

AMBIGUOUS GENITALIA SURGERY - A CROSS-COUNTRY ANALYSIS OF MEDICO-LEGAL ISSUES

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The rights of LGBTI (Lesbian, Gay, Bisexual, Transgender, and Intersex) persons are fast gaining pace across many countries, including India. However, assurance of the human rights of intersex children has a long way to go, especially regarding whether or not to perform surgery to rectify 'Ambiguous Genitalia' in infancy when the parents or guardians take the decision. This article has attempted to analyze this issue through legal and medical prisms. We have cited international human rights obligations to which India is committed. While examining the legal side, we have delved into the present domestic laws and explored key decisions of the High Courts and the Supreme Court. The legal interpretations have acknowledged the right to self-determination or self-identification of gender. We have referred to opinions rendered by medical experts on the pros and cons of conducting ambiguous genitalia surgery in infancy. We have also attempted to evaluate approaches in other nations. We conclude by identifying methods of societal integration of intersex individuals and possible ways of regulating surgeries, which ought to keep in mind the best interests of the intersex individual.

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INTRODUCTION

The term 'gender' pertains to characteristics attributed by social construction to males and females. In contrast, the term 'sex' pertains to male, female and intersex features in relation to biological and physiological makeup. 'Gender identity is an individual's intrinsic awareness of gender, which need not essentially relate to the individual's physiological features. The term 'intersex', or what in medical terminology is called differences of sex development (DSD), encompasses a vast group of pathological situations.¹ Such congenital conditions are related to a gene or hormone variations in the fetal stage resulting in ambiguity in genitalia ('Ambiguous Genitalia'), wherein appearances related to sexual organs do not strictly pertain to distinctly

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¹ Ramesh Babu, 'Changing paradigms in intersex management: Legal, ethical, and medical implications' (2022) 27(4) JIAPS <<https://www.jiaps.com/article.asp?issn=0971-9261;year=2022;volume=27;issue=4;spage=372;epage=375;aulast=Babu>> accessed 25 September 2022

male or female.² 'Intersex' is more sensitive to individuals and families than the earlier terms, such as 'hermaphrodite' and 'pseudo hermaphrodite'.³ Some scholars opine that intersex is a separate gender by itself.⁴

The term 'Transgender' refers to those whose gender identity does not conform to their physical sex. Generally, activist organizations view the rights of both intersex children and transgender people as closely associated. However, this paper discusses the issues about the surgical assignment of gender to a neonate born with ambiguous genitalia. Such surgeries were first conducted in the late 1950s and 60s and gained momentum in the 1970s.⁵ After laying out the basic definitions, in the next section, we will discuss the International human rights law perspective. In the subsequent sections, we will discuss how Indian law has evolved in this domain and also the legal developments in other countries. Later, we discuss the medical perspective on ambiguous genitalia surgery. Then we provide the conclusion.

INTERNATIONAL HUMAN RIGHTS LAW PERSPECTIVE

In this section, we will discuss the International human rights law perspective. We will see how the different arms of the United Nations Organization have provided directions on dealing with intersex persons, including protections from medical abuses, informed consent, etc.

The Universal Declaration of Human Rights (UDHR) states the following in the respective Articles:

- All human beings are born free and equal in dignity and rights - Article 1 of the UDHR.
- Everyone has the right to recognition everywhere as a person before the law - Article 6 of the UDHR.

The International Covenant on Civil and Political Rights (ICCPR) states the following in the respective Articles:

² Selma Feldman Witchel, 'Disorders of sex development' (2018) Best Practice & Research Clinical Obstetrics & Gynaecology < <https://pubmed.ncbi.nlm.nih.gov/29503125/>> accessed 25 September 2022

³ Ramesh Babu (n1)

⁴ Noa Ben-Ahser, 'The Necessity of Sex Change: A Struggle for Intersex and Transsex Liberties' (2006) Harvard Journal of Law & Gender <<https://www.semanticscholar.org/paper/The-Necessity-of-Sex-Change%3A-A-Struggle-for-and-Ben-Asher/d7e6c955a97cc26b0a6759ca815d418f23346568>> accessed 25 September 2022

⁵ International Commission of Jurist, 'Sexual Orientation, Gender Identity, and Justice: A Comparative Law Casebook Report 11' <<https://www.icj.org/sexual-orientation-gender-identity-and-justice-a-comparative-law-casebook/>>

- Everyone shall have the right to recognition everywhere as a person before the law - Article 16 of the ICCPR.
- No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor and reputation.
- Everyone has the right to the protection of the law against such interference or attacks - Article 17 of the ICCPR.

