



The Legal and Ethical Perspective on Cosmetic Surgery of Minors in India

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Abstract	Publication Information:
<p>In India, children's cosmetic surgery is becoming more and more common as teens choose to shape various body parts for a variety of non-therapeutic reasons. This article explores the causes of youngsters in India, a nation without extensive regulations controlling the industry, having a greater desire for solely cosmetic operations. The legal framework that controls a minor's ability to make decisions about getting cosmetic surgery and the significance of parental consent are also covered in the article. The benefits and drawbacks of the consent method for minors undergoing cosmetic surgery are examined. Emphasis is placed on the necessity of establishing a regulatory framework that controls children's access to cosmetic surgery while accounting for the various ethical and legal issues surrounding these operations. There are also suggestions for creating a legislative framework that shields kids from the risks associated with cosmetic surgery.</p>	<p>Received Date: 25-01-2023 Accepted Date: 18-02-2023 Publication Date: 19-02-2023</p>
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INTRODUCTION

The significance of attaining the best possible health standards for children and their entitlement to health care services is emphasized in several international instruments. Every state party is required by Article 24 of the United Nations Convention on the Rights of the Child, which went into effect in September 1990, to acknowledge children's right to the best possible health standards and to provide resources for illness treatment and health recovery. However, there has been a massive global backlash to operations and surgeries that don't aim to improve or restore health. but on the other hand, augment physical beauty, and children are no stranger to these surgeries. These procedures termed as cosmetic or aesthetic surgeries are elective in nature, that is to say they are not triggered by any medical 'need'; serve no therapeutic benefit *per se* and are opted by persons who want

to improve any feature of their physical appearance. There is a broad range of procedures targeting different body parts that one can opt for - starting from non-invasive or non-surgical cosmetic procedures such as Botox or botulinum toxin injections, chemical peels, laser therapy for the face or other body parts, dermabrasion, cosmetic filler or injectables, scar removal etc. And invasive surgical cosmetic procedures like liposuction, hair transplantation, eyelid surgery or blepharoplasty, nose reconstruction or rhinoplasty, breast reduction, enhancement, tightening or upliftment, male breast reduction or gynecomastia, to name a few. Global statistics on aesthetic procedures released by the International Society of Aesthetic Plastic Surgery (ISAPS) in December 2020 revealed that India ranked ninth in the total number of cosmetic procedures performed worldwide with 643,752 invasive and non-invasive procedures conducted in the

country in 2019. Cosmetic surgeries are gaining popularity amongst children. While there are several factors that can be attributed to this increase in demand, any kind of involvement in medical decision-making entails obtaining consent from the patient. Globally, the importance of securing the participation of children and respecting their autonomy in decisions affecting them is gaining ground. However, there is no universally acceptable age at which children are considered competent to take part in medical decision-making. Children's involvement in their own medical decisions becomes all the more contentious when one considers surgeries and interventions that are non-therapeutic in nature, like cosmetic surgeries. Purely elective cosmetic surgeries that aim to enhance and augment the physical features of children without adding any therapeutic value raise several ethical and legal questions, especially in jurisdictions where children are not considered competent to consent for any surgical or non-surgical interventions. It is impossible to ignore issues like who gains from these operations, who makes the decisions, and whether or not children with developmental problems should be treated with distinct ethical standards. This brings into focus the level of involvement that children and adolescents should have about decisions to undergo cosmetic procedures. In this backdrop, the article seeks to explore some of the ethical and legal dimensions of cosmetic surgery in minors. Part II of the paper discusses the different factors that have contributed to the increase in demand for cosmetic surgery amongst minors. The social, biological and psychological determinants that influence the yearning to attain bodily perfection in early adolescence and teenage years have been delineated. The lack of comprehensive legal or regulatory guidelines in India that stipulate the conditions to be fulfilled before cosmetic surgeries are conducted in minors is highlighted in Part III. This part also emphasizes on the importance of informed consent that applies as an overarching principle governing all medical procedures, including cosmetic surgeries and legal consequences that follow if it is not appropriately recorded. Part IV explores legal competence of minors to consent to cosmetic procedures and gives an overview of the different Indian legislations that prescribe different ages to define who is a child or an adolescent and the age at which one can lawfully consent to medical interventions. The ages at which a minor can consent to cosmetic procedures in the United States of America, United Kingdom and Australia are discussed and the absence of age-base prohibitions for cosmetic surgeries in India is also highlighted. The need for developing a regulatory framework that prescribes certain prerequisites before consent is given for purely elective cosmetic surgery in children is stressed upon. Part V delves into the different ethical considerations surrounding cosmetic surgeries in children and questions the limits of parental consent to judge the 'best interest' of the child. This part also identifies some of the pre-conditions that should be met before cosmetic surgeries in children are considered till legislation or regulatory guidelines are issued to fill the existing gaps. The pros and cons of consent approaches to cosmetic surgeries in minors and the need for legal regulation of cosmetic surgery in India is discussed in Part VI. Part VII of the paper concludes with the

