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Sex- Selective Surgeries in Inter-Sex Infants and Young Children : A Human Right Issue

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Abstract

Intersex persons and bodies have always been seen as being incapable of assimilating into society. The practise of performing medical operations on often-healthy bodies to meet perceived family and cultural obligations continues despite questions about the need, consequences, conduct, and consent of such procedures. International human rights organisations and a handful of national governments have responded by issuing a slew of new policy declarations on the rights of intersex individuals, which have been endorsed by the international human rights system. However, there are significant obstacles to overcome in order to put such assertions into action. Human rights crimes against intersex persons continue to be committed, and are deeply ingrained in a long history of purposeful suppression. The rhetoric of changing healthcare procedures has not been backed up by evidence. A policy disjunction occurs when intersex problems are framed as questions of "sexual orientation and gender identity rather than as matters of intrinsic sex characteristics; this has resulted in rhetoric of inclusion that does not match the reality.

Key Words: Intersex, Human rights, Healthcare, Surgeries etc.

Introduction

Those who identify as intersex are born with sexual traits that do not conform to medical and societal expectations for female or male bodies. Those who have intersex variants are diverse, having differing bodies, sexes, and sexual and gender identities, among other characteristics. Intersex characteristics are comprised of at least 40 distinct entities, the majority of which are genetically determined. Numbers are ambiguous, not just because of diagnostic difficulties and the expanding influence of genetic selection, but also because of social stigma. The ramifications of being born with intersex traits are far-

reaching and severe. Visibly intersex persons have been subjected to infanticide and freak exhibitions throughout history because they have been portrayed as hermaphrodites, gods, and monsters. Human rights activist Dan Ghattas observes that persons with intersex bodies have been declared incapable of assimilating into society in every country in the globe.

The terms used to describe affected persons have changed over the last century as clinical decision-makers determined that pre-existing terminology was imprecise or derogatory: that affected persons are not hermaphrodites, not pseudo-hermaphrodites, and not intersex, but disordered children whose bodies require finishing or disambiguation.

Human rights breaches manifest themselves in a variety of ways. If an intersex characteristic is visible in a kid or their mother in a setting where there is no access to medical care, abandonment, infanticide, mutilation, and stigmatisation of the child and their mother may occur. The mutilation and murder of a teenager in Kenya, as well as the abandoning of a newborn in Shandong, are recent examples of this. Human rights breaches occur in medical settings in locations with readily accessible medical systems, with the goal of forcing intersex people to conform to limited societal standards for females or men. In the absence of a compelling reason to do so, a person's autonomy, and valid agreement, normalising treatments violate the right to health and bodily integrity, the right to be free from torture and ill-treatment, and the right to equality and non-discrimination.

Medicalisation

From the end of the nineteenth century forward, intersex bodies were medicalized, alongside the medicalization of women's bodies and the medicalization of homosexuality. From the 1950s onward, a newfound belief in the malleability of infants' gender identities resulted in the development of an optimal gender model: intersex children who were identified at or close to birth could be normalised by aligning their bodies, gender roles, and the sex of their parents' rearing. Because of surgical limits, the majority of afflicted intersex children were assigned to the female gender. Those that achieved success were heterosexuals who identified with the gender that was assigned to them.

Visual examination, genetic and hormonal tests, as well as other factors, are now used to determine the gender of new-borns identified at birth. While there are certain general criteria based on chromosomes and susceptibility to and exposure to androgens, societal views in favour of male offspring may have an impact on assignment in some locations, particularly in the United States.

In order to reinforce a sex assignment, normalising interventions such as feminising and masculinizing surgical and hormonal interventions, as well as gonadectomies, are frequently performed during infancy, childhood, and adolescence, before the recipient can consent and without firm evidence of necessity or good surgical outcomes", among other things. The original sex assignment, on the other hand, does not have to be reinforced, permanent, or irrevocable.

In certain circumstances, further therapies for physical health may be required, particularly in the case of congenital adrenal hyperplasia, which has endocrine concerns. Surgical procedures may be required in certain cases to address higher gonadal cancer risks or urinary problems. Surgical therapies are not always necessary. These surgical treatments should not be controversial, yet there is a paucity of solid evidence to support them. Furthermore, professional judgements on these therapies are intertwined with normalising non-therapeutic rationales that are not therapeutic in nature.

According to Human Rights Watch, the consequences of that medical worldview are still being felt today, as is the medical community's inability to properly control itself. There have been changes in practise in recent years, as described below, with many physicians now recommending against surgery on newborns and young children. Surgery is nevertheless performed on children with unusual sexual features who are too young to participate in the decision-making process, even when such treatments involve a significant risk of injury and may be safely postponed, despite the fact that they are both unnecessary and dangerous.

Some intersex traits—

Atypical external genitalia, for example, are visible from the moment of birth. Those with other characteristics, such as gonads or chromosomes that do not correspond to the given sex, present themselves later in life, such as around the time of puberty. The amount of information available about intersex characteristics may be daunting. Whether parents

become aware of their child's intersex characteristics at the time of birth, throughout puberty, or at a later stage in life, they might be overwhelmed by conflicting information and guidance.

