Self-Sacrifice and Autonomy: Can a Woman Be Forced to Undergo a Cesarean Section in Order to Save the Life of the Fetus?

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Introduction

One of the most difficult dilemmas in contemporary medical ethics is whether a cesarean section may be performed without the woman's consent. The question usually arises in the context of a conflict between the woman and her physician. The doctor feels that an immediate cesarean section is necessary because of fetal distress and for whatever reason the woman refuses. This conflict brings to forefront such difficult ethical problems as to whether there are limits to autonomy, the rights of a viable fetus and the obligations of the physician. The dilemma is an extreme example of whether one may intervene when a woman's lifestyle interferes with the health of the fetus. The *Shulchan Aruch* (*Even Haezer* 60:12) also deal with this issue and rules that "a pregnant woman who want to eat a certain food that might cause harm to the fetus, some say that she is allowed to eat and she does not have to take into account that the fetus might die or be harmed".

Secular perspectives

On this question there is a debate among medical ethicists. Most feel that the woman's autonomy always takes precedence over the rights of the fetus and she should not be coerced to change her lifestyle. There are also concerns that threat of coercion would deter women who most need it from seeking pre-natal care and the practical difficulties of implementation of the coercion. Other ethicists maintain that if there is no danger to the mother and there is overriding evidence of danger to the fetus a woman can be forced to stop the behavior or accept treatment.[1]

Not surprisingly, in many countries the courts have ruled on this contentious issue. In a 1996 ruling a British high court judge, Justice Johnson, ruled that a woman can be forced to have a cesarean against her will if the fetus's life is in danger. The judge concluded "that the pain and emotional duress of labor had prevented the woman from weighing up all the considerations and making a choice". The decision met with harsh reaction with one British obstetrician declaring "the idea that just because you are in labor you're incapable of making a competent decision is ridiculous."[2] The Royal College of Obstetricians and Gynecologists responded with a paper from its ethics committee which maintained that women refusing a cesarean section should not have it forced upon them.[3] In 1997 the British court of appeals ruled that a physician is not allowed to force a competent woman to undergo a cesarean section even if a natural birth is likely to be fatal to the fetus.[4] However, physicians can still apply for legal compulsion if they believe the woman is not competent to make an informed decision. The American Medical Association supports court approval for coerced maternal therapy if there is no danger to the mother and there is agreement that

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1 Lyng K, Syse A, Børdahl PE. Can cesarean section be performed without the woman's consent? *Acta Obstet Gynecol Scand.* 2005 Jan;84(1):39-42.

2 Dyer C., Caesareans without consent authorized, *BMJ* 1996. Sept;313:705.

3 Ibid.

4 Mitchell P., UK doctors not to use law to force caesarean sections on unwilling mothers, *BMJ* 1997. April;349:1006.

the treatment is necessary to prevent serious harm to the fetus.[5]

The ethical basis for the opposition to forced cesarean sections among most ethicists is respect for human autonomy which is the fundamental principle of modern medical ethics. The Physician Charter on Medical Professionalism endorsed by over a hundred medical societies worldwide states as one of its cardinal principles "physicians must be honest with their patients and empower them to make informed decisions about their treatment."[6] However as we have argued previously,[7] the emphasis on autonomy might reflect a Western cultural bias. In other societies there is much less of an emphasis on personal autonomy and more of a shared decision making model between patients, families and physicians. In addition, in many religious models of ethics beneficence takes precedence over autonomy. For example, in Israel one may force lifesaving treatment upon a patient if an ethics committee feels that there is reason to believe that the patient will be grateful after the enforced treatment.[8] On this basis, Israeli courts have ordered hunger striking prisoners to be force fed.[9] There is also evidence that many patients do not want the responsibility of decision making and/or do not have the necessary knowledge to make an informed choice.