recommendation that purely elective cosmetic procedures in minors should not be allowed in the absence of perceptible medical or psychological benefits, determined with the aid of appropriate pre-procedure investigations and psychological screening. At all instances of cosmetic surgeries in minors the "best interest" doctrine must guide the decision-making process. The concluding part of the paper also identifies some of the factors that must be considered to judge the best interest of minors.

COSMETIC SURGERY AND MINORS

There is a dearth of gender and age-disaggregated data on the number of cosmetic procedures undergone by adults and minors in India. However, some cosmetic surgeons have reported that the decadal increase in cosmetic surgery amongst minors is around 30%. With the dawn of the internet and the age of social media, cosmetic surgery has seen a rapid growth as an accepted practice amongst people across many age groups. Earlier, only older people underwent these beauty procedures to alleviate some of the ill effects of aging. This trend has now changed and cosmetic surgery is being readily opted by younger women and children. Peer pressure; fear of body shaming; the influence of social media that prods children to validate their online identity which is usually projected as "blemish-free and perfect;" the desire to ape social media influencers and celebrities and a deep-rooted dissatisfaction with their bodies are some of the predominant reasons for the growing acceptance of elective cosmetic procedures among minors. With the rise of social media platforms, which are thronged by young people, several menacing trends are coming to light. Some of these platforms have in-built software called "filters" that apply virtual effects on appearances like making eyes and lips larger, teeth whiter and skin smoother and teenagers seeking cosmetic procedures have often expressed the desire to mimic Snapchat and Instagram filters. Most patients who undergo cosmetic procedures have little understanding of the surgical aspects of these procedures, and this is particularly true in case of minors. Cosmetic surgery is a surgical super specialty considered to be a subset of plastic and reconstructive surgery, and like any other surgical intervention that cures bodily afflictions and infirmities, requires proficiency and expertise on the part of the operating surgeons. Before delving into the legal dimensions of cosmetic surgery in minors, it is important to look at these procedures from a few other dimensions, particularly the psychological, biological and social dimensions that are closely tied together and impact a minor's decision to undergo cosmetic surgery. Minors, especially teenagers, are in a vulnerable state of mind during adolescence and tend to be easily affected by their social environment. The stage of adolescence is characterized by cognitive faculties that are in a state of development. Literature in the field of child psychology substantiates that adolescents are known to exhibit risky behaviour and cannot often gauge and appreciate the consequences of their actions. In addition to the normal psychological disposition, mental and personality disorders in children often surface during adolescence and teenage years that impairs rational thinking. Many of these

