say that the "circumstances in which each individual woman brings forth life are as varied as the circumstances of each woman's life, the court strongly suggested that there can be no consistent and objective legal standard by which to judge a woman's actions during pregnancy. Doe applied the rationale of Stallman[9] and held that "a woman's right to refuse invasive medical treatment, derived from her rights to privacy, bodily integrity, and religious liberty, is not diminished during pregnancy and the potential impact upon the fetus is not legally relevant."

Autonomy Principle: Autonomy comes from the Greek words 'autos', meaning "self," and 'nomos', meaning "rule" or ''law''.[10] As Gerald Dworkin writes, "Our idea of who we are, of our self-identity, is linked to our ability to find and refine ourselves. The exercise of the capacity of autonomy is what makes my life mine. And,

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[6]Superintendent of Belchertown State School v. Saikewicz370 N.E 2d 417-424(1977).
[7]U.S. CONST. Amendment IV.
[8] 260 Ill. App. 3d at 392 (court held that in the context of compelled medical treatment of pregnant women, a woman's right to refuse invasive medical treatment, derived from her rights to privacy, bodily integrity, and religious liberty, is not diminished during pregnancy).
[9] Stallman, 125 Ill. 2d at 267.
[10]Dworkin, Autonomy and Informed Consent, in PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, MAKING HEALTH CARE DECISIONS: THE ETHICAL AND LEGAL IMPLICATIONS OF INFORMED CONSENT IN THE PATIENT-PRACTITIONER RELATIONSHIP 63, 70 (1982).

as a presidential commission on ethics in medicine found, "Self-determination as a shield is valued for the freedom from outside control it is intended to provide. It manifests the wish to be an instrument of one's own and not of other men's acts of will. In recent years, some scholars have criticized the position that autonomy is the supreme social value. Some argue that the hands-off approach is not or should not be enough to bind a society. To them, a society's very survival requires intervention in the lives of its members to enforce the society's shared morality. While this may hold true in the social context, in the world of doctor and patient, autonomy as embodied in the informed consent doctrine-is still the dominant and ever growing value. Ordinarily, an individual can act, make choices, and control her life without interference by others or the state. But the Principle of Autonomy has got limitations ie, She does not, however, have unlimited freedom to act as she wishes if so acting will harm another person's interests or interfere with his rights, for example, by shooting him, driving through his prize begonias, or stealing his money. Nor does she have an unlimited right to act as she wishes if doing so will harm the interests of society generally, for example, by polluting the atmosphere. Society may place restrictions on her autonomy in those situations where the free exercise of autonomy without limits would harm others.

Religious and Cultural Consideration: Another important point to consider is the woman’s right to exercise freedom of religion and preserve her cultural values. It is common in many cultural and or religious groups for women to refuse a medical treatment[11], like cesarean delivery. For instance, in many Arab cultures, a cesarean delivery may be perceived as a form of mutilation. There are also situations in which the women belonging toJehovah witness community refused to take blood transfusion even to save the life of child[12]. The religious freedoms in this context overrides the right to life or any other fundamental rights that is been guaranteed to a person. When the religious freedom come into the picture of the refusal of treatment the whole scenario changes , the courts or the legal system are forced to uphold the religious freedoms over the right to life.

IV. The Right to Refuse Medical Treatment- A Comparative Study

In both the United States and the United Kingdom, an individual has a right to refuse medical treatment, even life-saving treatment, in most circumstances. The source and development of the legal right varies in the two countries; however, the doctrine of informed consent provides the basis for the legal principle in both. The right to refuse medical treatment developed differently in the United States and United Kingdom, and, consequently, it is important to understand the legal analysis in both countries.

United States

[11] Re Brown 478 So.2d 1033, 1036-1039(1985).
[12] Re Brooks Estate 205 N.E.d 435, 438-443(1965).

In the United States, a competent adult has the right to refuse medical treatment, even if such refusal will result in death[13]. In Cruzan v. Director, Missouri Department of Health[14], the U.S. Supreme Court held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution [15]confers a constitutional right to preserve one's own bodily integrity by avoiding unwanted medical procedures[16].The Court stated that the liberty guaranteed by the Due Process Clause must protect, if it protects anything, an individual's personal decision to reject medical treatment." Justice O'Connor, in her concurring opinion, stated: "Because our notions of liberty are inextricably entwined with our idea of physical freedom and self-determination, the Court has often deemed state incursions into the body repugnant to the interests protected by the Due Process Clause." Because the right to refuse treatment implicates a constitutional right, courts must use the most rigorous standard of review when evaluating state intervention." The right to refuse medical treatment is well established in American Jurisprudence. At common law, the touching of another without that person's consent was considered battery. The Supreme Court noted that "no right is held more sacred by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law[17].

