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ETHICAL AND LEGAL ISSUES IN REPRODUCTIVE HEALTH

Hymen reconstruction: Ethical and legal issues

Rebecca J. Cook, Bernard M. Dickens*

Faculty of Law, Faculty of Medicine and Joint Centre for Bioethics, University of Toronto, Toronto, Canada

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ABSTRACT

A hymen may be ruptured by sexual intercourse and several other means. In cultures prizing unmarried women's virginity, premarital rupture may shame a woman, and her family. Women, including brides whose virginity is not proven at marriage, face humiliation, ostracism, divorce, and violence—at the extreme, “honor” killing. Nevertheless, gynecologists may oppose hymen reconstruction on grounds that it is deceptive, not medically required, or that the requirement of evidence of virginity discriminates against women and the procedure supports holding them to higher standards of virtue than are required of men. Gynecologists may justify the procedure, however, as serving health, which includes patients' mental and social well-being and women's human rights to control their own bodies. Further, many adolescents lose their virginity innocently, by rape or coercion, and, without hymen reconstruction, women may face violence and even death. The procedure is usually lawful, and distinguishable from female genital cutting or mutilation.

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1. Introduction

The hymen is the mucous membrane that partially closes the entrance to the vagina. Named after the god of marriage in classical Greek mythology, the hymen is presumed to be broken at a woman's first experience of sexual intercourse, and its intact condition is so taken to represent virginity. A hymen may become ruptured or torn in several other ways, however, including vaginal insertion of objects such as tampons, vigorous sporting activities, surgical procedures, and falling on sharp objects.

Hymen reconstruction, also described as hymenoplasty, hymenorhaphy or revirgination, is a form of gynecological cosmetic surgery. It has been explained that the procedure: “is performed by approximating the free borders of the remnants, using fine, absorbable sutures to achieve partial occlusion of the introitus. If hymenal remnants are inadequate, a small flap of vaginal skin is reflected from the posterior vaginal wall and approximated to the anterior wall as a band across the hymenal ring” [1].

The description “revirgination” may be inaccurate when hymen rupture has occurred without intercourse, but the procedure may be accompanied by incorporation of a gelatine capsule containing a blood-like substance that breaks to simulate post-coital bleeding. It has been noted that [1], in the only reported case series, 50% of the women who had the procedure were followed-up after the wedding night, and all reported a satisfactory outcome [2].

2. Requests for the procedure

Female cosmetic genital surgery has come to attract considerable attention, for instance in news media coverage, television programs, commercial advertising, and professional, ethical, and feminist analysis. A concern transcending the cosmetic or superficial arises, however, in cultures in which assurance of a woman's virginity is a precondition to her marriage. Lack of such evidence at first marital intercourse is a source of her and her family's disgrace, and perhaps of divorce and violence against her [3]. A bride's evidence may be shown, for instance, in public display of the blooded sheet from the wedding bed [4].

There are cultures in many communities, in both so-called economically developing and developed countries, in which the honor and status of families are deeply invested in their daughters' virginity before marriage. An anthropological basis of insistence on a bride's virginity is to ensure her husband's paternity of her children, but the status has become emblematic of family honor and worth, in giving untainted daughters and sisters in marriage. Even in modern times, unmarried girls suspected of lost virginity may be at risk in some communities of suffering “honor killing” at the hands of their family members. Similarly, their rape may be a systematic feature of ethnic or tribal conflicts to humiliate the men unable to protect their families, and genocidally to render women of rival communities ineligible for marriage, and so legitimate childbearing, in their own communities.

Against this background, a request for repair of a hymen, whether ruptured in voluntary, coerced, or forceful intercourse such as by rape, or without intercourse, is not necessarily a purely cosmetic choice analogous to breast enlargement and liposuction. It may serve purposes more worthy and protective than personal vanity.

* Corresponding author. Faculty of Law, University of Toronto, 84 Queen's Park, Toronto, Canada M5S 2C5. Tel.: +1 416 978 4849; fax: +1 416 978 7899.

E-mail address: bernard.dickens@utoronto.ca (B.M. Dickens).