disorders may prod children to undergo cosmetic procedures. One such disorder that deserves a mention here is body dysmorphic disorder (BDD) that is characterized by extreme preoccupation with perceived defects in one's physical appearance that are either imaginary or very slight. A person with BDD has a distorted impression of one's body image that usually sets in during adolescence with some studies reporting that more than 70% of cases BDD were found to set in before the age of 18 years. This condition is known to contribute to negative body image associated with the fear of being negatively judged or bullied, and compulsive and repetitive behaviour such as mirror-checking, excessive grooming, or concerns about body weight. It is also known to impair social functioning. Children with BDD may pursue cosmetic surgery in response to their compulsive and obsessive thoughts. Historically and even in the recent past BDD has been seen as a contraindication for cosmetic procedures. That is to say, surgeons argue that BDD is essentially a body image and personality disorder and patients must first undergo psychological treatment before cosmetic surgery is considered, since it could further aggravate the disorder and not bring about any improvement. These underlying mental and personality disorders in patients have led to the development of the practice of "patient selection" employed by cosmetic and plastic surgeons to assess the physical and psychological suitability of patients to undergo cosmetic procedures. However, these signs of excessive preoccupation with looks may be ignored and considered normal amongst children since adolescents are known to demonstrate such behaviour due to the physiological changes that they undergo. As a result, without proper screening, children with underlying psychological impairments may suffer further after undergoing cosmetic surgery. Biologically, the bodies of teenagers are still developing. Several doctors express their reservations against cosmetic surgery in minor patients in their stage of pubertal development since they lack the physical maturity to undergo these procedures. As an example, breast sizes can change when a female steps into adulthood from her teens. For this reason alone, it might not be advisable for teenagers and minors to undertake certain cosmetic procedures such as cosmetic breast enhancement or rhinoplasty (surgical reshaping of the nose) since tissues, bones and cartilages are still in the process of development and are yet to reach their full growth. It is quite possible that they outgrow such issues or perceived flaws in their appearance, physically or even, mentally, as a growing body of literature in child psychology would suggest. Studies undertaken to evaluate the physical and psychological benefits of cosmetic surgery in adolescents have found differing results. Surgeons from the Department of Child and Adolescent Psychiatry and Medical Ethics, Erasmus University, Rotterdam, Department of Plastic and Reconstructive Surgery, University Hospital Rotterdam, and Sophia Children's Hospital conducted a cohort study to understand the impact of appearance related surgery on adolescents, especially their psychosocial functioning. The study involved two groups of adolescents comprising 184 adolescents in the first group who had undergone corrective and reconstructive plastic surgery who were interviewed pre and post

surgically and 83 adolescents in the second group with self reported deformity who were not planning to undergo surgery. The study results revealed that plastic surgery improved body satisfaction among adolescents but the study also reflected that over time and with increasing age, especially from the age of 18 years and above, the adolescents from both groups exhibited positive feedback about their bodies. Cosmetic surgery to treat gynecomastia (growth of male breasts), one of the most popular surgeries amongst adolescent males in India has been found to be psychologically beneficial especially in cases where children abstained from outdoor activities for the fear of being bullied, prior to surgery. However, there is little empirical evidence to substantiate the ability of cosmetic surgeries to ease psychological distress in children. If the example of gynecomastia is considered, clinicians have often contended that psychosocial or psychological well-being after cosmetic surgery is subjective since all patients do not derive the same level of satisfaction after undergoing these procedures. Contrary to therapeutic medical interventions, the success and failure of elective cosmetic procedures are to a great extent judged on the touchstone of patient satisfaction since these procedures are undergone to fulfill the 'wants' of the patients. Adolescents may continue to be satisfied with their postoperative bodies, even though the surgery undergone may have realized all the objective parameters of a successful procedure. For some of these reasons, doctors recommend postponing cosmetic surgery for minors to the early years of adulthood.