However even among those ethicists who accept the primacy of human autonomy and personal freedom there might be limits to its applicability. In a recent article, Walker[10] has argued that in contrast to the standard definition of autonomy, which emphasizes competence, autonomous healthcare decisions need to be rational. She posits two kinds of rationality, theoretical and practical. Theoretical rationality relates to what one believes and practical rationality to what one does. Theoretical rationality requires one to hold a set of coherent beliefs and the ability to draw conclusions from past experience. Practical rationality relates to how one goes about achieving one's goals. For example, if one desires to lose weight but goes about it by increasing one's caloric intake and exercising less, one is acting irrationally.

The court also reaffirmed the principle that a fetus has no legal right of protection under British law. According to the legal theorist Ronald Dworkin this question is crucial to the debate over abortion. In his own words "One can believe that fetuses are creatures with interests of their own right from the start, including, preeminently, an interest in remaining alive, and that therefore they have the rights that all human beings have to protect this basic interest, including a right not to be killed. Abortion is wrong in principle, according to this claim, because abortion violates someone's right not to be killed, just as killing an adult is normally wrong because it violates the adult's right not to be killed."[11] He calls this the *derivative* objection to abortion because it is derived from rights and interests that all humans, including fetuses have. Rabbi Soloveitchik adopts this derivative objection "If *Halacha* had identified the idea of man with that of consciousness, logos, intellectual activity, anthropology, then neither the embryo, nor the newborn, nor the man in the comatose state could be considered under the aspect of juridical person. Let us not forget that the embryo or the dying man deprived of all faculties resembles the plant far more than the animal. Instinct, sensation,

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[5] The AMA Board of Trustees, *JAMA*, 264:2663. 1990.

[6] ABIM Foundation. American Board of Internal Medicine; ACP-ASIM Foundation. American College of Physicians-American Society of Internal Medicine; European Federation of Internal Medicine, Medical professionalism in the new millennium: a physician charter, *Ann Intern Med.* 2002 Feb 5;136(3):243-6.

[7] Jotkowitz A, Glick S, Porath A., A physician charter on medical professionalism: a challenge for medical education, *European Journal of Internal medicine*, 2004; 15:5-9.

[8] Patient's Rights Law 1996. Laws of the State of Israel, Jerusalem: Israel Government Printing office, 1996:327.

[9] Glick SM Unlimited human autonomy – a cultural bias? *N Engl J Med.* 1997 Mar 27;336(13):954-6.

[10] Walker RL. Respect for rational autonomy. *Kennedy Inst Ethics J.* 2009 Dec;19(4):339-66.

[11] Dworkin Ronald. *Life's Dominion; an argument about abortion, euthanasia, and individual freedom* 1994 NY, NY, Vintage Books.

active response to stimulation, locomotion, and many other neurological processes that characterize animal existence are completely extinct in such persons. And still, man remains man."[12]

However according to Dworkin "one could also oppose abortion because one believes "that human life has an intrinsic, innate value; that human life is sacred just in itself; and that the sacred nature of a human life begins, even before the creature whose life it is has movement or sensation or interest or rights of its own". According to this second claim, abortion is wrong in principle because it disregards and insults the intrinsic value, the sacred character, of any stage or form of human life."[13] He calls this the *detached* objection because it does not depend on any particular rights or interests. We have previously argued that Rabbi Waldenberg adopts this detached objection and is the explanation for his controversial decisions allowing abortion for fetuses with Tay-Sachs and even Down's syndrome in certain instances.[14]

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Halachic opinions

Halachic authorities have also addressed the difficult question of compulsory cesareans. Rabbi Elyashiv responded to an inquiry "It is safe to assume that if a woman knew the truth that the refusal to undergo the operation would cause the death of the child, there is no doubt that she would agree to the operation. And the probable reason that she refuses is lack of faith in the physician and in her opinion the operation is not necessary and the fetus can be delivered safely without it. And that is the reason she doesn't want to endanger or harm herself with the operation. Or she received a promise from someone that child will be born safely and this is the reason she refused the operation… and if it clear as daylight to the physicians that they must operate in order to save the fetus, one should not listen to her, because her decision is and there is no competency and therefore there is no legal standing to her refusal."[15]

