



## Medico Legal Advice to the Distressed Fetus – Now A Child

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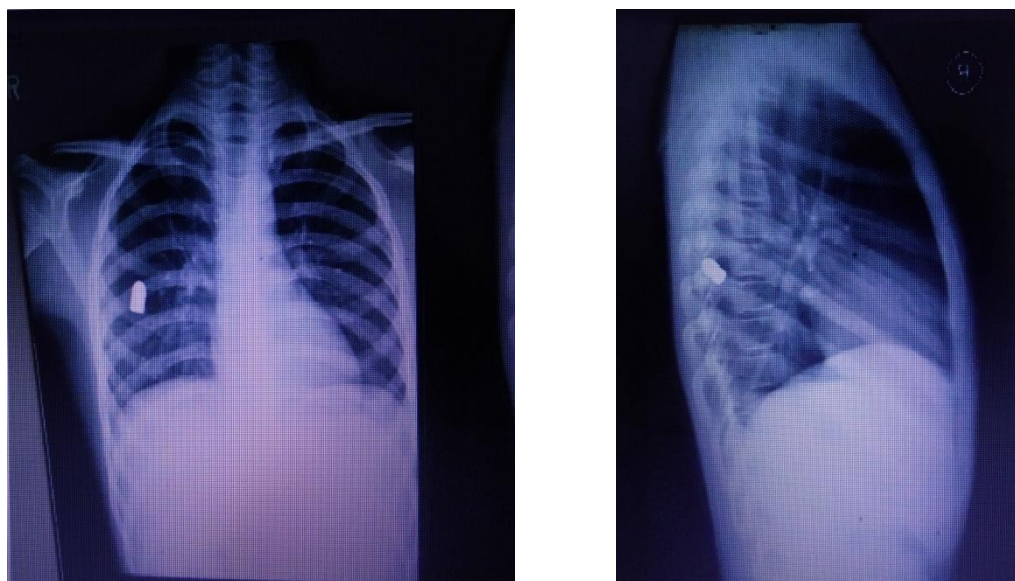
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Apropos the case report entitled ‘Fetal gunshot of the chest: An unprecedented surgical encounter’<sup>1</sup> the under mentioned authors would like to append the medico legal component to this unusual episode.



**Figure: X- ray chest PA and right lateral view revealing radio opaque shadow**

(entrenched bullet) (Source: IJCRI, 2011; 2(8): 1-4)

From the case report the following facts emerge out:

1. The age of the child is about ten years.
2. The mother had been non-collaborative while giving the medical history.
3. The bullet measuring 1.2 x 1 cm and weighing 100 gm was incidentally discovered on chest x'ray of the child during routine pre-anesthetic check up for a non-related planned CSOM surgical intervention.
4. On examination of the mother there was a 3 x 0.5 cm scar mark on the left side of abdomen, 4 cm lateral to vertical midline incision (*the puckered nature of scar along with tattooing would add substance to the trauma caused by bullet – authors*).

Since the bullet was lodged within the child's body even after ten years it could be safely presumed that the tentacles of maternal malafide intention existed.

For the child the case does not end here. There are several options available under which he can seek remedy for himself, if not already availed.

- (a) The State has the right to intervene to preserve the life and health of the fetus at any stage in case it suspect of mother's connivance or willful resistance as happened in case of drug misuse / addiction <sup>2</sup>. This option has met the natural death after birth.
- (b) The child can seek relief under Sec 319 IPC (Indian Penal Code), i.e., causing willful hurt to any person. That the child was viable renders it to be a person and hence automatically qualifies to have all the properties of a personhood <sup>3</sup>.
- (c) The child can claim for compensation under Constitutional Law (Art. 21 of the Constitution of India). The damage could be awarded under 'general damage' head following the dictum of Lord Salmon whose pearls of wisdom were "the damage awarded should be such that the ordinary sensible man would not instinctively regard them as either mean or extravagant, but would consider them to be sensible and fair in all circumstances."
- (d) That the trauma causing neoplasm is not a remote possibility either. In case of such an eventuality the Nestor of cancer authorities, James Ewing, has listed five tenets that must be fulfilled to implicate trauma as a causative agent for a given cancer:
  - i) The site of injury must correspond to the region in which the cancer develops
  - ii) Proof of the injury: there should be demonstrable evidence of injury, such as a hematoma, ecchymosis, abrasion or laceration
  - iii) The interval elapsing between the date of the injury and the appearance of the tumor should be compatible with causal relationship
  - iv) The previous integrity of the wounded part should be established
  - v) There must be microscopic proof of the cancer <sup>4,5</sup>

To these five, Pack has added two additional prerequisites:

- i) The cancer must be in line of force of injury as in contre coup fractures
- ii) The tumor must be of a 'simple, single, histologic type' <sup>6</sup>

To avail any of the benefit accruing out of legal provisions the child must attain the age of majority i.e., 18 years under Indian law or else the proxy guardian could take the fight to the legal surf.

### References

1. Beg MH, Ali WM, Samad A, Gauraw K, Alam S, Shaquib: Fetal gunshot on the chest: an unprecedented surgical encounter. IJCRI, 2011; 2(8): 1-4
2. Husain, M; Rizvi, SJ; Usmani, JA. Medico legal status of an unborn child - a review. JFMT, 1994; 11 (1&2): 34- 37
3. Areen, J. Limiting procreation. In: Medical Ethics, ed Robert M Veatch. Kennedy Institute of Ethics, Georgetown University. Publishers: Jones and Barrett, Boston, 1989, p 108
4. Ewing, J. Relation of trauma to malignant tumors. Am J Surg., 1926; 40 (6): 30
5. Ewing, J. Modern attitude toward traumatic cancer. AMA Arch Pathol., 690, March 1935
6. Pack, GT. The relation of cancer to trauma. Compensation Medicine, 1950; 3 (1):5