Thus, in the absence of conclusive evidence of the benefits that children can derive from purely elective cosmetic procedures, they should either be postponed to an age of greater physical and mental maturity or completely avoided. Law does not operate in silos and any effort to bring about legal regulation of the access of cosmetic surgery to children must take cognizance of these intertwined facets. Legal Dimensions of Cosmetic Surgeries in Minors in India there is a dearth of laws that particularly applies to the field of cosmetic surgery. The Clinical Establishments (Registration and Regulation) Act, 2010 may be cited as one of the sole legislations that requires medical professionals undertaking cosmetic procedures and surgeries to adhere to certain standards with respect to equipment, support services and support staff in their clinics or hospitals. In the absence of specific legal rules governing cosmetic surgeries, the most pertinent legal principle that applies to the practice is the need to secure informed consent from the patient. This stems from the inalienable right of the patient to resist any physical contact that has not been assented to, emerging from the right of bodily autonomy and right to self-determination, which clothes a patient with the supreme right to decide what must be done to his or her body. From the surgeon's perspective, consent safeguards the medical practitioner from civil and criminal liability that may emerge if it is alleged that the patient was treated without consent. The concept of consent is paramount in the field of medical law. It means that before any medical procedure is undertaken the doctor needs to inform the patient about the procedure being considered, explain the alternatives available along with the expected outcomes of all options, risks and

benefits of undergoing the procedure or refraining from it, time and number of sittings required, and answer any other questions that the patients might have and take their prior permission before undertaking the same. Unlike therapeutic treatment where the patients are often unsure of the procedure or surgery that would cure them of their ailments, in cosmetic surgery there is little information imbalance between patients and surgeons. Often the patients themselves ask the doctor to carry out a certain procedure. In that case, the responsibility of the doctor is to confirm and ensure that the patient is aware of the potential trade-offs in terms of risks and benefits of the procedure. Some cosmetic procedures often leave marks or scars which could be harmless but irritating to the patient. Hence, in this field, the consent process is crucial and it is important that the nuances of the procedures as well as post procedure constraints are adequately explained to the patient or their guardians in case of minors, to avoid litigation in future. The discourse on consent to cosmetic procedures would become futile, if the legal consequences for not securing consent are not examined. Any cosmetic procedure undertaken without the patient's consent could attract tortious liability under civil law for trespass to person that would give rise to a claim for compensation. The intentional tort of trespass to person can take one of the three forms of assault, battery or false imprisonment and a medical professional treating a patient without consent could attract liability for 'battery' for invading the patient's right to bodily integrity, even if the patient does not suffer any physical harm. Rendering treatment to a patient without consent can also expose the medical professional to disciplinary proceedings for the charge of professional misconduct under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The new Consumer Protection Act, 2019 that replaced and repealed the Consumer Protection Act, 1986 has identified the deliberate withholding of information by the service provider as deficiency in service that allows a consumer to file a complaint before the consumer commissions established under the Act to claim compensation. The Indian Supreme Court vide its judgment in *Indian Medical Assn. v. V.P. Shantha* has brought patients within the ambit of the Consumer Protection Act as consumers of medical service. Thus, patients can seek relief under the Act, if consent is not taken before commencing any procedure or if consent is taken without sharing all relevant information pertaining to the procedure. Courts have time and again held that treating a patient without consent would amount to medical negligence and deficiency in service. Insufficient consent or complete lack of informed consent is often employed as a tool for filing cases of medical negligence. This route is usually adopted by patients when negligence on the part of the doctor becomes difficult to prove. In the case of adults, consent for a procedure can be given by the patient themselves, provided they are of "sound mind". However, the answer is not so straightforward in case of minors. The Indian Law does not expressly prohibit cosmetic surgery for minors. Thus, surgeons can undertake cosmetic procedures for minors provided consent for the same has been recorded from someone having their legal charge. In the absence of a clear prohibition, it is important to

delve into the legal provisions that regulate consent to cosmetic procedures for minors.

