



THERAPEUTIC MISADVENTURE IN ANALYSIS OF COSMETIC SURGERY

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Abstract: This article explores therapeutic misadventures in the history of medical tradition, which is interconnecting with cosmetic surgery. It deals with the origin of Sushruta period from 600 B.C. to the current age of the twenty first century. The purview of Aesthetic surgery in the medical field and its development gradually. This article details how cosmetic surgery differs from plastic surgery and its primary invasive categories. It lays impediments to the surgery and risks and responsibilities of surgeon. Principles of clinical ethics and professional conduct of doctors indulging in medical treatment, and consequently, Consent plays climacteric role in the surgical performance with effective communication prior to the operation. This article deals with the Law regulating cosmetics offences and penalties when there is a defect or deficiency in service under the Consumer Protection Act, 2019 and the Indian Penal Code, 1860. The Primary objective of the article is to specify the suitable case laws, that is, victims of cosmetic surgery with negligence of service and damages for error. It focuses on how beauty plays essential role in celebrity world and its complexity over the years. The article ends with the conclusion that even though there is a high chance of risk of surgery and therapeutic treatment in India, we have to go with qualified doctors to secure a successful outcome.

IndexTerms: Therapeutic Misadventure, Origin, Cosmetic Surgery, Risk, Informed Consent, Ethics, Aesthetic Procedures, Victims.

1. INTRODUCTION

A Therapeutic Misadventure is an error or injury caused by medical management rather than underlying illness. Human error's significant role in medication errors in the operation is perceived.¹ Disparate of all therapeutic misadventure in analysis of Cosmetic surgery may seem like a simple approach to improve your physique or take years off your appearance. Cosmetic surgery is a subspecialty of plastic surgery that covers both surgical and nonsurgical techniques. Cosmetic surgery, however, has several risks and limitations. They use a variety of techniques, including minimally invasive procedures and traditional surgical methods, to achieve the desired results. While cosmetic surgery can improve a person's appearance and self-esteem, it also comes with several hazards, just like any other surgery. These can include infection, bleeding, scarring, anaesthesia complications, and unsatisfactory results. It is important for individuals considering cosmetic surgery to have realistic expectations, be in good overall health, and have a thorough understanding of the risks and benefits of the procedure. The service under section 2 (42) of consumer protection act explains surgeon should provide a better-quality service and proper medical care for the client.^{2,3} They should also choose a qualified and experienced plastic surgeon and follow all pre- and post-operative instructions carefully to ensure the best possible outcome.

¹ Langford, N. J, "Therapeutic Misadventure". Medical, Science and the Law, 50(4), 179-182, (2010).

² The Consumer Protection Act, 2019, s 2(42), (India).

³ PR Pathak, PS Garcha, KM Rajoo, DK Sreevastava, "Therapeutic Misadventure or Medical Negligence", Med J Armed Forces India,53(4), 322-324, (Oct, 1997).

1.1 HISTORY OF COSMETIC SURGERY

In the developing era of medical surgery and misadventures, surgery has been traced back to Neolithic age to 1800 AD window to birth of surgery.⁴ On the historical development of Code of Hammurabi in 2000-1750 B.C. it certainly establishes a code of ethics for doctors, therapeutic misadventure and punishments. It brings that during an operation if they kill a patient or cut off an eye their hands will be chopped off.⁵ “Sushruta is the Father of Indian Surgery” of recorded history in 600 B.C. In his book Sushruta Samhita highlighted about the ancient tradition of surgery which is plastic surgery. His compendium elaborately describes about surgical methods in detail. The most impressive thing is to consider is that dissection is performed even without any knife. In ancient time of early medical world Sushruta is very first person who introduced about Rhinoplasty.⁶ Sushruta period was considered as Birth place of surgery. During the Golden age of medicine, Sushruta paved the way for reconstruction of nose successfully results in aesthetic surgery and extensively mentioned about the therapeutic techniques was incredible. The history of nasal reconstruction is documented in a number of literary works, ranging from Tagliacozzi's time in Renaissance Italy to his portrayal in Hindu medicine during the Vedic era.⁷ Plastic surgery evolved and placed a greater part during wartime and established a board namely as American Board of Plastic Surgery and Reconstructive surgery developed.⁸ In the nineteenth century origin of risk and negligence was lifted due to the medical innovation of surgery. By 1904, doctors were able to avoid the hazards associated with operating on a conscious patient who required rapid, forceful, but skilful, surgery due to advancements in surgical science throughout the latter half of the nineteenth century. However, it also coupled surgeon taking responsibility for patients and before operation surgeon should disclose the risk involved in operation for the advantage of the patients.