For implementing the above in the area of sexual inclination and gender recognition, the Yogyakarta Principles were formulated by experts in 2006. The experts included distinguished members of the judiciary, academia, voluntary non-governmental bodies, convention bodies, a former UN High Commissioner for Human Rights, etc. Professor Michael O'Flaherty was The Rapporteur of the process. His inputs to the blueprint and redraft of the Yogyakarta Principles are remarkable. The Yogyakarta Principles underwent upgradation in 2017 by adopting "Additional Principles and State Obligations on the Application of International Human Rights Law in relation to Sexual Orientation, Gender Identity, Gender Expression and sex characteristics to complement the Yogyakarta Principles". The above was christened as the Yogyakarta Principles plus 10.

Judicial forums have applied these Principles across the globe in determining the rights of LGBTI (Lesbian, Gay, Bisexual, Transgender, and Intersex) persons. "The Right to Recognition before the Law, Principle 3 of the Yogyakarta Principles", 2006, among other things, states that "each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity."⁶

"Principle 18, Protection from Medical Abuses, states, No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to

⁶ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity* (first published 2007) 11

the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed."⁷

This Principle also directs states to make sure that "no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration."⁸ "The Right to Bodily and Mental Integrity", which is "Principle 32" of the Yogyakarta Principles plus 10 states, among other things, that "No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person."⁹

As part of measures to be adopted by States under "Principle 37 – The Right to Truth", states shall endeavor to "protect individuals' right to know the truth about their medical histories, including through full access to accurate medical records."¹⁰ The United Nations (UN) Special Rapporteur on torture has adjured States "to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, 'reparative therapies' or 'conversion therapies', when enforced or administered without the free and informed consent of the person concerned."

The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health status, "Healthcare providers should strive to postpone non-emergency invasive and irreversible interventions until the child is sufficiently mature to provide informed consent. Footnote 67 of the same report states: "This is particularly problematic in the case of intersex genital surgery, which is a painful and high-risk procedure with no proven medical benefits." The UN Organization, High Commissioner for Human Rights, published an information handbill on intersex after organizing a conference of resource persons to discuss means of putting an end to a breach of human rights of intersex persons. The document states: "Forced and coercive medical interventions violate rights to the security of

⁷ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity* (first published 2007) 23

⁸ *Ibid*

⁹ International Commission of Jurists (ICJ), *The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (first published 2017) 10

¹⁰ *Ibid*

person, right to bodily and mental integrity, freedom from torture and ill-treatment, freedom from violence, right to health, right to free and informed consent and right to non-discrimination. When medical procedures take place without personal informed consent, they violate the right to freedom from experimentation." After having discussed the international human rights laws, we will now turn our attention to the Indian legal system and how it has evolved in this context.

JOURNEY OF THE INDIAN LEGAL SYSTEM

Chapter III of the Constitution of India encompasses the fundamental rights guaranteed to all citizens. The said chapter covers, among other things, the right to equality (Article 14), the right against discrimination (Article 15), the right to freedom of expression (Article 19), and the right to life (Article 21).

In arriving at the landmark decision in the lawsuit of National Legal Services Authority vs. Union of India and Others (NLSA)¹¹ the Hon'ble Supreme Court stated that "gender identity is an integral part of the personality and one of the most basic aspects of self-determination, dignity, and freedom. Thus, no one can be forced to undergo medical procedures, including sex reassignment surgery, sterilization, or hormonal therapy as a requirement for legal recognition of their gender identity."¹²

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The judgment goes on to state that "the International Conventions, including Yogyakarta principles, which we have found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognized and followed, which has sufficient legal and historical justification in our country."¹³

The court had opined that psychological gender ought to outweigh biological sex. Rights of all persons have to be secured, whatever be the individual's "chromosomal sex, genitals, assigned birth sex, or implied gender role."¹⁴ The judicial forum had also decided that people have a right not to be discriminated against because of not conforming to "stereotypical generalizations of the binary genders."¹⁵ The judgment also gave directions to state and central

¹¹ *National legal services Authority v Union of India* [2013] SC 604

¹² *National legal services Authority v Union of India* [2013] SC 604 [20]

¹³ *National legal services Authority v Union of India* [2013] SC 604 [53]

¹⁴ *National legal services Authority v Union of India* [2013] SC 604 [34]

¹⁵ *National legal services Authority v Union of India* [2013] SC 604 [59]

governments to initiate actions to safeguard the lawful privileges of transgender people. One such direction was to provide lawful recognition of the 'third gender' in all documents.

