

Autonomy in Pregnancy and Childbirth: The Next Frontier of Maternal Health Rights Advocacy

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Abstract : Since the 1990s, legal strategies for the promotion and protection of maternal health rights have achieved significant gains. Successful litigation in courts around the world have shown that these rights can be judicially enforceable. Governments and international organizations have acknowledged the importance of a human rights-based approach to maternal mortality and morbidity, and obstetric violence has been recognized as a human rights issue. Despite the progress made, maternal mortality has worsened in some regions of the world, while progress has stagnated elsewhere, and mistreatment in maternal care is reported almost universally. In this context, issues of maternal autonomy and decision-making during pregnancy, labor, and delivery as a critical barrier to access quality maternal health have been largely overlooked. Indeed, despite the principles of autonomy and informed consent in medical interventions being well-established in international and regional norms, how they are applied particularly during childbirth and pregnancy remains underdeveloped. National and global legal standards and decisions related to maternal health were reviewed and analyzed to determine how maternal autonomy and decision-making during pregnancy, labor, and delivery have been protected (or not) by international and national courts. The results of this legal research and analysis lead to the conclusion that a few standards have been set by courts regarding pregnant people's rights to make choices during pregnancy and birth; however, most undermine the agency of pregnant people. These decisions recognize obstetric violence and gender-based discrimination, but fail to protect pregnant people's autonomy, privacy, and their right to informed consent. As current human rights standards stand today, maternal health is the only field in medicine and law in which informed consent can be overridden, and patients can be forced to submit to treatments against their will. Unconsented treatment and loss of agency during pregnancy and childbirth can have long-term physical and mental impacts, reduce satisfaction and trust in health systems, and may deter future health-seeking behaviors. This research proposes a path forward that focuses on the pregnant person as an independent agent, relying on the doctrine of self-determination during pregnancy and childbirth, which includes access to the necessary conditions to enable autonomy and choice throughout pregnancy and childbirth as a critical step towards our approaches to reduce maternal mortality, morbidity, and mistreatment, and realize the promise of access to quality maternal health as a human right.

Keywords : autonomy in childbirth and pregnancy, choice, informed consent, jurisprudential analysis

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