In the medical context, the doctrine of informed consent protects an individual's bodily integrity[18]. Informed consent is a legal construct, which has evolved over the past thirty years into a complex doctrine designed to promote autonomous decision-making[19]. Justice Cardozo once wrote: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages".[20]In addition to their ethical obligations, courts impose a legal duty on physicians to inform their patients of all the risks associated with a surgery before obtaining consent to perform that surgery. After receiving information concerning a surgery, the patient has the choice of whether to consent or refuse the treatment. Chief Justice Rehnquist concluded that "right the logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment.'[21]

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[13] Mark Strasser, *Incompetents and the Right to Die: In Search of Consistent Meaningful Standards*, 83 KY. L.J. 733 (1995).
[14] Cruzan, 497 U.S. at 266.
[15] U.S. CONST. amend. XIV, § 1. The pertinent portion states: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
[16]In re Baby Boy Doe,632 N.E.2d 326,331 (111. App. Ct. 1994).
[17]Union Paific.Railway.Co. v. Botsford, 141 U.S. 250, 251 (1891).
[18] Alan Meisel ,*Toward a Model of the Legal Doctrine of Informed Consent*, 134 AM. J. PSYCH. 285, 286-87 (1977).
[19] Jessica WilenBerg ,*Constructing Competence: Formulating Standards of Legal Competence to Make Medical Decisions,* (1996).
[20]Schloendorff v the Society of the New York Hospital, 211 NY 125 (1914)
[21]Cruzan v. Director, DMH 497 U.S. 261 (1990).

Two cases in particular demonstrate the potential liability physicians face for failing to abide by their patient's wishes. In Shorter v. Drury[22], the husband of a Jehovah's Witness brought an action against the obstetrician who treated his pregnant wife. The obstetrician cut the woman's uterus and caused profuse bleeding. Despite the immediate necessity of a blood transfusion, the patient refused and died from the loss of blood. The jury found the physician negligent and awarded $412,000 in damages. The jury determined that the woman was 75% at fault for her refusal and reduced the damages accordingly to $103,000. The Washington Supreme Court upheld the judgment and noted that the physician had informed the woman of the risk, which she chose to assume when she refused the transfusion. It was the woman's refusal, not the physician's error that resulted in death. One should note that the physician was not charged with malpractice for abiding by the woman's choice.

Similarly, in Corlett v. Caserta[23]a woman brought suit against a physician because the physician had abided by the wishes of her husband not to receive blood transfusions. Upon the husband's death, his wife brought a malpractice suit. The Illinois Court of Appeals held that the patient's choice to refuse a blood transfusion did not bar recovery for the physician's negligence; however, the refusal should reduce the recovery proportionally. Because a competent adult has the right to refuse medical treatment, the court stated that an individual cannot impose liability upon a physician who disagrees with the consequences of the choice. Corlett teaches that when physicians inform a patient of the risks and potential consequences of an action, and even then the patient refuses treatment, then the physician is not liable for the patient's actions.

A competent adult may also refuse medical treatment for religious beliefs under the First Amendment of the United States Constitution[24]. Although those cases normally involve Jehovah's Witnesses, an individual may refuse medical treatment due to a number of traditional or non-traditional religious beliefs[25]. Both the First and Fourteenth Amendments of the U.S. Constitution guarantee that an individual has the right to refuse medical treatment.

United Kingdom

In the United Kingdom, courts operate on the legal principle that each individual's body is inviolate unless the individual consents to the surgical procedure. There are a few exceptions; however, courts generally defer to an individual's choice even under the exceptions. Generally, if a doctor performs medical treatment without obtaining a competent patient's consent, then his or her action violates medical ethics and a legal duty. In those situations, an individual may sue a doctor under the civil action for trespass of the person or criminally as an assault. The consent must be informed, as doctors in the United Kingdom have an absolute duty to warn

[22]Shorter v.Drury, 695 P.2d 116, 118-19 (Wash. 1985).
[23]Corlett v.Caserta, 562 N.E.2d 257 (Ill. App. Ct. 1990).
[24] U.S. CONST. amend. I. See also Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).
[25] Julie A. Koehne, *Witnesses on Trial: Judicial Intrusion Upon the Religious Practices of Jehovah's Witness Parents*, (1993).

patients of all potential risks involved with a medical procedure before obtaining consent. If a doctor informs the patient of all foreseeable risks, then the patient may decide to refuse the treatment, regardless of the effect that decision might have on the patient.