It follows from this that if there is a logical reason for her refusal she should not be coerced and this is indeed what Rav Elyashiv maintains. In accord with this logic he also rules that if the woman is carrying an impaired fetus and she does not want to give birth to a disabled fetus, she should not be forced to undergo a cesarean section if there is fetal distress. It is interesting to note the similarities in the legal basis for their decision between Rav Elyashiv and Justice Johnson. Both authorities maintain that for whatever reason the woman can be forced to have a cesarean because she is deemed incompetent. According to them there is no need to have a formal competency evaluation; the fact that she is refusing the operation is demonstrative enough of lack of competency. It is obvious that both decisors were highly disturbed by the prospect of a potentially healthy fetus dying and were looking for legal loopholes to ensure that this cannot occur even at the expense of the woman's autonomy.

One can also view Rabbi Elyashiv's position from the perspective of Walker's requirement for rational autonomy. She claims that a woman who refuses HIV medication, because she misunderstands the meaning of statistics and prognosis as it relates to the case, may be forced to accept treatment. According to Walker the woman lacks theoretical autonomy.[16] Similarly in our case, the woman who refuses a cesarean because she believes that there is no need for it or received a promise from someone that the fetus will be born safely might lack theoretical autonomy. In determining whether the woman is competent from a theoretical autonomy perspective, the reason for her

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[12] Soloveitchik, Joseph. 2005, *The emergence of ethical man*, Jersey City N.J.: Ktav, p. 29.

[13] Dworkin Ronald. Life's Dominion; an argument about abortion, euthanasia, and individual freedom 1994 NY, NY, Vintage Books.

[14] *Responsa Tzitz Eliezer* Vol. 14#101:2.

[15] Rabbi Yosef Shalom Elyashiv quoted in Zilberstein, Yitzchak Forced Cesearean in order to save the fetus, *Assia* 65-66 (volume 17 1-2) *Elul* 1999.

[16] Walker RL, Respect for rational autonomy, *Kennedy Inst Ethics J.* 2009 Dec; 19(4):339-66.

refusal is crucial and this might explain Rabbi Elyashiv's refusal to force a woman to undergo a cesarean for an impaired fetus. In this case the woman's refusal might be ethically problematic but autonomous from a rational perspective.

In another responum, Rabbi Zilberstein quotes another version of Rav Elyashiv's opinion:

"Not always is a woman allowed to refuse an operation that benefits the fetus. And even though a person is not obligated to put himself at risk to save another, regarding a fetus sometimes it is required. Because a married woman is contractually obligated to her husband to bear children and she cannot refuse to take upon herself the risk of pregnancy and childbirth."[17]

Continuing in this vein, Rav Elyashiv explains why a woman is not forced to undergo a cesarean if the fetus is potentially disabled. A woman is not obligated to give birth to an unhealthy child. He bases this on the opinion of the Maharit[18] that a woman is allowed to abort a child due to maternal needs or suffering.

While agreeing with this principle of Rav Elyashiv, Rabbi Shlomo Zalman Auerbach limits it by maintaining that a woman is not required to have a cesarean but is obligated to take the risk of normal pregnancy and childbirth because she implicitly agreed to this when she got married.[19] However harsh these words are to modern ears, they relate to a central theme in the moral development of women. Carol Gilligan, in her pioneering studies on the difference in moral thinking between men and women, writes regarding abortion:

"While society may affirm publicly the woman's right to choose for herself, the exercise of such choice brings her privately into conflict with the conventions of femininity, particularly the moral equation of goodness with self-sacrifice. Although independent assertion in judgment and action is considered to be the hallmark of adulthood, it is rather in their care and concern for others that woman have both judged themselves and been judged."[20]

In our case the woman exercising her autonomy has decided not to undergo the cesarean, but Rabbi Elyashiv views womanhood as self-sacrifice and from this perspective she is obligated to undergo the cesarean in order to save the fetuses life. There is however a crucial difference between the formulation of Rabbi Elyashiv and Gilligan's perspective on womanhood. According to Rabbi Elyashiv sacrifice is by necessity transferred into mandating behavior while according to Gilligan it guides her moral decision making without predetermining a resolution of the dilemma.