Consent should have been effectively withdrawn from the patient for the possibility of safe despite of any risk.⁹ Nose reconstructions have been prevalent in India for centuries, with South Korea, Brazil, and Israel becoming international centres for procedures like eyelid restructuring. Aesthetic surgery has become a cultural and medical fixture, with Argentina having the highest silicone implant rate. Gilman's systematic world history and cultural theory explores its universal appeal.¹⁰ Its prevalent in the twenty first century there are steady growth in cosmetic field carried out globally. According to the Global survey report 2022 of international society of Aesthetic/ Cosmetic procedures (ISAPS) result shows that aesthetic surgery has been continuously increased to 41.3% over the last four years in surgical procedures in worldwide.¹¹ As per the data of International Society of Aesthetic plastic surgery (ISAPS) global statistics on aesthetic procedures result in 2022, more than 33 million (33,844,293). Comparing to data of 2021 with recent data released in 2022, percentage of aesthetic/cosmetic procedure increased to 11.2% of overall statistics. India ranked tenth in the total number of procedures performed comprising surgical and non-surgical accounting number of 711,922 among all over the world.¹²

⁴ Zachary B. Friedenber, “A history of surgery: From superstition to science”, Canadian Medical Association Journal, 182(8), 809, (May 18, 2010).

⁵Dr. Pankaj Kumar, “Hammurabi’s medical regulation code (1750 BC): Noble profession has always been regulated cruelly”, Evolution of Medical profession extinction of good doctors, Dec 23, 2017, 00.27 PM), <https://extinctdoctorgood.com/2017/12/23/hammurabis-medical-regulation-code-1750-bc-noble-profession-has-always-been-regulated-cruelly/>, accessed on Feb 8, 2024.

⁶Saraf S, Parihar R, “Sushruta: The First Plastic Surgeon in 600 B.C.”, The Internet Journal of Plastic Surgery, 4(2), (2006).

⁷Manish C, Champaneria, Adrienne D, Workman, Gupta, Subhas C, “Sushruta: Father of plastic surgery”, Annals of Plastic Surgery, 73(1), 2-7, (2014).

⁸Randall P, McCarthy G.J, Wray R.C, “History of the American Association of Plastic Surgeons AAPS”, 1996, <https://aaps1921.org/files/2018/History-1921-1996.pdf>, accessed on Feb 10, 2024.

⁹ Brock C, “Risk, Responsibility and surgery in the 1890s and Early 1900s”, Medical History, 57(3), 317-337, (2013).

¹⁰Sander L. Gilman, “Making the Body Beautiful, A Cultural History of Aesthetic Surgery”, 1999, Princeton University Press.

¹¹ISAPS Global Survey 2022 Press Release, Global Survey 2022: Full Report and Press Releases | ISAPS, accessed on Feb 10, 2024.

¹²ISAPS International survey on Aesthetic/Cosmetic procedures, https://www.isaps.org/media/a0qfm4h3/isaps-global-survey_2022.pdf, accessed on Feb 11, 2024.

