

Delhi Commission for Protection of Child Rights (DCPCR)

Government of NCT of Delhi

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Dated: / /2021

ORDER

1. WHEREAS, the Delhi Commission for Protection of Child Rights has been constituted under the Commission for Protection of Child Rights Act, 2005, an act of Parliament. The Commission is mandated to inquire into complaints and take Suo motu notice of the cases involving the violation of constitutional and legal rights of the children.
2. WHEREAS the Commission is in receipt of a plea by Dr Satendra Singh, Air Cmde (Dr.) Sanjay Sharma and Dr Aqsa Shaikh that there are instances wherein intersex people are treated as disabled, and hence are approached through a medical lens, 'reducing' intersex people to an 'impairment' leading to medical interventions that can lead to long-term impairments and requiring lifetime medical care. It has further been highlighted that most of the times these surgeries are conducted without prior, free and fully informed autonomous consent.
3. WHEREAS the Commission takes into notice the recommendations of UN Committee for the Rights of Persons with Disability (CRPD) to the Government of India in September 2019, which includes that *'the government must take measures to prevent "sex assignment" or "sex-normalizing" surgeries on intersex children. The government must also guarantee the right of intersex people to maintain their physical and mental integrity.'*
4. WHEREAS the Commission takes note of the Article 39 (f) of the Constitution of India which reads as follows: *The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*
5. WHEREAS the Commission takes due notice of the Hon'ble Supreme Court's Judgement National Legal Services Authority vs Union Of India & Others dated 15.04.2014 which categorically states that *'no one shall be forced to undergo*

medical procedures, including sex reassignment surgeries, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity’.

6. WHEREAS the Commission also takes due notice of the judgment of Hon'ble Madurai bench of Madras High Court dated 22.04.2019 in WP(MD)No. 4125/2019 and 3220/2019 filed by Arun Kumar and Sreeja, wherein the Court necessarily directed the Government of Tamil Nadu to issue a Government Order enshrining the aforesaid mandate of the Hon'ble Supreme Court so as to effectively ban sex reassignment surgeries on intersex infants and children.
7. Pursuant to the Madras High Court Order, Government of Tamil Nadu issued an Order Vide Letter G.O. (Ms.) No 355, decided to *'ban sex reassignment surgeries on intersex infants and children except on life-threatening situations and orders accordingly.'*
8. To further the enquiry into the matter at hand, the Commission requested submissions from the Delhi Medical Council, Department of Health and Family Welfare, Government of NCT of Delhi and Department of Social Welfare, Govt. of NCT of Delhi along with organizations and experts in the domain, including Advisors to the Commission on the matter, Ms. Anjali Gopalan and Mx. Gopi Shankar Madurai. Key extracts of their responses are as follows:
 - 8.1. The Delhi Medical Council has filed its response Vide Letter DMC/EC/f.2/2/2020/292283 stating that they agree with the petition since *the differences of sex development/intersex are human rights issues as it pertains to bodily integrity and autonomy and further states that surgical interventions and gender-related medical interventions should be delayed until the patient can provide meaningful informed consent/assent to these interventions.*
 - 8.2. Mx. Gopi Shankar Madurai, in her submission to the Commission states *'some doctors continue to perform medically unnecessary, 'normalizing' surgeries on infants/children. The results are often catastrophic, and the supposed benefits are largely unproven. Regulating such surgeries with medical ethics is very important.'* The same has been stated by the organization *'Human Rights Watch'* in their submission to the Commission.
 - 8.3. Ms. Anjali Gopalan submitted her response stating that *'such medical interventions are violative of the fundamental right to bodily integrity and physical autonomy. Some intersex people can face significant health issues*



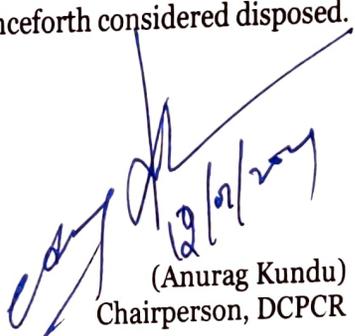
that require treatment, which may include hormone-based therapy or surgery. Others do not require medical intervention.'

- 8.4. The Commission is in receipt of a submission from the organization 'The Humsafar Trust' on the matter stating that *Medical treatments of an intrusive and irreversible nature, if they lack a therapeutic purpose, constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups.*
- 8.5. The Commission is also in receipt of a submission from the organization 'Haq: Centre for Child Rights' on the matter recommending *regulations instead of a complete ban and proposed constitution of a board in every hospital that shall review the request for such surgery based on an interaction with the person seeking surgery and a social and psychological impact assessment.*
- 8.6. The Commission is in receipt of a Codicil compiled by the organization 'Srishti Madurai' which highlights the various national and international precedents supporting the argument of how medically unnecessary surgeries on intersex children interfere with their *right to bodily autonomy, the rights of health and informed consent, children's rights and women's rights.*
- 8.7. The Commission has received a submission by 'Intersex Human Rights India (IHRI)' which states that *'such unnecessary medical interventions are against the human rights of children which has far reaching consequences on health and sense of self as attested to by intersex adults who were put through the trauma in their childhood.*
9. Furthermore, the Commission held hearings on the matter on the 7th and the 8th of December 2020. The following are the key proceedings hitherto:
 - 9.1. The Department of Health and Family Welfare, Government of NCT of Delhi has constituted a Committee to closely examine the matter and submit their report to the Commission accordingly.
 - 9.2. The Department of Social Welfare, Govt. of NCT of Delhi's representative has made an on-record commitment to constitute a dedicated Committee to



look into the matter which would submit bi-monthly progress reports and file their final submissions within 3 months.

10. The Commission advises the respective departments to include within the Committee people who are intersex, or from a similar marginalized background to be a formal member of the Committee. This step would ensure that the community is adequately represented, and their voices heard in the decision-making process.
11. After careful deliberations, the Commission is of the considered opinion that the Government of Delhi should declare a ban on medically unnecessary, sex-selective surgeries on intersex infants and children except in cases of life-threatening situations and advises the government accordingly.
12. With this recommendation, the petition would be henceforth considered disposed.



(Anurag Kundu)
Chairperson, DCPCR

To:

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4. Mx Gopi Shankar Madurai, Co-founder Srishti Madurai Volunteer Movement <br.gopishankar@gmail.com>
5. Ms. Anjali Gopalan - Founder Naz Foundation (India) Trust <anjali@nazindias.org>