Providers of healthcare services are a crucial source of knowledge and comfort in the face of such uncertainty. However, “in recent decades, many clinicians have reverted to recommending irreversible surgery on intersex children at an earlier age. Cleftoral reduction surgeries, for example, are treatments that are performed to lower the size of the clitoris for aesthetic purposes. Pain, nerve damage, and scarring are all possible side effects of such operation. Other procedures include gonadectomies, or the removal of the gonads, which result in the kid being obliged to have hormone replacement treatment for the rest of his or her life.

Some proponents of surgery assert that surgical procedures have improved, and they express confidence in their potential to provide better results; nevertheless, they acknowledge that there is little data to back up that confidence. Adults who were questioned for this investigation and who had had surgery described distressing outcomes, even after nerve-sparing procedures.

Cosmetic normalising operations on children's genitals have two common goals: to facilitate heterosexual penetrative intercourse and to assist the kid in conforming to social and cultural standards about gender and sexuality as well as expectations. A common justification given by physicians for performing hypospadias surgery on boys is the necessity for them to be able to stand and urinate while doing so. Procedures designed to modify a child's body in order for him or her to conform to rigid gender stereotypes before they can express their sexual orientation or gender identity have a significant impact on the right to free expression as the child grows into an adult with a surgically-modified body that is intended to conform to social norms rather than the individual's sense of self. Many intersex children's rights to bodily integrity and health are jeopardised as a result of these procedures.

It is never necessary to do surgery to assign a youngster to a certain gender of parenting. In the case of intersex infants who are too young to define their gender identity, genital or gonadal surgery runs the danger of medically assigning the incorrect sex. Depending on the circumstances, this risk may be as high as 40%, which means that many children

will grow up to reject the sex that has been irrevocably surgically assigned to them when they are adults. This implies that, in cases when it is not feasible to anticipate the result of gender identity procedures with certainty, surgeons are performing sex assignment surgeries on the basis of educated speculation.

Surgery on intersex infants and human rights

People who are intersex have the same rights as everyone else when it comes to their human rights. Human rights are concerned with the recognition of the inherent dignity of every human being.

Even though there is no specific human rights treaty for intersex individuals, it is evident that all people who are sex and gender varied have the right to enjoy all of the human rights that are accessible to all members of the community.

People who are sex and gender varied, in particular, are protected under the basic rights of non-discrimination and equality before the law. A number of international human rights treaties, notably the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child, have provisions relating to children's rights (CRC).

The human rights of children in particular, as outlined in the Convention on the Rights of the Child (CRC), are particularly pertinent to the subject of surgery on intersex babies. Some of the most important rights are as follows:

Non-discrimination — All children have the right to exercise their human rights free of any kind of prejudice (article 2, CRC)

Best interests - When making decisions about a kid, the best interests of the child should be the main factor taken into account (article 3, CRC)

Development - All children have the right to the best possible chances of survival and development (article 6, CRC)

Participation – all children have the right to express their opinions freely in all matters affecting them, and to have those opinions given due consideration (article 12, CRC), freedom of expression (article 13, CRC), and freedom of thought, conscience, and religion (article 14, CRC), among other rights (article 14, CRC)

Birth registration (article 7 of the CRC), identity preservation (article 8 of the CRC), privacy (article 16 of the CRC), protection from violence (article 19 of the CRC), and health are all addressed in the CRC (article 24, CRC).

The Yogyakarta Principles also indicate that performing surgery on intersex babies is a violation of their human rights. The Yogyakarta Principles were agreed by a group of international human rights experts in March 2007, and they are based on the United Nations Declaration on the Rights of the Child. It should be noted that the Yogyakarta Principles are not legally enforceable in and of themselves, but rather constitute an interpretation of previously legally binding accords from the perspective of sexual orientation and gender identity. As a result, the Yogyakarta Principles have been influential in defining our understanding of how current enforceable human rights duties apply to persons who are sexually and gender diverse.

According to the Yogyakarta Principles, all international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), apply to all persons, regardless of their gender identity.

An worldwide committee of medical professionals, from a wide range of disciplines, came together in 2006 to establish a consensus statement on the therapy of abnormalities in sex development (DSD) (see below). A person who is intersex is included in the definition of a DSD. Parental involvement in the development of the consensus statement included parents of children with DSDs as well as adults with DSDs. It is recommended in the consensus statement that surgery be conducted on babies only when an evidence-based determination has been reached concerning the child's expected gender

Conclusion

In order to determine whether or not surgery on an intersex newborn is in the best interests of the kid, it is necessary to consider the numerous risks and advantages of surgery in the context of the particular infant in question. In Section 7, you will find an overview of some of the risks and advantages associated with gender-related surgery on neonates. Because the choice whether or not to do surgery may have serious implications for a child's rights, it is critical to assess if surgery is the sole means of achieving the advantages sought after by the parents. Parental counselling and increased community education, for example, might reduce the likelihood that a newborn would be rejected or

ostracised by his or her peers. Consideration of current medical research and study into whether gender-related procedures are performed due to medical hazards or for psycho-social reasons are required when making decisions regarding a child's best interests are considered. For others, choices on gender-related surgery on newborns are so crucial that they should be determined by courts that are able to take a more objective viewpoint in evaluating the best interests of the kid, at least for non-life threatening" problems. Currently, this is the situation with various non-therapeutic surgical procedures.

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