3. Professional refusal

There are several grounds on which, as a matter of principle, gynecologists may decline to comply with requests to undertake hymen reconstruction. One is that physicians should not collude with patients in attempts to deceive prospective marriage partners and their families when virginity was lost before marriage [5]. Deception is less, of course, when virginity was lost to the intended husband, since it then affects only families and the wider community. This objection to the procedure may not distinguish between voluntary and coerced or involuntary loss, such as by rape, since the procedure conceals loss of virginity, whatever its origin. The objection risks injustice, however, in failing to distinguish chastity from virginity. Virginity is a physiological state, indicated though not conclusively by an intact hymen (since some may be sufficiently elastic to allow sexual penetration), whereas chastity is a status of moral virtue. According to the ethic of justice, women should not forfeit their reputations for good moral character through the misfortune of being subjected to rape. Hymen reconstruction as part of rape rehabilitation disguises lost virginity, but can be consistent with victims' maintenance of personal virtue.

A purely medical ground of gynecologists' refusal is that hymen reconstruction is not medically indicated. The hymen serves no known biological function, and its rupture is of no medical consequence. The procedure achieves no medical benefit, so accordingly there is no favorable benefit-to-risk ratio. Medical risks of the procedure under professionally skilled and sterile management appear minimal, but there is never zero risk, making the procedure appear not indicated since there is zero medical benefit. There may be a health benefit, bearing in mind the World Health Organization description of "health" as a state of "physical, mental and social well-being and not merely the absence of disease or infirmity" [6], but this identifies the procedure as one of many elective cosmetic or lifestyle choices which gynecologists and other healthcare professionals are free not to serve. Some indeed have found a danger to patients' mental or psychological health [7], in knowingly founding their marriages and continuing family life on falsehood and deception.

An objection based on human rights is that the procedure perpetuates discrimination against women in conforming to an expectation of virginity in unmarried women not expected or required of unmarried men. That is, professionals who participate in the procedure would be complicit in holding women to higher standards of behavior and status than are required of men. Human rights values inspired the UN Convention on the Elimination of All Forms of Discrimination against Women, "the Women's Convention," which defines "discrimination" in Article 1 as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms."

Unmarried women should accordingly be no more required to remain virgins, or to prove their virginity as a condition of marriage, than unmarried men, and not require revirgination. It has been observed that the description "virgin" itself shows women's subordination to men, since the French term "virgine" is derived from Latin by combination of the words "vir," meaning "man," and "genere," meaning generated or "created for" [8] (p. 162). Revirgination, renewing the dedication of a woman to the use, pleasure and/or proprietary control of a man, may appear to perpetuate a human rights offence against the equality of women with men.

Article 5(a) of the Women's Convention requires states that agree to its provisions to "modify the social and cultural patterns of conduct...with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." The concept that a woman unable to prove her virginity to a man requires a surgical procedure to rise to a status

worthy of him, without regard to his status of chastity, may appear so discriminatory and repugnant as to justify a gynecologist's refusal to undertake the procedure.

Countries bound to comply with the Women's Convention are required by Article 2(e) to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise." They may require the collaboration of governmental health professional licensing authorities and of medical associations to discourage procedures seen as discriminatory. In whatever way hymen reconstruction is viewed, licensing authorities and medical associations should clearly act against not only any unqualified practitioners, but also the conduct of intimate surgical procedures by qualified practitioners who lack necessary skills. It has been noted, for instance, from Guatemala that "[g]ynecologists report that women who have had hymen reconstructions come to their clinics suffering from numerous health problems, including infections, haemorrhaging, incontinence, fistulas, and extreme pain during sexual intercourse" [4].

4. Professional performance

Each of the arguments against performance of hymen reconstruction attracts a counter-argument that the procedure be permitted, even if not encouraged. The claim that the procedure is unnecessary on medical grounds, for instance, aligns it with many other medical interventions, including considerably more invasive and risk-bearing cosmetic interventions, that professionals conscientiously undertake, without censure. Many procedures that are not compelled on medical grounds are legitimately considered healthcare procedures, consistently with the WHO description of "health," and may be funded by governmental and/or private health insurance programs, although hymen reconstruction usually is not.