The Transgender Persons (Protection of Rights) Act, 2019 (Transgender Act)¹⁶ was legislated to acknowledge the identity of transgender people. The Transgender Act also seeks to effect equity in education, public and private sector employment, healthcare, ownership or transfer of property, and services rendered in the public interest.

However, certain areas of the Transgender Act have been subject to widespread criticism by activists. The Act is said to seize a person's prerogative in determining their sexual inclination. The NLSA judgment pronounced this right to self-determination as an inherent feature of the right to privacy. The certificate that is supposed to "confer rights and be a proof of recognition of a transgender person's identity" as per Section 6 of the Act¹⁷, must be issued by the District Magistrate. The Act further stipulates that for conversion of gender identity in documents, verification of sex reassignment surgery is essential.

In a suit in the Philippines which is relevant to this context; the complainant, whose sex in the birth records was entered as female, was later diagnosed with 'congenital adrenal hyperplasia, which resulted in the person developing male characteristics. He thus wanted to register his change of name and gender. The medical witness, a psychiatrist, testified that such recognition would benefit the plaintiff. The Court had deliberated on the fact that nature had been allowed to "take its course", without external intervention. It held that it was rational to permit an intersex individual to self-identify their gender. It is relevant to note here that some feminist groups have put forth a peculiar claim that permitting self-identification of gender may endanger women.¹⁸

Both the NLSA judgment and the Transgender Act represent intersex people within the category of transgender people. The definition of a transgender person as per Section 2(k) of the Transgender Act includes a person with intersex variations. Organizations comprising lawyers and activists such as Human Rights Watch and Human Rights Law Network have proactively advocated the inclusion of explicit protections for intersex persons.

¹⁶ The Transgender Persons (Protection of Rights) Act 2019

¹⁷ *Ibid*

¹⁸ Jules Gleeson, 'I'm Intersex and Wish the Gender Recognition Act Was More Inclusive' (*Vice*, 15 October 2018) <<https://www.vice.com/en/article/9k7mzv/intersex-experience-gender-recognition-act-reforms>> accessed 25 September 2022

In the United Kingdom (UK), the Scottish Offences (Aggravation by Prejudice) Act 2009, lays down a broader definition of gender identity, including intersex issues.¹⁹

In the year 2020, a writ petition²⁰ has been registered in the Supreme Court of India. The petition appeals to declare specific provisions (Sections 4, 5, 6, 7, 12(3), 18(a), 18(d)) of the Transgender Act as unconstitutional. It has been claimed that the said provisions encroach upon the fundamental rights assured under Articles 14, 15, 19 and 21 of the Constitution of India. The petitioners, among other things, stated that certain provisions go against the NLSA judgment. The said judgment had guaranteed that a person's privilege in determining their own identity as to gender is an innate constituent of the right to lead a dignified life.

A milestone judgment of the Madurai Bench of the Madras High Court instructed the local government to prohibit intersex sex-selective surgeries. It was opined that such "normalizing" surgeries performed on intersex infants were medically unnecessary and ought to be done only when the patients can consent on their own. The judgment validated the marriage between two intersex individuals. In arriving at the decision, the court had referred to the law in Malta²¹ which espoused rights-based legal recognition of the rights of transgenders and disallowed nonessential surgery on intersex infants. The honorable judge had also cited a World Health Organisation (WHO) report titled 'Sexual Health, Human Rights and the Law', which had advocated for the postponement of surgical intervention for intersex children up to when the concerned individual could give consent voluntarily.

