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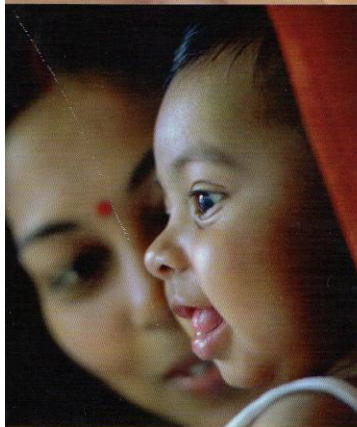
1st STATE LEVEL CONFERENCE ON SAFE BIRTHING PRACTICES FOR MOTHERS & THEIR NEWBORN



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ABORTION & HEALTH OF UNBORN CHILD: ISSUES AND CHALLENGES

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Right and duties are interrelated and indivisible. Law of land is considered an instrument to regulate all the issues related to rights and duties among all the human beings. But when this comes on the issue of unborn there are so many controversies round the globe and in almost all the communities. Though, efforts have been made by the law makers to give an end to the debate at legislative and religious front too. As the idea of no fault liability is core behind all such legislations. The constitution of India ensures right to life and personal liberty which talks about right to life with dignity, that means all the stake holder must be considered responsible in case of lack of due care resulting, unborn seized to have a healthy life. Where modern society is not bothering for female foeticide, illegal abortions or abuse of an unborn child by its own mother even after the presence deterrent laws in case of fault, this become essential to examine various issues like the reckless behavior of mothers resulting into death of or injury to their unborn children, misuse of abortion and the indifferent attitude to ensure safe and healthy future of unborn. The present piece of work is focused on such issue with a medico-legal insight.

MOTHER'S AND CHILD'S RIGHTS: A LEGAL CALCULUS

The right of pregnant woman to live her own life and the right of the unborn child to be alive and healthy may in some situations are conflicting. However, in the jurisprudential context of 'rights' and 'duties' it may not be difficult to work out the elements of a 'legal calculus' to take care of these conflicting rights and duties. The determining rules of this calculus would be;

- (a) More serious the harm to which foetus may be exposed more compelling may be mother's duty to behave properly.
- (b) More serious the risk to mother's health, less strong may be the claim of the foetus.
- (c) A medically demonstrable relationship must exist between the conduct of mother and the threatened harm to foetus.

LAW AND THE ISSUES:

There have been astonishing improvements in maternity care during this century. Mothers and their babies are much safer now than a century ago in all. But safety and improved mortality statistics are not the only ways to measure the adequacy of maternity care. The past 20 years have revealed in many countries a growing sense of dissatisfaction. Users are frustrated by the failure of the services to acknowledge the more human side of maternity care provision. Put simply, there has been an increasing feeling that it is no longer acceptable to pretend that pregnancy and childbirth are exclusively medical events, responsive only to medical solutions. Added to this there is a growing realization that much of what has been done in the name of medical safety has at best not been proved to be effective and at worst suspected to be harmful, often for many years?

The **Unborn Victims of Violence Act of 2004** (Public Law 108-212) is a United States law which recognizes a child in utero as a legal victim, if they are injured or killed during the commission of any of over 60 listed federal crimes of violence. The law defines "child in utero" as "a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb".¹ https://en.wikipedia.org/wiki/Unborn_Victims_of_Violence_Act-cite_note-1

¹In *Dv Berkshire*² the House of Lords deprived a drug-addicted mother, who gave birth to a child with drug withdrawal symptoms, of the custody of her newborn child,

by giving the custody to the social services department, in the best interest of the child. In this case, the child's medical condition was due to the excessive use of hard drugs by the pregnant woman, who continued to take drugs even after the birth. The court issued the 'care order' under section 1 (2) of the Children and Young Persons Act, 1969. The House of Lords fully recognized the importance of ante-natal development of a child as the most vulnerable period of the whole human life, when the foundations of childhood and adulthood health are laid down, and it is continuous with and of great influence on the later stages of a child's life.¹ Though, the judgment of the House of Lords was not based only on the past behavior of the mother but also her present and the anticipated future behavior. Later on, when the Children Act, 1989 was enacted, the above judicial view was used in formulating to fashion its section 31(which repealed section.

CONCLUSION

The above analysis of the various hazards facing the unborn child has shown that the world is becoming increasingly insensitive to the unborn child's existence and welfare. This fact comes out clearly from the legislative activities and judicial pronouncements of various countries. The failure of the United Nations to champion the cause of the unborn child and the silence of UN convention on the issue is a serious omission. Hence, both at the national and international levels not much is being done to protect the unborn child. Unfortunately, mistaken priorities, give preference to individual personal liberty and political expediency over the right to life of an unborn child. Nothing less than a dramatic change in the global attitude may save the unborn child from the encroaching culture of death', as the Pope rightly puts it.² According to him, "the fact that legislation in many countries, perhaps even departing from basic principles of their constitutions has determined not to punish practices against life (which emanate from the said culture of death), and even to make them altogether legal, is both a disturbing symptom and a significant cause of grave moral decline."

The preamble to the U.N. Convention on the Rights of child, 1989 mentions the legal protection of the child both "before as well as after birth", but in none of its fifty four articles there is any reference to the unborn child. And this is not confined to Convention alone. The current legal attitude which fails to attach much importance to the needs and rights of an unborn child must also be replaced with a healthier outlook, because: "...to begin legal protection and comprehensive obligations towards human beings only at birth, is to assume that the most vulnerable period of all human life, the period during which the foundation of childhood and adulthood health are laid, is discontinuous with and of no influence on those later stages.

"Since the unborn child has health needs and vulnerabilities analogous to those of healthy children, and since between the child when unborn and after birth there is continuity in all essential respects, then it would seem logical and just to assign to parents duties to their unborn children analogous (when applicable) to those they have to their children and to recognize in unborn children analogous rights (when applicable) to those already granted to children."

The recent judicial trend in the U.S. to uphold laws that discourage abortion and the readiness of the British courts to extend legal protection to the unborn child against physical injury are welcome developments which need to be extended further. But a lot still remains to be done both at the national and international levels to save the life and health of the unborn child.