The procedure has a history of availability in France, for instance in the eighteenth and nineteenth centuries to serve women's licentiousness [9], and has remained or re-emerged to serve modern demands. It has been noted that: "[i]n France, such surgery is common among the five million Muslims who emanate largely from North Africa. Some have blamed the rise in religious fervour in this population for the demand in hymen surgery" [8] (p. 165). French social security payments reimburse some of the cost in cases of rape or trauma.

A feminist critic of hymen reconstruction being conditioned by discrimination against women has denied its psychological benefit. She has written that such surgery "is exploiting women's lack of bodily self esteem," and contends that "there is no evidence of any benefit of this surgery for mental health" [10]. An inherent risk of cosmetic and other medical procedures is that they fail to deliver the benefits that patients and others expect of them. However, this does not negate patients' ethical right, as competent adults, to request such procedures, and to receive them.

An important, and often persuasive, argument in feminist advocacy is that the decisions that competent women make regarding their own bodies and medical treatment should be respected. The same is the case concerning adolescent females, including mature minors [11]. The goal of the Women's Convention, and of demands for its enforcement, is that women should enjoy, as Article 12(1) provides: "on a basis of equality of men and women, access to health care services." Such services include those that women, on an individual basis, consider appropriate to their purposes, even when others, including women, disagree. That is, women of all ages who have competent capacity can make the same contentious judgments as men to determine their own well-being. Equal respect for their differences allows men to take drugs and procedures for instance for penis enlargement, and women to have procedures for hymen reconstruction.

Oppressive though requirements of unmarried women's virginity may be to them, women are often active proponents of cultures that monitor and enforce such requirements. Mothers are as anxious as fathers that their unmarried daughters' reputations, and hymens, should

remain intact, and that the sheets from their newly married daughters' wedding beds should show blood. Similarly, prospective mothers-in-law want assurances that their prospective daughters-in-law are worthy as virgins to be their sons' brides, and that they have proven so on the wedding night. Mothers may thereby participate unwittingly in cultures that discriminate against their own sex, but neither they, nor gynecologists, are entitled to make their daughters sacrificial instruments of eventual cultural reform by denying hymen reconstruction.

Two tragic phenomena combine to provide grounds for gynecologists in many parts of the world to be trained and willing to undertake hymen reconstruction when requested, and even to offer it when not, namely sexual abuse of young girls, and family members injuring or killing those who have lost, or are suspected to have lost, their virginity, on grounds of alleged "honor."

Forced intercourse, meaning rape, is sometimes distinguished from coerced intercourse, when a woman is persuaded or pressured to have intercourse against her will, overwhelming her resistance by continual arguments and purposeful maneuvers or inducement. Forcing or pressuring vulnerable women, especially adolescents, into intercourse, appears ubiquitous, and is reported in many parts of the world [12]. It has been noted, for instance, that "[i]n parts of South Africa and Tanzania, up to a third of adolescent girls reported that their first sexual experience was forced" [13]. A nationally representative 1998 study in South Africa showed almost one woman in 50 reported being raped before reaching 15 years of age, and that, due to reluctance to report, this was probably a heavy underestimate [14]. In many cases, this was the first experience of intercourse. In a related report, devastating short-term and long-term mental, reproductive, and physical health consequences were identified, commonly including pregnancy and gynecological complications, infection with HIV and other sexually transmitted diseases, depression, post-traumatic stress disorder, and social ostracism [15]. There are limits to how far hymen reconstruction can relieve these effects, but it is clearly indicated in the arsenal of medical responses.

Gynecologists with sufficient skills asked to perform the procedure should ethically take account of the consequences of their refusal. These include women's expulsion from their families and communities, terminated betrothal, divorce, personal violence and, at its most extreme, so-called "honor killing," usually by close family members. It has been reported, for instance, that "[a]lmost 2000 Pakistani women were killed in the name of honour between 2004 and 2007, constituting more than nine murders every week" [16].

The concern is particular but not limited to the Middle East and south Asia, since "[r]eports to UN human rights bodies show that honour killings have occurred in Bangladesh, the UK, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey and Uganda...there are also reports that the practice takes place in the USA and Canada, as well as Iran and Iraq" [16]. The relatively high incidence in Pakistan, and its occurrence, normally within immigrant communities, in western countries, including Australia [8] (p. 165), is sometimes associated with the rise in religious fundamentalism, but "[a]lthough more predominant among Muslims, women belonging to Pakistan's minority Christian and Hindu communities have also been murdered, which suggests that the practice is more cultural than religious" [16]. For instance, the country with the world's largest Muslim population, Indonesia, was not named above. Some killings are attributable to suspected infidelity within marriage, and to women's defiance of parentally arranged marriages, so it is unclear how many could be prevented by hymen reconstruction. It has been claimed, however, that the procedure has reduced the rate of honor killings by 80% in Egypt in recent years [17].