In compliance with the directives set out in this judgment, a Government Order (GO) was issued by the Health and Family Welfare Department, State government of Tamil Nadu. The GO forbids surgeries assigning sex on intersex infants. The only exception is when the intervention is necessary to prevail over life-threatening circumstances. The GO specifically instructs the Director of Medical Education to make certain that the use of such exceptions is only after due consultation with experts. A four-member expert committee consisting of a pediatric surgeon or urologist, endocrinologist, social worker or psychology worker or intersex

¹⁹ Aishwarya Sinha and Manasi Prabhakaran, 'Comparative Study of the Progression of Queer Rights in India and the UK, with Special Emphasis on Intersex People' (2021) 1(3) IJPSL <https://ijpsl.in/wp-content/uploads/2021/03/Comparative-Study-of-the-Progression-of-Queer-Rights-in-India-and-the-UK-with-Special-Emphasis-on-Intersex-People_Aishwarya-Sinha-Manasi-Prabhakaran-2.pdf> accessed 25 September 2022

²⁰ *Grace Banu Ganeshan & Ors v Union of India & anr* [2020] SC 406

²¹ Gender Identity, Gender Expression and Sex Characteristics Act 2015

activist, and a government representative not below the rank of undersecretary has to make the decision.²²

The Equality (Prohibition of Discrimination) Bill 2021²³ aims to address discrimination, recognize intersectionality, and promote equality. A reading of the Act suggests that the protections conferred under this Act extend to intersex persons too.

Legal developments in other countries

The European Union Agency for Fundamental Rights (FRA) put forth a report that states, "Member States should ensure all rights to informed consent are respected regarding procedures on intersex children. Medical associations should ensure that their members are fully informed on current trends in ethics, therapy, and care for intersexual persons."²⁴

In 2015, the FRA also published one of the pioneering documents in the world that addressed issues solely related to intersex persons that noted that intersex people encounter breaches of fundamental rights, including discrimination and non-consensual medical interventions. It opined that more awareness of the rights, especially of intersex children, should be propagated among medical and legal professionals. The document also called for all Member States to refrain from medicinal, therapeutic, and surgical treatments for intersex persons, without their consent.²⁵

In 2017, the Parliamentary Assembly of the Council of Europe resolved to safeguard intersex infants against non-consensual, unnecessary, and irreversible surgery. In 2019 the European Parliament complemented that call with its resolution.

At present, the Gender Recognition Act, 2004 (GRA)²⁶ of the UK is silent on surgeries intending to fit intersex persons into any of the binary genders. However, the foundational legal stand holds that medical treatment is illegal when done without individual assent. An individual must be able to give informed consent, which infants cannot. In the UK, children are regarded as distinct juristic beings having inherent legal privileges. For lawfully carrying out medical

²² Mohamed Imranullah S., 'T.N. bans sex reassignment surgeries on intersex infants, children', *The Hindu*, (Chennai, 29 August, 2019)

²³ The Equality Bill 2021

²⁴ The Equality Bill 2021

²⁵ European Union Agency for Fundamental Rights, 'The fundamental rights situation of intersex people', (April 2015)

²⁶ Gender Recognition Act 2004

procedures on children, the law, through The Children Act, confers responsibilities and rights on parents. The law here is in favor of the best possible outcome for the child. Unfortunately, the proposals for the upgradation of the GRA have not delved much into the area. The GRA consultation documents imply to state that for intersex infants, there exists the issue of non-essential medical interferences. However, the consultation decided that the issue was beyond its purview.

The UK 'Equalities Act' 2010 is an enactment, the purpose of which is to administer the laws of the UK to uphold the rights of all categorized under the minority umbrella. Regrettably, the statute excludes intersex persons in particular. Any such person desiring assistance has to be identified under any other protected category.²⁷

The United States (US) has an ungenerous history in relation to the adoption of treaties or recommendations of human rights organizations. Sexual rights are not considered to be within the purview of international human rights law. The attitude varies vastly with the approaches adopted by the governments of Germany, Australia, Malta, Chile, Switzerland, India, Argentina, Portugal, and Mexico.²⁸

Having discussed the legal development and perspectives in other countries related to intersex issues, we will now turn to a brief discussion on the medical views on this issue.

