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Case Report

Gender Differentiation: The Difficult Task in Unusual cases

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Abstract

The word "transsexualism" has been coined by American physician, Harry Benjamin. A transsexual is a person who belongs to a particular sex anatomically but is psychologically obsessed with a desire to change to other sex which, according to him, is his rightful gender. A 19 years old female was joining as female constable sent for medical examination specifically for sex determination. After examination she was found to be of different gender. This paper is regarding this case, laws and Medico-Legal issues related to this.

1. Introduction

The word "transsexualism" has been coined by American physician, Harry Benjamin.¹ A transsexual is a person who belongs to a particular sex anatomically but is psychologically obsessed with a desire to change to other sex which, according to him, is his rightful gender. A transsexual finds it extremely difficult to adapt himself to the society. He is ashamed of and embarrassed with, his features. sometimes such a person may even develop suicidal tendencies. these peoples often face problems in their identity, marriage, employment, property matter, and many other legal issues. This paper is regarding one of such case came for opinion to our department.

Literature -

In 1932, Lili Elbe was first known patient of male to female sex reassignment surgery in Germany.² In 1945, First female to male surgery done by Sir Harold Delf Gillies (Father of modern plastic surgery) in UK.³

In 1952, Christine Jorgensen, man, 24 years, Denmark, underwent sex change got legal problems and successfully fought to have transgender people recognized in their new sex.⁴ In India, in 1979, a girl, 19 yrs, was refused admission in Junior College at Karimganj, Bihar unless she had produced medical certificate of her sex confirmation. She was as athlete. Later developed masculine features like moustache. She was denied admission in "Kabaddi" tournament. Later done sex change surgery.³

Legality of Transsexualism in different countries⁵⁻⁷:

Argentina - It is Permissible if physical abnormalities are there with patient's consent.

Belgium- Patients consent with pre-operative medical evaluation

Canada- Sec. 45 of Canadian Criminal code 1970

Great Britain- It is permissible if undertaken for genuine therapeutic purpose.

London- Patient are required to live in the new sex role for at least six months prior to surgery.

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USA- Patient is evaluated by psychologist, psychiatrist and a surgeon. When it is found to be true transsexual & physically and mentally fit then it is as allowed.

2. Case Report:

A 19 years old female was joining as female constable sent for medical examination specifically for sex determination. Consent for examination, sample collection and photographs was taken.

Psychiatric examination- General mental condition including orientation as regards to time, place, person was normal and feminine type.

Local examination- breast examination - Tanners stage 1 features look like male breast (**Figure 1**).

Figure 1: Front & Lateral view local examination



Axillary and pubic hairs were present. In Genital region, Labia Majora, Labia Minora with Vaginal orifice was present with Penile like tissue 1-2 cm was also present.

USG Abdomen- Absent uterus and ovaries & prostate like structure at the base of bladder.

MRI- Undescended morphologically normal left testis at deep inguinal ring. hypoplastic prostate. No female gonads, uterus and fallopian tubes.

Hormonal assay- Testosterone- 8.17 Normal value - F: 0.2 to 0.8 ng/ml M: 4 to 11 ng/ml

Karyotyping- No of cells score:20, karyotype-46XY, Cytogenetic evaluation of G banded metaphases revealed male karyotype.

Final opinion- It was given that the examined person is genetically male.

3. Discussion -

In India, though no legal case has come to notice so far but instances are not waiting where an individual has changed his or her biological sex. It is legally allowed in U.K. since 1967¹ in America since 1972, in Japan in 1998. But, till now there is no law governing this transsexualism and its related legal issues in India.⁵

Legal Problems in India³:

An Indian surgeon dealing with transsexual patients faces number of issues like consent for procedure, safe guarding surgeon or gender team from future litigations.

a) The Indian Penal code 1860-

1. Sec 375 and 376 IPC - Definition and punishments of rape may require a change.
2. Sec 497, 498, and 498A - Definition of wife, Husband And adultery require a change.
3. Sec 125 Cr P C - Definition of wife and laws regarding maintenance require a change.

b) Personal Laws-

1. Hindu Marriage act and all personal laws relating to marriage. These are not adequate in questions of maintenance, grounds for divorce and custody of children's.
2. Hindu adoption and maintenance act 1956.
3. Hindu succession act especially Sec. 1, 14 and 23 Labour and Industrial laws especially Workmen's compensation act 1923, Factories act 1948 and reservation of jobs.

c) Taxing status- Various beneficial provisions like tax exemptions available only to women under IT Act.

International issues: In 1968 International Olympic committee first time started to test the chromosomes of athletes to prevent transsexuals from competing.

In present case patient has not told of any operation done in past it may be due to fear of losing the job. On external examination female genitalia are there but on hormonal, USG MRI and genetic examination it was proved as male. He might face

problems like identity, marriage, Occupation, adoptions and maintenance.

transsexuals. *British Journal of Psychiatry* 1993;162:681-85.

4. Conclusion -

1. Consent for procedure and safeguarding the surgeons or gender team from future litigation.
2. At completion of GAS, a Gender Certificate should be issued to the patient by the gender team consisting of the operating surgeon, psychiatrist and endocrinologist.
3. There is also the issue of postoperative sexual and legal status of the patient. Change in all Laws mentioned in discussion should be there.
4. Postoperatively, the patient faces issues of change in name, birth certificates, school and college certificates and identity cards.

This situation can be amended by new legislation. There can be a nodal authority for dealing with transsexual patient. On presentation of Gender Certificate by the individual, this authority can then retain previous certificates and issue new certificates to the individual.

References

1. Brent G. Some legal problems of the post-operative transsexual. *J Fam Law* 1972-73;12(3):84-86.
2. Shikhandi The history of transsexuality. (Online) 2012 (Cited 2020 Apr 9) Available from: URL: <http://en.wikipedia.org/wiki/Shikhandi>.
3. Ahuja RB, Bhattacharya S. Intersex, transsexuality and gender reassignment surgery *Indian J Plast Surg* 2001;34:83-84
4. Christina of Sweden Legal problems of transgender peoples. (Online) 2014 (Cited 2020 Apr 5) Available from: URL: http://en.wikipedia.org/wiki/Christina_of_Sweden.
5. Gupta R, Murarka A. Treating transsexuals in India-History, prerequisites for surgery and legal issues *Indian J Plast Surg* 2009;42(2):226-233.
6. Liv Lili Elbe- Transsexual and transgender - The Online Discussion About Gender. (Online) 2016 (Cited 2020 Apr 5) Available from: URL: <http://etransgender.com/viewtopic.php?f=9&t=372>.
7. Philip S, Michael J.T. and Rusell R. Sex reassignment surgery- A study of 141 Dutch