What is an acceptable risk?

Both decisors are struggling with the legal basis for a compulsory cesarean in order to save the fetus. In this formulation they postulate that a woman is contractually obligated to take upon herself the risk of childbirth. The argument between Rav Elyashiv and Rabbi Auerbach revolves around what is acceptable risk and what determines this level of risk.

Halachic decision making relies heavily on the methodology of casuistry in reaching its conclusions. It might therefore be helpful to look at other cases where *halacha* does or does not mandate risk taking to save a life?

There is, for example, a universal *halachic* agreement that one cannot be forced to donate an organ which is based on the well known position of the Radbaz that one has no obligation to sacrifice one's limb to save someone else's life. The actual question posed to the Radbaz was in a case where the ruler said to a Jew, let me cut off your hand or I will kill another Jew, "and furthermore it is written its ways are pleasant and the laws of our Torah have to be acceptable to our reasoning and logic and how can someone suggest that a person be required to blind himself or amputate his leg or arm so his friend should not die. And therefore I do not see a reason for

[17] Quoted in Halperin Mordechai, *Assuta* Volume 3, *Parashat Lech-Lecha*, *Cheshvan* 2009 p.3.

[18] Responsa 99.

[19] See note 17 *supra*.

[20] Carol Gilligan, *In a Different Voice* (Cambridge, 1982)

this law except as a meritorious act and praise the person who can fulfill it but if there is danger involved than the person is a saintly fool."[21] On this basis Rabbi Waldenberg forbids organ donation.[22] One can suggest possible differences between the two which theoretically could impact on the ruling:

1. Sacrificing a limb in the time of the Radbaz was obviously done without anesthesia and without the availability of pain medications. In addition there would be a great risk of infection and gangrene. Modern techniques of kidney donation should be less painful with a quicker recovery.[23]
2. It has been well documented that losing one's kidney should have very little if any impact on the functioning of the donor. The same cannot be said of losing a limb. In addition in the middle ages there may have been serious financial repercussions of losing a limb.
3. As opposed to limb amputation there is only a limited visual reminder of the operation and even less so in the era of laparoscopic surgery.

Rabbi Feinstein allows one to donate kidney but nevertheless feels it is not obligatory but labels it a "meritorious act."[24]

However, there exist many opinions that one can be coerced to donate blood if the donation is necessary to save a life.[25] There is essentially no risk associated with simple blood donation, just the uncomfortableness of the needle prick and the mild lightheadedness afterwards. Where does a forced cesarean fit in on that spectrum? At first glance it would seem to be much more comparable to organ donation. In order to answer this question one must first ascertain the degree of risk of a cesarean and that information is readily available. The mortality risk of a normal vaginal delivery is 2/100,000, the risk of a planned cesarean is 8/100,000 and the risk of an emergency cesarean is 16/100,000.[26] Therefore the risk of performing a cesarean for fetal distress (which is considered an emergent cesarean) is eight times that of a normal vaginal delivery (if one assumes that there is no increased risk of a vaginal delivery in the context of fetal distress) which appear to be a significant added risk. But one must take into account that it is only the additional relative risk, from an absolute risk standpoint there is only an additional 14/100,000 risk and the question arises do we obligate people to take that amount of risk to save another person. For example, is one require to dive into the ocean to save another person if there is a 14/100,000 chance that you too will drown? The dilemma relates to the very serious question of how we determine risk in *halacha* and specifically regarding *pikuach nefesh*. In our eyes it seems difficult to try to put an absolute value on when we accept risk and when we don't. It appears much more valid to determine risk either based on what society feels is an acceptable risk or what an individual feels is an acceptable level of risk. Most people would feel that there is a high level of risk associated with organ donation while there is a negligible risk associated with blood donation. Returning to our question of a forced cesarean, the fact that many women now prefer a planned cesarean rather than a normal vaginal delivery would seem to indicate that the risk is viewed as negligible by society and therefore maybe be obligatory. However, if one looks at the situation from the perspective of the pregnant woman it may depend on why she refuses the cesarean. If she is afraid of the risk, then maybe her judgment takes precedence over society's judgment, but if her refusal is based on a lack of belief that the operation is necessary than maybe she is obligated to take the miniscule risk.