LEGAL COMPETENCE OF CHILDREN TO CONSENT TO COSMETIC SURGERY

There is no regulation in India that conclusively lays down the age at which one can independently consent to medical treatment or surgery. When the subject matter of discourse is cosmetic surgery and children and it is well-known that children cannot consent independent of their parent's acquiescence, it is important to identify the age at which children step into adulthood. While a 'minor' is understood to be a person who is yet to attain the age of eighteen years, different legislations prescribe different ages at which one can signify legal consent and different ages to define a 'child' or an 'adolescent.' Thus, for want of a law that clarifies the legal age of consent with specific reference to medical interventions, the Indian Courts have turned to three legal instruments to derive clarity - the Indian Contract Act, 1860, the Indian Majority Act, 1875 and the Penal Code, 1860. As per Section 11 of the Indian Contract Act, 1860 a person is legally competent to contract if he has attained the age of majority, in accordance to the law to which he is subject, is of sound mind and is not barred from contracting by any law that applies to him. For the application of this provision to a doctor-patient relationship, the transaction shared by the parties must mirror a contract and the parties must have attained the age of majority. The age of 18 years has been stipulated as the age of attaining majority for persons domiciled in India as per the Indian Majority Act, 1875 and several decisions of the Higher Judiciary have compared the doctor-patient relationship to be one akin to an agreement that gives rise to contractual obligations. In *Samira Kohli v. Prabha Manchanda*, the Supreme Court held that the relationship of doctors and patients is contractual in nature. This contract requires doctors to demonstrate a reasonable degree of care and competence in discharge of their duties towards their patients. The Court also held that the consent form signed by the patient "*can safely be presumed to constitute the contract between the parties.*" Even in *Indian Medical Assn. v. V.P. Shantha*, the Supreme Court noted that in addition to tort, a doctor is contractually obligated to exercise reasonable care in advising or performing his services towards his patients. The Penal Code, 1860 prescribes different ages for consent to shield persons who act in good faith for the benefit of others from attracting criminal liability if something untoward results, including death of the person for whom consent has been given. Section 89 of the Code provides that if any act is done for the benefit of a person under 12 years of age or a person of unsound mind, with the express or implied consent of the guardian or person having lawful charge, it would not be an offence if any harm results. The illustration appended to this section hints at the applicability of this provision to the medical profession. It states that if a person gets his child who is under 12 years of age operated by a surgeon for the benefit of the child without the child's consent, no liability would be attracted even if the procedure is likely to result in the death of the child. Lastly, Section 90 of the Code provides more clarity when it excludes

consent given by a person who is under twelve years of age from the ambit of consent '*as intended by any section of the Code.*' Thus, as per the Penal Code, 1860, a person above 12 years of age can give consent to undergo a medical procedure both cosmetic and therapeutic. If the relevant provisions of the three legislations are read together, it would become evident that although the Penal Code, 1860 allows children above 12 years of age to consent to medical treatment, doctors still insist on parental consent for children below 18 years. This is primarily owing to the relationship shared by a doctor and patient, which has been affirmed by the Supreme Court to resemble a contractual transaction, that requires both contracting parties to have attained the age of adulthood and payment of fees (consideration) for the services (treatment or surgery) rendered. Therefore, till the question of minor's consent to medical procedures is conclusively settled by legislation or judicial precedent in the country, doctors must take consent from parents or legal guardians for any cosmetic or therapeutic procedure for children below 12 years of age and record consent from both the parent and child if aged between 13 and 18 years. Globally, every country follows its own regulations and requirements around age of consent for medical treatment or procedure. In the USA, in most states, citizens under the age of eighteen years are considered as minors and are allowed to undergo medical procedures with the consent of parents. However, exceptional situations exist under which a minor can choose to undergo a procedure even without the consent of the parent or guardian. Such situations include medical emergency, reproductive health issues and cases of sexual assault among others. In certain states, there are doctrines called "emancipated minor" and "mature minor" under which exceptions from parental consent are also allowed. These doctrines are applicable in extraordinary cases for example "emancipated minors" are no longer dependent on their parents due to circumstances such as marriage, pregnancy etc., while "mature minors" are determined to have sufficient psychological maturity and intelligence to be able to do a risk-benefit analysis of procedures and provide consent to the doctor on their own. If these doctrines do not apply, parents or guardians must consent to a medical or a cosmetic procedure that a minor wishes to undergo, in the absence of an emergency. There are no age-specific restrictions for undergoing cosmetic surgery amongst minors in the US, apart from breast implants although doctors do recommend different age ranges suitable for undergoing different cosmetic procedures for minors.