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MEDICAL PERSPECTIVE

At times, change deliberated to be brought into societal mindset through legislative and other measures may take much longer than intended. This may be primarily due to the cultural outlook existing over generations. Hence, though well-meaning legislative, judicial, administrative, and activist approaches aim at the integration of third-gender persons without discrimination, in reality, it may be farfetched. A comparable situation is the existence of the well-accepted custom of dowry, despite legislation prohibiting it²⁹ from coming into force decades back. Hence the chances of rejection and discrimination against intersex children in society remain very high. Corrective surgery is proposed for these children, considering their

²⁷ UK Intersex Association, 'Misogynistic attitudes underlying the surgical reassignment of intersex infants' (UKIA, 2015) <http://peacewomen.org/system/files/global_study_submissions/UKIA%20peacewomenpublic-submissions.pdf> accessed 25 September 2022

²⁸ Juan Carlos Jorge, Leidy Valerio-Perez, Caleb Esteban, Ana Irma Rivera-Lassen, 'Intersex care in the United States and international standards of human rights' (2021) 16(5) Global Public Health 679–691

²⁹ Dowry Prohibition Act 1961

best interests. Though activists promote the ethical viewpoint that any intervention or treatment should begin only after the child reaches the age of consent, most parents disagree with it.³⁰

A writ petition has been filed in the High Court of Kerala by parents requesting directions to medical authorities to conduct gender reassignment surgery on their intersex infant. The child here was diagnosed with congenital adrenal hyperplasia and had been undergoing treatments imperative for preventing life-threatening consequences. Citing the NLSA judgment and judgment of the Madurai bench of the Madras High Court discussed earlier, the medical team counseled the parents to allow the child to decide on gender reassignment surgery after acquiring maturity to take a decision in this regard. The petition is indicative of the anguish suffered by parents and family. The court has appointed an Amicus Curiae to assist it in this matter.

Intersex people may be healthy, yet some are in need of medical ministrations. For instance, congenital adrenal hyperplasia may turn lethal in the absence of regular medication because the body is incapable of hormone production necessary for protection against stress or regulation of sodium levels.³¹

The protocol for the medical management of DSD must be further studied and clarified. Molecular and Genetic studies form the crux of the foundational prognosis of DSD. The treatment generally preferred for infants with XY chromosomes and uncertain genitalia is assigning male gender. This is done with parental consent. Genital tissue is conserved, so there is the possibility of choice when they grow up.

Pediatricians should explain to parents, and patients once they attain suitable age, the accessible options alongside evidentiary data concerning the results of such options.

When there is no emergent requirement for surgical intervention, clinicians can make the alternative of waiting clear to the patient and family. They can be introduced to the families of

³⁰ Bajpai M, 'Editorial: Disorders of Sex Development: The quintessence of perennial controversies I' (2014) 19 Journal of Indian Association Pediatric Surgeons 3-4

³¹ Aishwarya Sinha and Manasi Prabhakaran, 'Comparative Study of the Progression of Queer Rights in India and the UK, with Special Emphasis on Intersex People' (2021) 1(3) IJPSL <https://ijpsl.in/wp-content/uploads/2021/03/Comparative-Study-of-the-Progression-of-Queer-Rights-in-India-and-the-UK-with-Special-Emphasis-on-Intersex-People_Aishwarya-Sinha-Manasi-Prabhakaran-2.pdf> accessed 25 September 2022

persons who were diagnosed with the same form of DSD in infancy but lived without intervention, making way for the child to decide after attaining the age of maturity.

There are situations where informed parents pursue appealing for early surgery on their intersex infant. Here, the rights of parents as alternate choice-makers may be favored. Standards of normalcy differ from person to person. Hence, caregivers ought to avoid forcing the patient into a social norm that may prove harmful. Factors such as education, analytical skills, deftness, etc. of caregivers applicable to understanding DSD and rearing a child with DSD may be evaluated by psychologists. These may have a bearing on the recommended gender assignment.³²

Medical experts find that at times, untreated intersex children face stigma throughout their years of growing up and evolving into adulthood. This creates an adverse impact on their psychological development. Situations necessitating early surgical intervention are "gonads located at abnormal positions that are at risk of damage due to high temperatures losing fertility potential and risk of cancer. The passage of passing urine (urethral meatus) if abnormally located leads to infections of the kidneys and kidney damage. Some have their uterus in a position where there is a blockage of the outflow of secretions, leading to various irreversible consequences for their reproductive health."³³ Surgical procedures should be central to the treatment protocol for issues like fertility potential. It is also essential to divulge details to the patient and their parents.³⁴

Intersex rights campaigners in the UK claim that every year, nearly one in 2000 newborns have intersex traits. Of these, nearly one in 200 have evident ambiguous genitalia. Surgical procedures may be effeminizing like clitoral surgeries, vaginal construction, and related procedures in children with larger clitorises or ambiguous genitalia. This may result in female genital mutilation (FGM), which is prohibited in the UK. Yet, it has been noted that many clitoral surgeries on children are prevalent.³⁵ Experts now recommend delaying vaginoplasty until puberty, when it can be safely performed with the informed consent of the individual.