2. WHAT IS COSMETIC SURGERY

When someone decides to have an operation, other intrusive medical procedure, to change their physical appearance for reasons other than medical ones, that person is engaging in cosmetic surgery. Cosmetic surgery, also known as aesthetic surgery, is a type of medical procedure that is performed to improve a person's physical appearance. It is typically elective and not considered medically necessary, as it is performed for aesthetic rather than functional reasons. There are many types of cosmetic surgery procedures that can be performed on various parts of the body, including the face, breasts, abdomen, thighs, and buttocks. These procedures may include facelifts, breast augmentation or reduction, liposuction, tummy tucks, and buttock lifts, among others. Cosmetic surgery is usually performed by plastic surgeons who have specialised training and experience in this area.

The “cosmetic” defined under the Drugs & Cosmetics Act, 1940 under section 3(aaa) as “any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic”.¹³ This is the only act which defines cosmetic in India unless there is no legislation to govern the cosmetic surgery and its mishaps.

2.1 COSMETIC SURGERY COMES UNDER THE PURVIEW OF THERAPEUTIC MISADVENTURE

Cosmetic surgery is an evolved type of medical procedure that is performed to lift elegance of person's aesthetic appeal in appearance. Therapeutic misadventure, on the other hand, refers to an unintended and undesirable outcome or complication that results from a medical treatment. While cosmetic surgery is a medical procedure, it is not typically considered a therapeutic misadventure because the primary purpose of the procedure is to improve a person's appearance, rather than to treat or cure a medical condition. However, like any medical procedure, cosmetic surgery does come with mishaps, and there is a potential for adverse outcomes or complications.

In some cases, complications from cosmetic surgery can lead to therapeutic misadventures, such as infections, nerve damage, or other medical problems. If this occurs, the patient may have legal grounds for a medical malpractice claim. They can have serious consequences for patients, including disability, prolonged hospitalisation, or even death. To prevent therapeutic misadventures, healthcare providers must take steps to ensure that patients receive the appropriate treatment and care. This includes carefully monitoring patients during treatment, properly diagnosing medical conditions, following established treatment protocols, and regularly reviewing and updating medication regimens. When therapeutic misadventures do occur, it is important for healthcare providers to acknowledge them, investigate their causes, and take steps to prevent them from happening again in the future. This may include implementing new safety protocols, providing additional training to staff, and improving communication and collaboration between healthcare providers. However, it is important to note that not all adverse outcomes or complications from cosmetic surgery are considered therapeutic misadventures.

2.2 THE DIFFERENCE BETWEEN COSMETIC SURGERY AND PLASTIC SURGERY

The primary objective of cosmetic surgery is to make individuals appear beautiful. Aesthetics is frequently the focal point of the procedure. The most popular procedures include those to enhance the breasts, reshape the face, and rejuvenate the skin and facial tissues. Plastic surgery and cosmetic surgery are frequently confused. But they are two distinct words.¹⁴ Definite variation visible from the manner of surgery performed. Plastic surgery, on the other hand, consists of repairing the defects that a person has had since birth.¹⁵ It also consists of treating illnesses and burns. The most frequent interventions are those to repair skin burns, to reconstruct the breast or lower limbs, plastic surgery of the hand and operations for the revision of scars. Cosmetic surgery has become a trend among stars and has many advantages, but it also has disadvantages.

2.3 CLASSIFICATION OF COSMETIC SURGERY PROCEDURES

Generally, surgeries are of two main categories of cosmetic surgeries and procedures are: (1) minimally invasive procedures, which are performed on the skin's surface and can be completed quickly without requiring any surgical procedure; examples of these include skin resurfacing and laser hair removal; and (2) traditional surgeries, which are performed in a hospital or clinical setting and necessitate the patient's sedated or anesthetized.¹⁶ Nonsurgical and skin procedures include such as laser treatments, dermabrasion, deep chemical peels, sclerotherapy, hair transplants, skin

¹³ The Drugs and Cosmetic Act, 1940, s.3(aaa), (India).

¹⁴ MIRA clinic, why do celebrities do Cosmetic surgery, <https://www.mira-clinic.net/b/63/en>, accessed on Feb. 2, 2024.