ETHICAL CONSIDERATIONS FOR COSMETIC SURGERY IN MINORS

From the ethical standpoint, cosmetic procedures for minors often entail quality-of life considerations. Unlike therapeutic surgeries that are often subsidized in government hospitals to meet the needs of the economically weaker sections, cosmetic procedures that are purely elective and serve no medical purpose are seldom covered under any health scheme. Cosmetic procedures are also exempted under health insurance policies of most insurance companies since they are not undergone for reconstructive purposes or to correct disfigurement such as those

suffered after burns or trauma. Cosmetic surgeries undertaken by registered medical practitioners in their private clinical establishments or hospitals are generally quite expensive and cost between a several thousand to a few lakhs of rupees.

PROS AND CONS OF CONSENT APPROACHES FOR COSMETIC SURGERY IN MINORS AND THE NEED FOR LEGAL REGULATION OF COSMETIC SURGERY

Two major arguments can be advanced concerning consent for cosmetic procedures in minors. These arguments primarily differ in whether elective cosmetic procedures should even be carried out on minors, irrespective of how consent is taken, considering that there are no real medical benefits that can be established. One argument suggests that such procedures can be undertaken as long as a legal framework for consent has been established and followed, while the other suggests that cosmetic procedures for minors for purely aesthetic purposes should be legally prohibited.

The former argument is that as long as consent is taken, as per a defined process, from a competent and eligible minor or their parents, and the doctor believes it is in the "best interest" of the minor, as per specified parameters, it is fine to conduct the procedure, since it upholds the right for self-determination of the individual, with sufficient checks and balances, while, potentially, improving their quality-of-life. The counter-argument to this would be that the supposed physical and psychological benefits might not perceptibly materialize or even matter during adulthood, considering that the emotional vulnerabilities teenagers experience are usually transient. Also, the body of a teenager is still growing and evolving and any physical "flaws" they feel they have could get rectified when they become adults. Hence a "wait and see" approach could be the more practical one to take in such cases. The other argument of legally prohibiting elective cosmetic surgery for children below eighteen years of age, while reeking of medical paternalism, serves to safeguard minors from a host of adverse consequences - physically and psychologically that could result from exposing the body to a number of medical risks for a medically unnecessary procedure. Further, even if the contentious issues around consent to cosmetic procedures and minors are set aside, it is worth noting that India lacks adequate legal regulations governing the field of cosmetic surgery, and minors opting for cosmetic procedures are more likely to suffer at the hands of quacks or persons not fully qualified to undertake cosmetic procedures.

As per the laws governing medical qualifications, a medical practitioner with MBBS and MS degree and M.Ch. degree in Plastic and Reconstructive Surgery, or a physician with an MBBS degree and a DNB in Plastic Surgery is qualified to undertake cosmetic and plastic surgery. The Medical Council of India, recognizes plastic and reconstructive surgery as a standalone area of post-doctoral specialization, but has not recognized any specific qualification in aesthetic or cosmetic surgery. Thus, any surgeon hoping to practice cosmetic surgery must specialize in plastic and reconstructive surgery. But, there is no legal prohibition for medical practitioners from other areas