Conclusions

There is debate among the Torah leaders of our generation over whether one can compel a woman to have a cesarean section in order to save the life of the fetus. However all agree that it is "a mitzvah on the

[21] *Responsa of the Radbaz* #627.

[22] *Responsa Tzitz Eliezer* Vol 10#25:7:12.

[23] See: Dorry L. Segev, Abimereki D Muzaale, Brian S. Caffo, *et al*., Perioperative Mortality and Long-term Survival Following Live Kidney Donation, *JAMA* 2010;303(10):959-966.

[24] *Responsa Iggerot Moshe*, *Yoreh Deah* II 174:4.

[25] Goldmintz Avraham Yaakov, Donation of blood by pheresis, *Assia* 67-68 (Volume 17, 3-4) *Shevat* 2001 pp. 93-96.

[26] *Williams Obstetrics* 22nd edition McGraw-Hill Books: New York, New York 2005.

doctor to explain to the woman and to attempt to convince her to undergo the operation in order to save the life of the fetus."[27] This highlights the overarching importance of doctor-patient communication when dealing with these sensitive issues. Practically and legally it will be very difficult to perform a cesarean section against the will of the woman, even if one maintains that it is *halachically* permissible. It is thus crucial that physicians try to identify the reasons for the woman's refusal and deal with them in a sensitive and caring manner in order to allay her fears as much as possible.

[27] Zilberstein, Yitzchak, Forced cesarean in order to save the fetus, *Assia* 65-66 (volume 17 1-2) *Elul* 1999.

International Responsa Project

Animal castration through mediation or chemically

I had a question regarding animal castration.
Regarding a Jewish family who bought a male dog and will not get rid of it.
They would like to have it castrated to protect their daughter as the animal gets excited.
As animal castration is usually forbidden by Jews they are faced with a problem?
What options would be halachically permissible?
through a goy?
chemical castration through medication?

Answer:

According to the Shulchan Aruch, castration of a male dog entails a Torah prohibition. (E.H. 5:11) The Gemara remains unresolved whether *amira l'nochri* (instructing a non-Jew), which is prohibited rabbinically on Shabbat, is prohibited also in other areas. The Shulchan Aruch and Rama rule that *amira l'nochri* applies also to other prohibitions, including castration. (E.H. 5:14; C.M. 338:6)

Thus, castration through a non-Jewish veterinarian is also not allowed. However, in cases of need, the Chasam Sofer (Responsa C.M. #185) allows through "heter mechira," selling to a non-Jew, who will have it castrated, and purchasing back from him. (See also Otzar Haposkim 5:83,85)

Rav Amar is further cited as having allowed *amira l'nochri* to castrate dangerous dogs on account of *hezeka d'rabim* (public danger). (See O.C. 334:27)

Castrating a male animal through chemical means is also prohibited. (E.H. 5:12) Where the animal is in danger, some permit it even through a Jew and others only through a non-Jew. (Pischei Teshuva 5:12) However, from a veterinary perspective, castration through medication is less preferred.

Answered by: Rabbi Meir Orlian at 26/2/2015