¹⁵ Lagrasso J, Cosmetic Surgery vs Plastic Surgery, <https://medium.com/@jeffreylagrasso/jeffrey-lagrasso-cosmetic-surgery-vs-plastic-surgery-7d2786bd7b92>, accessed on Feb 12, 2024.

¹⁶ Sadhya M, “Role of Consent Surgeries and Enhancements: A Comparative Analysis”, National Law School Journal, 15(1), (2019).

grafts, removal of dermal lesions, and injectables. Surgical procedures highly followed such as Abdominoplasty, body implants, eyelid surgery, face implants, augmentation, reconstruction, reduction, lift, liposuction, gynecomastia, rhinoplasty, otoplasty, soft tissue excision, and vein operations.¹⁷ (1) Facial Contouring: Rhinoplasty, Chin, or Cheek Enhancement, (2) Facial Rejuvenation: Facelift, Eyelid Lift, Neck Lift, Brow Lift. (3) Body Contouring: Tummy Tuck, Liposuction, Gynecomastia Treatment (male breast reduction). (4) Breast Enhancement: Breast Augmentation, Breast Lift, Breast Reduction. (5) Skin Rejuvenation: Laser Resurfacing, Botox, Filler Treatments.¹⁸ Additional treatments included chin reduction, tissue expanders, breast pocket revision, symmastia, and revision of the reconstructed breast.¹⁹ Cosmetic surgery is an evolving concept of everyday life with gradual development of modern science technology and needs of aesthetic. Types of cosmetic surgery are passed from one generation to the next through with change of the necessity and it is unfathomable.

2.4 COMPLICATIONS OF COSMETIC SURGERY

Cosmetic surgery, like any other medical procedure, carries certain risks and potential complications. While most people who undergo cosmetic surgery experience positive outcomes, there are cases where patients may become victims of cosmetic surgery. Some of the common complications and negative outcomes of cosmetic surgery include:

- (1) Infections: Cosmetic surgery involves incisions, which increase the risk of infections. Infections can lead to serious complications, such as sepsis, and may require additional medical treatment.
- (2) Scarring: Some cosmetic surgery procedures can result in noticeable scarring, which may affect the patient's self-esteem and confidence.
- (3) Anaesthesia-related complications: Anaesthesia is used during cosmetic surgery, and in rare cases, patients may experience adverse reactions to anaesthesia, such as respiratory distress, heart attack, or stroke.
- (4) Nerve damage: Cosmetic surgery can sometimes result in nerve damage, which can lead to loss of sensation, muscle weakness, or paralysis.
- (5) Unanticipated results: In some cases, cosmetic surgery may not produce the desired results, and patients may be left with a distorted or asymmetrical appearance.
- (6) Emotional distress: Some patients may experience emotional distress following cosmetic surgery, particularly if the results are not what they expected or if complications occur.
- (7) It is important for individuals considering cosmetic surgery to carefully weigh the potential risks and benefits and to thoroughly research their options before making a decision. It is also essential to choose a qualified and experienced surgeon who can minimise the risks and ensure the best possible outcomes.²⁰

3. CONSENT IN COSMETIC PROCEDURE

Generally, consent is individuals voluntarily agrees upon some act without any fear or threat or misrepresentation or fraud or with an intention of deceiving other person for unfair advantage.²¹ (1) A doctor or surgeon must obtain patient consent before starting a treatment, including surgery, which should be real, valid, and based on adequate information about the treatment procedure. (2) The doctor or surgeon should disclose the nature and procedure of the treatment, its purpose, benefits, effect, alternatives, substantial risks, and adverse consequences of refusal. (3) A balance should be achieved between disclosing necessary and adequate information while avoiding deterrence from consenting to unnecessary treatment. (4) Consent given for diagnostic procedures cannot be considered as consent for therapeutic treatment, and unauthorized additional surgery is not grounds for defence in tort cases. (5) Common consent can be obtained for diagnostic and operative procedures, as well as for specific surgical procedures and additional procedures. (6) The information provided to secure consent should be acceptable by medical professionals, considering the patient's physical and mental condition, treatment nature, and associated risks and consequences.²² These are the various measures to be followed by the surgeons prior to operation to obtain a valid consent.