Under state common law, the right to refuse medical treatment is grounded in the concept of autonomy. It is

closely related to the right to informed consent, with some courts citing additional support in the common law or constitutional right to privacy and bodily integrity. These rights share the common thread of respect for an individual's right to autonomy[26]. Informed consent promotes patient autonomy by requiring physicians to inform patients of their diagnosis, the alternative treatments and their consequences (including the consequence of no treatment), and their recommendations for treatment so that a patient is able to make a meaningful choice.

The logical corollary of informed consent is the right to exercise autonomy by withholding consent and refusing treatment[27]. Similarly, the right to privacy and bodily integrity protects the right to be let alone from government interference, particularly with regard to bodily autonomy[28].

The common law right to refuse medical treatment is not absolute. Courts have recognized four countervailing state interests that may be used to override a patient's right to refuse treatment: (1) the prevention of suicide; (2) the preservation of life; (3) the protection of third parties; and (4) the preservation of the ethical integrity of the medical profession[29].The right to refuse treatment strengthens, and state interest weakens, as the degree of bodily invasion increases and likelihood that the treatment would effectively treat the patient decreases[30].

While all of these exceptions are limited and rarely employed, it is particularly important to note that the protection of third parties has only been applied in very limited circumstances. In general, it is well accepted that the state cannot compel an individual to undergo medical treatment for the benefit of another, even where doing so would save the life of a third party. The classic case cited for this proposition is McFall v. Shimp[31]in which a court declined to order a man to donate bone marrow that would save his cousin's life. The court held that:

"The common law has consistently held to a rule which provides that one human being is under no legal compulsion to give aid or take action to save another human being or to rescue. For our law to compel defendant to submit to an intrusion of his body would change every concept and principle upon which our

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[26]Reva B. Siegel, *Dignity and the Politics of Protection: Abortion Restrictions under Casey/ Carhart*, 117 YALE L.J. 1694, 1754–56 (2008).

[27] Cruzan, 497 U.S. at 22.

[28] Taft v. Taft, 446 N.E.2d 395, 396–97 (Mass. 1983)

[29]Cruzan,497 U.S. at 22

[30] In re Quinlan, 355 A.2d 647, 664 (N.J. 1976) (noting that a state's interest weakens as the degree of bodily invasion grows), abrogated on other grounds by In re Conroy, 486 A.2d 1209 (N.J. 1989)

[31]McFall v. Shimp, 10 Pa. D. & C.3d 90, 91 (1978).

society is founded. To do so would defeat the sanctity of the individual, and would impose a rule which would know no limits".

For this reason, the third party exception is somewhat controversial and has only been applied in rare circumstances. In 1990 the Supreme Court recognized a constitutional dimension to the common law right to refuse medical treatment in Cruzan v. Director, Missouri Department of Health[32]. Recognizing a common law right to refuse medical treatment rooted in the right to informed consent, the Court held that there was a constitutionally protected liberty interest in refusing medical treatment. The Court cited cases recognizing the right to be let alone from bodily intrusion in the context of searches and seizures involving the body; an unwanted medical examination for the purposes of discovery in a civil action; an unwanted vaccination that would compromise the patient's health; the unwanted administration of antipsychotic drugs; mandatory behavior modification; and unnecessary confinement for medical treatment[33]. The Court also cited the four countervailing state interests that it identified in the context of the common law right to refuse medical treatment: (1) the prevention of suicide; (2) the preservation of life; (3) the protection of third parties; and (4) the preservation of the ethical integrity of the medical profession. Thus, it is likely that the analysis for balancing an individual's right to refuse medical treatment under the Constitution against relevant state interests is similar or identical to that of the common law.

V. STATE TO PROTECT FETAL LIFE

The origin of the concept of interest of state in fetal life is based on the doctrine of "parens patrie"[34]. The doctrine authorizes the State to intervene in family affairs to protect the health, welfare and safety of children. This prerogative is inherent in the supreme power of every State and has been used to enact statutes governing guardianship and custody, juvenile courts, child abuse and neglect, and may even extend to the unborn child where the State has a compelling interest. The concept of parens patriae has been used in a number of United States cases to extend the area of child abuse and neglect to protect a fetus. Such actions have been brought by the State both prior to and subsequent to the birth of a child. Apart from this the state justifies their intervention on the ground of public policy and the general laws that is prevailing in their land.