of specialization to venture into the field of cosmetic surgery. As a result, a number of medical practitioners from the fields of dermatology, to orhinolaryngology (ENT), dental and maxillofacial surgery offer cosmetic surgeries. Further, practitioners who claim to have received training in integrated medicine, or alternative systems of medicine, not expressly recognized under any law in India administer cosmetic surgery and there are cases of medical practitioners trained in Indian systems of medicine who offer cosmetic surgery after securing post graduate diplomas and certificate courses in cosmetology, trichology, clinical dermatology etc., most of which are not recognized by the regulatory authorities in India. Along with registered medical practitioners qualified in modern scientific medicine, 'beauty doctors,' 'cosmetologists' or 'trichologists' who have no formal medical training and who practice out of beauty salons and beauty clinics have made inroads into the field. These facilities remain outside the ambit of the regulatory authorities, especially the recently constituted National Medical Commission, and the Clinical Establishments (Registration and Regulation) Act, 2010 rarely follow the procedures of informed consent, downplay the risks of aesthetic surgery, and often lack the infrastructure that a legally authorized clinic is mandated to provide. This lack of clarity about the eligibility requirements of surgeons who are legally authorized to practice cosmetic surgery further allows unqualified persons to capture the growing demand for these procedures, thereby exposing patients to greater risks.

While this is a worrying trend and calls for greater regulation of the sector, most people prefer to visit private clinical setups and beauty clinics and cosmetology centers, many of which are not run by registered medical practitioners. This is largely due to the lack of awareness about the associated risks of cosmetic surgery and the perceptions that people have about elective beauty augmenting surgeries which is comparable to a routine visit to the parlour. This further increases the chances of patients falling prey to aggressive marketing strategies that are often used by doctors and beauty clinics to lure patients. The need for legal regulation of cosmetic surgery is further pronounced when one the adverse consequences that can result from it. Invasive cosmetic procedures undertaken on patients including minors, if not carefully carried out can have adverse outcomes, sometimes even resulting in death leading to penal consequences for the operating surgeon. In 2013, a sixteen-year-old boy from Bangalore who was about to undergo a liposuction died due to the overdose of anesthesia which resulted in cardiac arrest and consequent death of the child as alleged by the parents. A case under Section 304A of the Penal Code, 1860 was filed against the doctor for causing death by negligence. With respect to the redressal mechanism for cases of medical negligence in cosmetic surgery, the remedies available for malpractice in therapeutic surgery, equally applies to cosmetic surgery. In addition to criminal remedy that is seldom availed of, the most popular recourse available to patients is seeking relief under the Consumer Protection Act, 2019.

The same principles for the establishment of doctor's negligence - presence of a duty, breach of duty, resultant harm to the patient

and causal link between the breach of the doctor's duty and the harm suffered by the patient must be established. Alternatively, the patient can claim lack of informed consent while alleging negligence. The Consumer Protection Act, 2019 does not entertain complaints from minors, as is evident from Section 2(5). Unlike the 1986 Act, the Act of 2019 recognizes minors as consumers of goods or services, but does not allow them to file complaints, as the provision while defining a "complainant" under the Act explicitly states, that for minor consumers, the complaint has to be filed by parent or legal guardian. Thus, for an elective cosmetic procedure that has gone wrong, minors are reliant on their legal guardians for seeking relief and this can prove to be a challenge when the procedure was undergone without their knowledge (for e.g. in an unauthorized beauty clinic) or when they had consented to the minor's procedure unwillingly. Hence, it is imperative that a regulatory framework that takes into account the myriad challenges that this field presents is adopted in India that safeguards the interests of cosmetic surgery patients, particularly minors.