Patient must give their informed consent before the medical surgery, which is to ensure that they are mentally fit and competent to make their consent in surgery. If a patient is lacks to understand treatment and doctor should asses their mental wellbeing to acquire legal consent.²³ Under civil law, the patient may institute a suit against the cosmetic surgeon

¹⁷ Valina, Grace. Sessa, Alberico, "Current Trends of Cosmetic Surgical Procedures with the General Cosmetic Surgery Fellowships by the American Academy of Cosmetic Surgery", *The American Journal of Cosmetic Surgery*, 37(1), (2019).

¹⁸ Lagrasso J, *supra* note 15.

¹⁹ Sadhya M, *supra* note 16.

²⁰ Coco Ruby Plastic Surgery, "General Risk and Complications of Cosmetic Surgery", <https://cocorubyplasticsurgery.com.au/patient-resources/cosmetic-surgery-risks-and-complications/>, accessed on Feb 11, 2024.

²¹ The Indian contract Act, 1987 s 13 Act No.9 of 1872.

²² Samira Kohli v. Dr. Prabha Manchanda & Anr., AIR 2008 SC 1385.

²³ Hewins W, Zienius K, Rogers JL, Kerrigan S, Bernstein M, Grant R, "The Effects of Brain Tumours upon Medical Decision-Making Capacity", *Current Oncology Reports*, 21(6), 55, (2019).

in tort for trespass to person or the tort of negligence. In some cases, the cosmetic surgeon may even be criminally held liable for assault or battery. Principles of Biomedical Ethics brings main principles on health care and professionalism to practice, that is autonomy, nonmaleficence, beneficence and justice.²⁴ To the parallel to maintain the principles of clinical ethics on informed consent for a medical and surgical treatments there are four essential constituents namely, (1) competence, (2) disclosure, (3) understanding, (4) voluntariness and (5) consent which must coexist for the consent to be informed.²⁵ Consent should be appropriate without any coercion or fraud or silent on benefits and problems.

Under Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, chapter 7.16 brings about that before performing an operation the physician or surgeon should obtain the consent in writing either from the husband or wife, if in case of minor consent form parent or guardian, or the Patient itself. In a case sterility operation consent from both husband and wife is necessary.²⁶ Despite its uniqueness, the fact that cosmetic surgery involves the performance of some kind of surgical interventions on individuals for the sake of improving appearance is indisputable, and hence, the requirement of taking consent before starting the procedures is very pertinent. This makes effective communication and consultation between the doctor and patient one of the most crucial elements to avoid litigation. One of the fundamental duties of the doctor is to inform the patient of all relevant information relating to the procedure, the pre-procedure requirements, inherent risks, alternatives and post-operative care, etc., before commencing any surgery, and this gets legal sanctity in the procedure of taking informed consent through the consent form.²⁷ However, consent plays a fundamental role, whether to accept or to refuse the treatment is entirely dependent on patient's personal and decision making process. Surgeon primary duty is to inform the details of procedure in prior hand before treatment.

4. LAWS AND REGULATION GOVERNING COSMETIC SURGERY

There are no specific laws in India that deal with cosmetic surgery and its damages provided to victims. However, victims of cosmetic surgery malpractice may seek legal recourse under the Consumer Protection Act, 2019 or the Indian Penal Code, 1860.

