



Exploring the Contemporary Terrain: Gender Reassignment Surgery and the Legal Framework in India

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Abstract: The clinic at a tertiary care hospital in India has conducted 242 gender affirmation surgeries, with a notable increase in new patient visits from 6 in 1993 to nearly 150 in 2019. This study examines the current landscape of gender reassignment surgeries, historical perspectives in India, and the legal framework that protects the personal autonomy of transsexualism individuals using a non-doctrinal research methodology. The paper underscores the significant challenges faced by transsexual individuals, including criticism and humiliation in a society shaped by stereotypes and legal medical facilities available by the government. It advocates for strengthened legal protections to secure the life and liberty of transsexual in the face of societal criticism which symbolism the true equilibrium in society at large.

Keywords: Gender Dysphoria, Transsexualism, Third gender, Reassignment surgeries, Personal Autonomy.

1. Introduction

The Ipsos survey statistics 2024, approximately 33 percent of the respondents expressed strong support for transgender individuals being allowed to undergo gender surgery, while 7 percent of the respondents strongly opposed the reassignment of gender surgeriesⁱ. In the years 2022-2023, 105 gender reassignment surgeries were performed. It is important to note that these surgeries are exclusively conducted on individuals aged 18 with consent at GRH. Additionally, the expenses associated with these surgical measures are enclosed by the Chief Minister's wide-ranging Health Insurance Schemeⁱⁱ.

The Gender reassignment surgery is often recommended for individuals experiencing gender dysphoria. Gender dysphoria is a condition where a person feels that their birth gender does not align with their true gender identity. People experiencing gender dysphoria seek to conversion their identified gender role, and reassignment operation is considered a potential treatment option to help alleviate their dysphoria and enable them to live more authenticallyⁱⁱⁱ.

In addition, judiciary played the pivotal role to address the concern through the landmark judgment in NALSA^{iv} decision acknowledged the importance of diagnosing and respecting the rights of transgender individuals. In light of a significant legal precedent, substantial measures have been implemented to promote and protect the transgender's right in the society. In 2014, the Rights of Transgender Persons Bill was introduced as a private

member's Bill, and it was subsequently passed by the Rajya Sabha in April 2015^v. Subsequently, the Transgender Persons (Protection of Rights) Act, 2019 was enacted to provide legal protection and recognition to transgender individuals. Furthermore, specific rules to safeguard the rights of transgender persons were introduced through the Transgender Persons (Protection of Rights) Rules, 2020^{vi}. In addition, the National Portal for Transgender Persons was launched, providing a platform for accessing various government welfare schemes and resources. In a significant move towards providing social support, a shelter home called "Garima Greh" was inaugurated in November 2020, specifically designed to provide a safe and welcoming environment for transgender individuals.

The present paper delves into the significant impact faced by individuals who have undergone sex reassignment surgeries, examining both the national and international implications and identifying the major challenges associated with this issue. The study proposes recommendations for societal awareness and the need to address these challenges with supportive measures as these individuals are integral parts of our society.

1.2 Review of Literature

Gyanendra Kumar Sharma, “Rights of Transsexual Genders, the new Emerging Field of Law: A Research Paper”^{vii}, The paper emphasizes the neglect of transsexual communities worldwide and the lack of recognition of their rights in many countries. It mentions the landmark Naz Foundation’s case in India, which led to some legal protections for sexual minorities. The author proposes two remedies: recognizing transsexuals as a third gender or protecting their rights under existing laws. Additionally, the author suggests establishing a research and educational center to study and address transsexuality, and emphasizes the need for the judicial system to protect the rights of sexual minorities.

Mohmmad waggy, “Transgender Rights in India’s Legal System: A Critical Analysis”^{viii}, The study discusses the challenges faced by India's transgender community due to discriminatory laws and societal neglect. It highlights the need for legal framework for transgender rights to align with the global standards, emphasizing the importance of a comprehensive approach to ensure the protection and promotion of transgender rights in the country. The study also evaluates The Transgender Persons (Protection and Rights) Act 2019, expressing concerns that it may not effectively address the community's pressing needs.

Dr. Jacob Jon, “Study of Human rights of Transgender as a third gender”^{ix}, The study aims to cover the overall profile of transgender as a “third gender” focusing on important socio-economic variables like age, caste, religion etc. and emphasizing on the violence faced by transgender community and the protection of their rights guaranteed under the constitution of India. Further focusing on the aspect that various provisions in the legal system are limited leaving transgender people vulnerable. This study tries to build a database coming up with actionable recommendations to protect and promote their human rights.

Richie Gupta and Anil Murarka, “Treating transsexuals in India: History, prerequisites for surgery and legal issues”^x, in this article the authors analysis the literature on transsexualism and share their clinical experiences with transsexual patients seeking gender affirmation through sex change procedures. They note a lack of Indian literature on this topic and identify deficiencies in Indian law regarding gender affirmation surgery (GAS), unlike the U.K. and U.S., which have established legal frameworks. The authors highlight challenges faced by Indian surgeons, such as obtaining consent, protecting against litigation, and addressing the

postoperative sexual and legal status of patients. They emphasize need for modifications in existing laws concerning marriage, adoption, and other rights to better protect transsexual individuals.