CONCLUSION AND RECOMMENDATIONS

Taking into consideration the different legal and ethical conundrums that cosmetic surgeries in minors present, a legal framework where purely cosmetic procedures, for aesthetic reasons alone, are not allowed in minors could be a more suitable one to adopt. In cases where there are perceptible medical or psychological benefits of undergoing cosmetic surgery, a framework for consent needs to be adopted. In line with the laws in India and other jurisdictions, consent should be given by the parent or guardian when the minor is below the legal age of majority. The "best interest" doctrine must mandatorily guide the decision that must be judged on the basis of the views of the minor, physical and emotional maturity, views of the parent or guardian and the likelihood of parental coercion on the minor to undergo the procedure, views of other relevant health professionals, risks and benefits, potential long-term implications, cultural beliefs and anything else deemed fit. Since India lacks standalone legislation on health or a public health code the aforementioned direction should be issued by the Ministry of Health and Family Welfare by way of a notification or circular, in association with the Indian Medical Association, the voluntary association of doctors of modern scientific system of medicine and professional associations of aesthetic and plastic surgeons. This will help prevent missteps like emotionally impulsive desires of minors to undergo risky procedures or self-serving behaviours of parents or guardians. In extraordinary situations, a provision should be made to allow minors, who are mature and competent enough, to provide consent on their own for a procedure without involving or needing consent from the parent, if medical or psychological benefits to the minor can be proven. Need based cosmetic procedures on minors must only be carried out by registered medical practitioners specialized in plastic and reconstructive surgery or dermatology qualified in modern scientific medicine. Moreover, cosmetic procedures on children must be completely prohibited in establishments that are

not registered under the Clinical Establishment Act, 2010. It is important to appreciate and identify the significant role that registered medical practitioners adept at carrying out aesthetic procedures have to play in regulating the access of such procedures to minors.

Any cosmetic procedure that results in side effects or harm to the patient would result in the doctor attracting liability under the civil law of torts, the Consumer Protection Act, 2019 and in extreme cases even under the Penal Code, 1860 for causing death by negligence under Section 304A or causing hurt or grievous hurt under Sections 336, 337 and 338. Thus, doctors must be careful in selecting and assessing the suitability of minor patients to undergo cosmetic procedures even if consent from the patient and parent or guardian has been recorded. Pre-procedure investigations and screenings of patients are quite common in foreign jurisdictions before a patient is selected by a surgeon for cosmetic surgery. They should be adopted by surgeons offering cosmetic procedures in India. For minor patients, doctors must necessarily assess the motivations of undergoing any particular procedure. If a procedure to correct gynaecomastia or protruding ears is opted to benefit the psychological well-being of the child or to ward off emotional distress, a pre-operative mental assessment should be carried out to judge the competency of the child to deal with the risks of undergoing an invasive surgery that may not always have a favorable outcome and to assess whether the distress could be remedied without opting for the procedure. A mandatory “cooling off” period of three months for invasive surgical cosmetic procedures and of seven days for non-surgical cosmetic procedures that allows the minor to reevaluate the decision, should be mandated in India, in line with the practice adopted in the United Kingdom and Australia. In other jurisdictions to bring in greater accountability from within the ranks, these guidelines are issued by professional associations of plastic and cosmetic surgeons. Similarly, in India to bring it greater accountability amongst surgeons, such guidelines may be issued by voluntary associations of doctors working in the field of cosmetic surgery such as the Association of Plastic Surgeons of India and the Indian Association of Aesthetic Plastic Surgeons. Despite the popularity of cosmetic procedures in India, the field has continued to be highly unregulated and that has exposed patients to several medical risks. While this needs a holistic solution through a comprehensive regulatory framework that addresses all the challenges starting from mandating the requisite qualifications for medical practitioners to the facilities where cosmetic procedures should be undertaken, considering the vulnerability of young children, some of the recommendations put forth in the article could be immediately adopted by regulators of medical practice and professional associations of aesthetic and plastic surgeons and dermatologists in the country. Children should not be completely robbed of their

bodily autonomy. But, India being a welfare state and the dangers that a completely unregulated field of cosmetic surgery can pose for patients in general and minor patients in particular, it is necessary that some safeguards be put in place to limit and regulate if not completely prohibit cosmetic surgeries in minors.

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