4.1 Consumer Protection Act

Under the Consumer Protection Act, 2019, a consumer who suffers harm or injury as a result of a defective product or service may file a complaint before the consumer forum. In the case of cosmetic surgery, a victim may file a complaint against the cosmetic surgeon or the clinic where the surgery was performed for deficiency in service or for providing a defective service. Being said that under Consumer Protection Act defines "unfair trade practice" done by surgeon, doctors or any specialist can be made liable for any unfair technique or dishonest activity used to foster the sale, use, or supply of goods or services in cosmetic surgery. This includes making erroneous assurance that goods or services meet a specific standard, quality or grade; misrepresenting the patients with goods or service, providing the false warranties or guarantees, cheating or giving false deceptive information about the service provided of another person.²⁸ According to law "defect" confines that any flaw or imperfection in quality, quantity, potency, purity, or standard²⁹ and in the case of "deficiency" Deficiency refers to a fault, imperfection, or inadequacy in performance required by law or undertaken by a person in a contract or service, including negligence causing loss or injury to the consumer and deliberate withholding of relevant information.³⁰

4.2 The Indian Penal Code

Under the Indian Penal Code, 1860, a victim of cosmetic surgery malpractice may file a criminal complaint against the surgeon or the clinic for causing hurt or grievous hurt, or for negligence causing injury. Under section 304A³¹ surgeon or doctors can be legally accountable for causing death by negligence not amount to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Additionally, surgeon or doctor can be held responsible under section 33 of the medical Council Act, 1956

²⁴ Beauchamp L.T, Childress F.J, Principles of Biomedical Ethics, 5th ed., Oxford University Press, (2001).

²⁵ Varkey B, "Principles of Clinical Ethics and Their Application to Practice", Medical Principles and Practice, (2020).

²⁶ "Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002",

<https://wbconsumers.gov.in/writereaddata/ACT%20&%20RULES/Relevant%20Act%20&%20Rules/Code%20of%20Medical%20Ethics%200Regulations.pdf>, accessed on Feb 13, 2024.

²⁷ Sadhya M, *supra* note 16.

²⁸ The Consumer Protection Act, 2019, s 2(47), Act No.35 of 2019 (India).

²⁹ *Id.* s (10).

³⁰ The Consumer Protection Act, 2019, s 2(11), Act No. 35 of 2019 (India).

³¹ The Indian Penal Code, 1860, s 304A, Act No. 45 of 1860.

certain duties and ethics to be followed, violation of any which leads to professional misconduct.³² The victim may also file a complaint under the Medical Council of India (Professional Conduct, Etiquette and Ethics) Regulations, 2002 for professional misconduct. It is important to note that in India, cosmetic surgery is considered a medical procedure and is subject to medical ethics and professional conduct regulations. Therefore, a victim of cosmetic surgery malpractice may also file a complaint before the state medical council for professional misconduct. Overall, there is no specific legislation in India that deal with cosmetic surgery victims, hence, victims may seek legal recourse under the Consumer Protection Act, Indian Penal Code, Medical Council of India (Professional Conduct, Etiquette and Ethics) Regulations, and state medical council regulations. It is advisable for victims of cosmetic surgery malpractice to seek legal advice from a qualified lawyer to understand their legal options and to pursue appropriate legal action.

5. VICTIMS OF COSMETIC SURGERY

There have been several adverse therapeutic misadventure cases in court regarding cosmetic surgery resulting from the failure of proper surgery. Here are some notable examples from India and in other countries.

5.1 Sullivan vs O'Connor³³

One of the distinctive cases decided by the Supreme Judicial Court of Massachusetts. Plaintiff was a professional entertainer who wants to surgery her nose thereby she entered into to a contract with the defendant, a surgeon promised her to change the shape of her nose symmetry and enhance her appearance. Despite of two surgery, her nose became worsen. Rather operation caused pain in body and mind with extreme suffering and disfigurement. However, plaintiff bind to undergo three operations but her look was worsened. Consequent of surgery resulted Plaintiff a loss of profession. The Plaintiff alleged for breach of contract of the surgeon for failure to enhance her beauty and negligence of service. Therefore, jury stressed the requirement of test of truth and found the surgeon issue of damages of \$ 13,500 and compensable in actions for breach of contract.

Discussion This case establishes the ruling that surgeon is fairly responsible including for pain and suffering resulted from the breach of Contract and disappointment for undesirable damage of plaintiff, arguably to make accountable claim of negligence.