³² *Ibid*

³³ Bajpai M, 'Editorial: Disorders of Sex Development: The quintessence of perennial controversies III' [2015] 20 Journal of Indian Association Pediatric Surgeons 60-62

³⁴ Panda SS, Bajpai M, Sharma N, Singh A, 'Effect of medical therapy on clitoral length in patients with congenital adrenal hyperplasia (CAH)' [2013] 16 Journal of Progress in Paediatric Urology 5-7

³⁵ Aishwarya Sinha and Manasi Prabhakaran, 'Comparative Study of the Progression of Queer Rights in India and the UK, with Special Emphasis on Intersex People' (2021) 1(3) IJPSL <<https://ijpsl.in/wp-content/uploads/2021/03/Comparative-Study-of-the-Progression-of-Queer-Rights-in-India-and-the-UK-with->

A detailed guidance report published in the UK states that the principle behind the thorough examination of an intersex infant is to reduce the level of unpredictability and resultant insecurity. The authors suggest the necessity to work conjointly with the family in discussions on the gender of rearing, early health issues that may arise, and causes of the disorder. Emotional and psychological support is also required in developing an apt management plan. The utmost aim should be to have an adult who is physically, emotionally, and intellectually well-endowed.

In the US, the revised consensus statement for the management of intersexuality by thirty biomedical experts from Canada, the United States, Belgium, France, Italy, Sweden, Qatar, the United Kingdom, Morocco, and Rotterdam is the definitive document that legally safeguards medical personnel.³⁶ However, there is the opinion that the statement ignores human rights in intersex care.³⁷ Human Rights Watch, USA, Congenital Adrenal Hyperplasia Research/Education/Support Foundation, and Advocates for Intersex Youth (InterACT), along with Dr. Dix Poppas, chief of pediatric urology at Cornell-Weill Medical Center in New York City, produced an extensive document after interviewing several intersex adults. They believe that assigning the gender of rearing to a child does not need surgical intervention. They also suggested that the society of pediatric urology can issue guidance on such surgeries.³⁸

CONCLUSION

In this article, we have discussed the basic definitions, the International human rights law perspective, how Indian law has evolved in this domain, and the legal developments in other countries. We have also discussed the medical perspective on ambiguous genitalia surgery.

Intersex people are still considered incapable of integration and hence they may face discrimination. Their basic rights to bodily integrity and self-identity are still not fully realized. For preserving the rights of intersex individuals, all governments may consider reviewing

[Special-Emphasis-on-Intersex-People_Aishwarya-Sinha-Manasi-Prabhakaran-2.pdf](#)> accessed 25 September 2022

³⁶ Mouriquand PD, Gorduzza DB, Gay CL, Meyer-Bahlburg HFL, Baker L, Baskin LS, ... Lee P, 'Surgery in disorders of sex development (DSD) with a gender issue: If (why), when, and how?' [2016] 12 *Journal of Pediatric Urology* 139–149

³⁷ Feder EK, Dreger A, 'Still ignoring human rights in intersex care. *Journal of Pediatric Urology*' [2016] 12 436–437

³⁸ Babu R, 'Changing paradigms in intersex management: Legal, ethical, and medical implications' [2022] 27 *Journal of Indian Association of Paediatric Surgeons* 372-5

gender labels in identity documents and catalogs registering births. Widespread awareness programs, including at the school level, may be initiated by governmental and social organizations. In a society like India, such programs may educate the audience on characters in epics, which fall under the third gender category. This may end stigmatization to an extent.

In the future, views of society may change through education or self-realization. However, until such a fortunate change becomes a reality, imposing rules affecting a total ban on all DSD surgeries may result in a regrettable and dangerous situation where parents are likely to turn to quackery. It would therefore be safer and better if intersex children continue to receive required medical care from qualified medical personnel. Data-driven guidelines may be issued to medical practitioners involved in DSD treatment after intensive research by a designated committee of experts from all relevant fields. The decision of the Madurai bench of the Madras High Court and the GO issued pursuant to it may be taken as a starting point in this regard. Governance of surgeries through guidelines, regulations, consensus, and informed decisions involving parents, would go a long way in helping the patient. Each intersex patient is unique and requires multidisciplinary care and long-term psychosexual support.