Courts overriding a pregnant woman's refusal of medical treatment [35] justify their decision by citing a countervailing state interest in fetal life. This can be viewed as either the state interest in protecting life, the state interest in protecting third parties, or a combination of the two. However, protection of fetal life does not

[32]Cruzan v. Director, Missouri Department of Health 497 U.S. 261 (1990).
[33]Union Pacific Railway.Co. v. Botsford, 141 U.S 250, 251 (1891).
[34]Heller vs. Doe (509) US 312.
[35] Nancy K. Rhoden, *The Judge in the Delivery Room: The Emergency of Court-Ordered Cesareans*, 74 CALIF. L. REV. 19-51 (1986).

fit neatly into the four countervailing state interests. Some courts and commentators have cited it as a separate, fifth state interest, noting that preservation of life refers to the life of the decision maker, and that the third-party exception has been limited to born children and the public health[36].

The Courts of United States and English Courts through its series of decisions put forth a new theory that the state has an interest on the refusal of treatment by pregnant women. The state interferes because the unborn has also got rights even though it is attached to mother's body. In such refusal the life of the fetus is also at stake and the state makes an entry into such situations.

The U S Supreme Court recognized a state interest in protecting fetal life in Roe v. Wade. While in Roe the Supreme Court made clear that the fetus is not a person under the 14th Amendment[37] it also held that the state has a legitimate interest from the outset of pregnancy in protecting not only the health of the woman, but also the life of the fetus. In Roe, the Court identified the state's "important and legitimate interest in potential life," which becomes compelling at viability. The Court identified viability as a turning point at which "the fetus then presumably has the capability of meaningful life outside the mother's womb". At that point, the state may regulate and even proscribe abortion, subject to an exception for the life or health of the mother. Courts have interpreted this state interest as providing legal grounds to override a pregnant woman's right to refuse treatment. For example, in Pemberton v. Tallahassee Memorial Regional Medical Center, Inc., the Northern District of Florida held that a pregnant woman's rights were not violated by a court-ordered Cesarean surgery and blood transfusion[38].Citing Roe for the proposition that a State possesses an "increasing interest in preserving a fetus as it progresses toward viability," the court concluded that "whatever the scope of Ms. Pemberton's personal constitutional rights in this situation, they clearly did not outweigh the interests of the State of Florida in preserving the life of the unborn child". Indeed, every post-Roe reported opinion compelling the medical treatment of a pregnant woman for the benefit of the fetus has relied on Roe in its argument that the state's interest in fetal life outweighs the mother's right to refuse treatment.

In the case of re Madyun[39], a woman refused consent to surgery on religious grounds after medical staff explained the likely infection to her child if she should give birth by vaginal delivery. The court ordered a Caesarean section after balancing the State's interest in protecting the fetus over a woman's right to refuse treatment. The court, in discussing the parens patriae concept, suggested that it 'applies with the same force to an unborn child'. In a number of cases involving the court-ordered blood transfusions of pregnant women,

[36]In re Fetus Brown, 689 N.E.2d 397, 402–04(Ill. App. Ct. 1997).
[37]Roe v.Wade, 410 U.S. 113, (1973).
[38]Pemberton v. Tallahassee Memorial Regional Medical Center, Inc.,66 F. Supp. 2d 1247, 1247 (1999).
[39] Reprinted in In re AC (1990) 573 A 2d 1235,1259. See Part IV for further discussion of the case. The court also relied on the 'abortion' concept discussed above.

courts have also referred to and relied on this concept. In Crouse lrving Memorial Hospital v Paddock[40], the New York Supreme Court permitted State intervention of a pregnant woman who refused a blood transfusion for religious reasons. The court justified the blood transfusion under its parens patriae power because the State's interest in protecting the health and welfare of the unborn child required that the parents yield to the State's interest. So thus state interest on the fetal rights based on the parens patriae broadened and there emerges a new concept known as "third party interest".

VI. Interest of Third Parties

American courts, while recognizing the right to accept or reject medical treatment, have consistently held that the right is not absolute. In a number of cases (especially those involving life-or-death situations), the courts have recognized four countervailing interests that may involve the State as parens patriae .These are:

1. Preserving life;
2. Preventing suicide;
3. Maintaining the ethical integrity of the medical profession; and
4. Protecting third parties.