5. Legal issues

In many Arabic countries, hymen restoration is illegal [18], which precludes professional associations from approving the procedure or

offering guidance on its performance. Even without prohibitive legislation, however, there are limits to what people may do or allow on their own bodies. Customary laws may not allow individuals to undertake or consent to maim (or mayhem) on their own bodies, meaning a serious or permanent bodily loss or disfigurement, although psychiatrically justified male-to-female gender reassignment may be allowed. Within these limits, however, competent individuals' freely given and adequately informed consent would render hymen reconstruction lawful.

Disclosures to render consent informed would include known physical risks, complications, discomforts and inconveniences, both short- and long-term, and any negative psychological implications, such as feelings of guilt about misrepresentation associated with revirgination.

Assurances of confidentiality may require some negotiation. In experienced hands, hymen reconstruction may often be a relatively simple procedure, undertaken a few days before a woman's wedding. It has been observed that "[t]he operation is carried out as an outpatient procedure, and the notes are commonly not entered in the patient's medical record" [19]. Patients frequently prefer this, in order to ensure confidentiality, but should be given the choice of notation in the medical records in case of associated complications. That is, providers will discuss the advantages and possible disadvantages of the procedure not being entered in patients' medical records, and let the patients decide. Complications of the procedure have been recorded [4], and should not be understated, although they are perhaps associated with unskilled or inexperienced practice.

Hymen reconstruction is not legally restrained by laws or professional guidelines against female genital cutting, sometimes characterized as mutilation (FGM). The procedures are comparable in that both are intended to make women marriageable within their communities, but are better understood through their contrasts. Female genital cutting is usually performed early in childhood at parents' request, by traditional, unskilled practitioners in unsterile conditions, often using crude instruments and without anesthesia [20]. In contrast, it has been explained that hymen reconstruction procedures "are performed in response to the voluntary requests of adult women who are able to give informed consent. They are conducted under sterile conditions in hospitals under anesthesia. There is adequate post-operative analgesia and supervision" [8] (p. 167).

Adult age is not necessarily a condition of providing legally effective consent to hymen restoration. It is widely accepted that, while laws may set age boundaries for instance for marriage, military enlistment, or purchasing tobacco, eligibility to approve or decline medical treatment is governed by capacity to comprehend its implications; that is, by intellectual or cognitive maturity specific to the particular treatment. The highest court in England, in the Gillick case [21], has set a standard to test adolescents' capacity for medical choice, so-called "Gillick competence" that has been almost universally adopted in the English-speaking world and beyond. The "mature minor" test is reflected in Articles 5 and 14 of the UN Convention on the Rights of the Child, usually defined as a person under 18 years of age, who must be treated "in a manner consistent with the evolving capacities of the child." Every state member of the UN except Somalia and the US has ratified the Convention.

6. Conclusion

Hymen reconstruction appears to be a generally benign medical intervention that patients request for social reasons. Such reasons invoke the social dimensions of health, and often have profound implications for women who seek the procedure, affecting their future in fundamental ways. They also affect communities, however, in that they challenge and subvert the culture that requires unmarried females' virginity. The procedure exposes the conflict between the ethics of cosmetic misrepresentation or deception, and the discriminatory ethics of requiring virtue in women not required of or enforced upon men.

The procedure is not governed by laws that criminalize female genital cutting. It is instructive, however, that such laws often have exceptions for women above specified ages who give free consent, and for reasons of patients' physical or mental health [8] (pp. 168–174). Almost all cases of hymen reconstruction requested by adult women and adolescents seem to be within such exceptions. Practitioners able to perform the procedure but who object, for instance on grounds of conscience regarding deception, are bound by FIGO Ethics Committee guidelines on appropriate referral [22], failing which, by para 4, they “must give priority to their patients' lives, health and well-being.”

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