1.3 History and international perspective

Gender Dysphoria term means when your biological sex does not match your gender identity^{xi}. Transsexualism is extreme form of disorder in which person realize that he or she is trapped in wrong body. For example, a person born as a male gender but deep down he never feels comfortable in male body, he always felt uncomfortable or he feels that he is female trapped in male body.^{xii} A medical technique called a gender affirming operation, or sex reassignment surgery (SRS), is intended to support who identify with a gender other than the one that was assigned to them at birth. Surgeries, which include genital reconstruction surgery, are intended to change the physical characteristics of the body to match the self-identified gender of the patient. Majorly two types are included 'Male to female' and other when is 'Female to Male'.^{xiii}

Akkriti Patel is the first person to go for 'sex reassignment surgery' (SRS) and with the help of sex change surgery converted into a female. "This was the first time that such a detailed surgery has been performed"^{xiv}. At the transgender multi-specialty clinic of Government Rajaji Hospital, 105 gender reassignment procedures have been carried out between January 2022 and January 2023, according to medical professionals.^{xv}

There are now number of examples in India that people have performed sex change surgeries such as according to reports, "a teacher in Rajasthan had gender surgery to become a man before getting married to one of his students"^{xvi}. Other very famous youtuber or model Ella D Verma^{xvii}. The individual in question was assigned male at birth but consistently expressed discomfort with their male identity. In various YouTube videos, they have recounted experiences of bullying during their schooling. Upon discussing these feelings with their parents, they indicated a desire to undergo gender confirmation surgery, articulating a belief that they were a woman trapped in a male body. Initially, they encountered resistance from their parents; however, they eventually succeeded in persuading them to support their decision to transition. Following this, the individual underwent gender confirmation surgeries, although their medical treatment continues. In their content, they also reflect on the mistreatment they faced during childhood, emphasizing the lasting impact this had on their well-being. They express concern regarding societal attitudes, highlighting that many individuals who share similar experiences may feel dissuaded from openly discussing their struggles. This situation underscores a significant gap in education about gender identity in society, suggesting that a lack of understanding can lead to widespread discrimination and silence among those who suffer^{xviii}.

In India, now these surgeries are been performed free of cost in some of government hospitals as in 2020, the government of India made rules to implement in the society at large^{xix}. According to the established regulation, at least one government hospital in each state is required to offer complimentary gender reassignment surgery and counseling services to individuals identifying as transgender. It grants transgender individuals the right to determine their own gender identity and stipulates that this identity should be legally recognized^{xx}.

The legislation addresses the issuance of gender-neutral certificates and identification documents. A transgender individual may request a certificate of identification that designates their gender as "transgender" from the District Magistrate. An updated certificate is only granted upon the individual undergoing surgery to transition from 'male to female'. It prohibits discrimination against transgender individuals based on various grounds,

such as unfair treatment in employment and unjust treatment in medical care^{xxi}. Additionally, it also confers specific rights to transgender persons, including the right to residence, the right to reside in the household of their parents or family members, and the right to utilize household facilities^{xxii}. It should be responsibility of government entity to mandated oversee health facilities related to transgender individuals which encompasses the provision of medical care for sex reassignment surgery, hormonal therapy, and the establishment of a hormone therapy council^{xxiii}. The Mumbai High Court noted in the Bidhan Baruah Case (2012) that there is no Indian legislation that forbids sex reassignment surgery. A sex change procedure can be performed on an adult (over the age of eighteen) without parental permission^{xxiv}

1.3 Gender Re-assignment Surgeries in India

Gender confirming surgeries are also known as “sex reassignment surgery” (SRS). It is a medical procedure aimed at aligning an individual's physical characteristics with their self-identified gender. It includes procedures such as genital reconstruction and may involve the removal of the penis, reshaping of genital tissue, and the creation of a vagina for ‘male-to-female’ (MTF) surgery. ‘Female-to-male’ (FTM) surgery presents challenges in creating a functional penis from clitoral tissue. Additionally, surgical adjustments to the breasts may be required to complete the transformation^{xxv}.

Challenges: Gender reassignment surgery

The individuals who have undergone sex change surgeries often face numerous challenges, including (i) difficulties in gaining acceptance from their families, (ii) fear of tarnishing the family's reputation in society, (iii) experiencing severe humiliation and taunting, (iv) concerns about insufficient post-operative care leading to potential health complications, (v) the financial burden of excessive expenses that can be challenging to afford, (vi) lack of hospitality, (vii) lack of counselling and mental assistance etc.

Conclusion and Suggestions

The Indian healthcare system faces significant challenges when it comes to treating transsexual patients, particularly in the area of Gender Affirmation Surgery (GAS). Unlike countries such as the U.K. and U.S., India lacks specific legal provisions governing GAS. This absence of regulatory clarity presents issues for surgeons, especially concerning the necessity of obtaining informed consent, which is critical for protecting against potential future litigation.

To address these concerns, experts suggest that consent forms could be transformed into legal affidavits to enhance their legal standing. Furthermore, there is a pressing need for modifications in Indian laws related to marriage, sexual offenses, and fundamental rights. These changes would aim to better safeguard the legal status and rights of transsexual individuals, ensuring they are granted the equal rights to life, personal liberty, and dignity within society.

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