Neither the prevention of suicide nor the maintenance of the integrity of the medical profession have been of significance in the cases. Courts have uniformly drawn a distinction between affirmatively acting to commit suicide and allowing one's body to follow its natural course without treatment[41].The integrity of the medical profession has not been a major issue in the reported cases of State intervention of a pregnant woman's right to refuse treatment. It is the doctor who is concerned whether he or she has one patient (the woman) or two (the woman and fetus) and where the potential legal liability lies. Courts have not put the medical profession's integrity above that of the patient. The State's interest in preserving life must be truly compelling to justify overriding a competent person's right to refuse medical treatment where there is no third party interest invo1ved.Where a patient's right to decline treatment has been overridden by the courts, the courts have sometimes relied upon the State's interest in protecting third parties (whether a fetus or otherwise). This rationale can be found in the reasoning used in the 'forced' Caesarean section cases where, for example, in Jefferson v Griffin Spalding County Hospital Authority[42] a Caesarean section was ordered in the thirty-ninth week of pregnancy to save the lives of both the fetus and the mother. In that case, there was no trade-off

[40]Crouse lrving Memorial Hospital v Paddock 485 NYS 2d 443 (1985).

[41] N. Tonti-Filipini, *Some Refusals of Medical Treatment which Changed the Law of Victori'* (1992) 157 Medical Journal of Australia 277, 279 where, for example, the Victorian Parliamentary Social Development Committee made a distinction between refusing active treatment (which concludes in death) and suicide.

[42]Jefferson v Griffin Spalding County Hospital Authority 274 SE 2d 457 (1981).

between the health of the mother and potential child. The interest of third parties has been a major basis for judicial intervention in refusal of blood transfusions. In the United States decision of In re Dubreuil[43] , for example, the interest of the patient's three minor children was considered compelling, in so far as the likely death of the patient should she not receive a transfusion was tantamount to abandonment of the minor children. The interest of the minor children was considered sufficient for judicial interference in that case.

VII. INDIAN SCENARIO

In India, the doctor–patient relationship is governed more by the principle of trust where the doctor is the authoritative person. Therefore, the benefit of informed consent never reaches all patients in normal medical practice. Also, a large section of the population of India is handicapped by illiteracy and poverty, and remains outside the ambit of medical services rendered by qualified physicians of recognized medical systems. For them the issue of obtaining informed consent becomes inconsequential. This fact was recognized by the Supreme Court of India in Samira Kohli v. Dr Prabha Manchanda[44]in which the judgment stated that in India, a majority of citizens requiring medical care and treatment fall below the poverty line. Most of them are illiterate or semiliterate. They cannot comprehend medical terms, concepts and treatment procedures. They cannot understand the functions of various organs or the effect of removal of such organs. They do not have access to effective but costly diagnostic procedures. Poor patients lying in the corridors of hospitals after admission for want of beds or patients waiting for days on the roadside for an admission or a mere examination is a common sight. For them, any treatment with reference to rough and ready diagnosis based on their outward symptoms and doctor's experience or intuition is acceptable and welcome so long as it is free or cheap; and whatever the doctor decides as being in their interest is usually unquestioningly accepted. They are a passive, ignorant and uninvolved participant in treatment procedures. The poor and needy face a hostile medical environment-inadequacy in the number of hospitals and beds, non-availability of adequate treatment facilities, lack of qualitative treatment, corruption, callousness and apathy. Many poor patients with serious ailments (for instance, patients with heart diseases and cancers) have to wait for months for their turn even for diagnosis, and due to limited treatment facilities, many die even before their turn comes for treatment. What choice do these poor patients have? For them, any treatment of whatever degree is a boon or a favor. The reality is that for a vast majority in India, the concept of informed consent or any form of consent, and choice in treatment, has little meaning or relevance.

VIII. CONCLUSION

The issue of conflict between the unborn and mother has been emerged in the legal arena with the exercise of

[43]Re Dubreuil603 So 2d 538 (1992).
[44]Samira Kohli v. Dr Prabha Manchanda (2008) 2 SCC 1(India).

pregnant mother’s right to refusal to treatment which shall be based on informed consent. In United States, federal and state laws are not unanimous on whether the mother’s refusal to accept treatment should always prevail whenever there is a maternal-fetal conflict of interests. On the contrary, in English law the matter is at present firmly settled in favor of a competent mother’s right to refuse, on the ground that respecting her autonomy must always trump the protection of any fetal interest. The question whether a mother’s refusal to undergo a recommended treatment should be overridden in favor of her viable fetus is fundamentally one of balancing maternal rights against any fetal rights that are recognized by law, or recognized in ethics. But here it is most important to recognize that what may be required or allowed by law may not be required or allowed in an ethical context.