

# Bioethical and legal issues of termination of pregnancy resulting from rape

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From the obstetrical point of view, abortion is the interruption of pregnancy, spontaneous or provoked, with up to 22 weeks of gestation and/or with the fetus weighing up to 500 g<sup>1</sup>.

From a Brazilian legal point of view, abortion is the interruption of pregnancy with the destruction of the product of conception, regardless of gestational age or fetal weight and whether the pregnancy is spontaneous or the result of assisted reproduction techniques, characterizing a crime. In these cases, the law criminalizes the voluntary termination of pregnancy with the plea of defending the life of the human being in formation, but there are three legal exceptions that expressly allow the performance of an abortion: pregnancy resulting from rape, a situation in which the termination of pregnancy is the only way to safeguard the mother's life (high-risk pregnancy), or pregnancy of an anencephalic fetus (this last hypothesis is allowed based on Supreme Court decision on ADPF 54, from 2012).

Recently, there has been intense discussion about the legal, bioethical, and health aspects related to the termination of pregnancy of a girl who was 11 years old at the time of the facts, making necessary to analyze some legal, obstetric, and bioethical aspects on the subject.

According to Brazilian law, it is the crime of rape of a vulnerable person to “have sexual intercourse or perform another lewd act with a person under the age of 14”<sup>2</sup> (Article 217-A). Complementing this understanding, the Superior Court of Justice determined in 2015 (AgRg REsp 1453155/SC) that this situation characterizes the crime, regardless of whether there is the victim's consent, previous sexual experience, or the existence of a romantic relationship with the one who committed the act. Therefore, in the specific case, as it is a girl under the age of 14, there is no doubt that there was rape of a vulnerable person.

As already discussed, abortion is allowed when the pregnancy is the result of rape and if there is a consent on the part of the

pregnant woman. Furthermore, the Brazilian Penal Code does not impose a temporal limitation for its performance. This is exactly what happened in the case: as it was a pregnancy resulting from rape, it was the girl's right to terminate the pregnancy, being a decision and a right of the young pregnant woman, and judicial authorization is not required for the abortion.

From a healthcare viewpoint, pregnancy in girls under the age of 14 represents a real risk to the health of the adolescent and the fetus, which also provides medical support to the pregnant woman's decision. From specifically the obstetric position, the literature reports a higher prevalence of anemia, arterial hypertension, birth dystocia, postpartum hemorrhage, and a higher incidence of maternal death<sup>3</sup>. In addition, there is an association with the development of social, emotional, and economic problems, represented by school dropout, need to provide for their own support, emotional pressure exerted by the family and society in general<sup>4</sup>.

Finally, considering the Bioethical principles, the interruption of pregnancy in these circumstances meets the principle of Beneficence, as it protected the girl from the complications of a pregnancy at an early age, Autonomy, as far as it respects the pregnant's decision of interrupting the pregnancy, and Justice, as far as the laws of the country were respected and applied.

The principle of Beneficence refers to the physician's obligation to maximize benefit and minimize harm. The medical professional must have the conviction and technical knowledge needed to ensure that the medical act is beneficial to the patient. Thus, the principle of Beneficence prohibits inflicting deliberate harm, so that the physician's action must always cause the least harm or no harm to the patient's health, a precept historically enshrined in the Hippocratic aphorism *primum non nocere* (first do no harm), whose purpose is to reduce the adverse or undesirable effects of diagnostic and

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therapeutic actions<sup>5</sup>, always with the objective to treat, cure, and protect a patient's life.

Likewise, the principle of Autonomy advocates that individuals must be empowered to decide about their health pathway and should be treated with respect for their decision-making capacity. People have the right to decide on matters related to their body and their lives, and the patient's authorization is required to carry out any medical acts<sup>6</sup>. The Committee on Ethical Issues in Human Reproduction and Women's Health of the International Federation of Gynecology and Obstetrics stated that "the principle of autonomy emphasizes the important role that women must play in decision-making regarding their health care. Physicians should observe female vulnerability, expressly requesting their choice and respecting their opinions<sup>7</sup>." In the case of children, the principle of autonomy must be exercised by the family or legal guardian, which occurred in the case under discussion, as the child's mother was supporting her.

Based on all the discussions and myriad of opinions expressed about this case, it is essential to highlight the

importance of knowing and applying the legal, technical, and bioethical aspects for the performance of best practices in medical activities, especially in vulnerable patients and those situations surrounded by possible controversies, so that one can act according to the rules and principles that must guide every medical professional and not based on societal pressures and fears.

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## AUTHORS' CONTRIBUTIONS

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