5.2 Veena Sethi vs Dr. J.B. Ratti³⁴

The Delhi Consumer Disputes Redressal Commission found the doctor guilty of deficiency in service for not giving adequate details about the procedure to the patient, for his failure to inform about the risk of surgery. Complainant was a senior secondary school student was obese with large fat deposit had decided to undergo liposuction at the doctor's clinic with availability of information in the advertisement in a local daily. The complainant was assured that she would lose 50kg to 60 kg of weight the very same day. After the operation, the complainant noticed that there were long cuts with deep wounds, scars in both her arms and leading to permanent disability and she had undergone lipoplasty although the advertisement mentioned liposuction. The complainant fought with doctor for disfiguring her body with deep cuts and scars which caused severe mental agony.

The State Commission found the doctor guilty of medical negligence, since the complainant suffered due to the false representation of the doctor who had been negligent in conducting the procedure. For the deficiency of service, the State Commission ordered the doctor to refund twenty thousand towards expenditure on operation with interest, to pay a compensation of Rs. 50,000/- (Rupees fifty thousand) to the patient for treatment expenses, to pay a sum of Rs.10,00,000/- (Rupees one lakh) for mental trauma and to pay a sum of Rs. 50,000/- (Rupees fifty thousand) for transportation and to pay Rs.30,000/- (Rupees thirty thousand) for legal expense with interest @24% per annum.

Discussion Patient ready to undergo the surgery, doctor should explain the entire procedure involved in the operation if they lack to give details, they are held to liable for not explaining the process of involved in lipoplasty properly and also its after effects and negligence in not taking post-operative care and causing mental agony and partial disfigurement of unable to perform her daily activities. The court must determine whether was any lack or deficiency in conducting the operation or post operative care.

5.3 Smt.Purnima Mishra vs Kalda Cosmetic Surgery Institute³⁵

This case was decided by the Chhattisgarh state consumer disputes redressal commission. Complainant was professor in Government college who had undergone treatment for cancer, after receiving a full course of Radiotherapy

³² The Indian Medical Council Act, 1956, s 33, Act No.102 of 1956.

³³ 296 N.E.2d 183 (MASS. SuP. JUD. CT. 1973).

³⁴ Complaint No. C- 270/98, (Delhi State Consumer Disputes Redressal Commission decided on 4 November, 2008).

³⁵ Complaint No.CC/2017/83 (Chhattisgarh Consumer State Disputes Redressal Commission decided on 2 August, 2018).

and Chemotherapy and complete regular check-ups and she was declared fully cured of the Cancer disease by the Tata Memorial Hospital, Mumbai. The complainant neither having any problem on the part of the face and she informed her previous condition about her disease and treatment taken from Tata Cancer Hospital to the plastic surgeon. She wants to reconstruct her face symmetry, thereby she has undergone cosmetic surgery accordingly for 4cm bone unfortunately 10cm long bone was removed and implanted in the jaw along with metal plate and wound cause by the 'First Surgery' became wide open and the metal plate was clearly visible after the 'Second Surgery' making the fact of the complainant completely disfigured and subject of mockery. After the failure of 'Second Surgery' complainant that both the surgeries were failure so the implanted metal plate and the bone should be removed from the site of surgery, for which 'Third Surgery' is also done. Due to which she incurred face paralysis of left upper eyelid, unable to speak, faced permanent swelling of the left leg, permanent ugly scar

State Consumer Disputes Redressal Commission held that complainant is entitled to get compensation from the surgeon due to medical negligence committed by the Surgeon sum of Rs.10,00,000/- (Rupees Ten Lakhs) to the complainant, within two months from the date of this order along with simple interest @ 9% p.a. and also pay a sum of Rs.15,000/- (Rupees Fifteen Thousand) towards the cost of litigation to the complainant.

Discussion In this case it is noted that consent is not proper and which not a valid consent. It appears that Surgeon had not obtained valid consent form the complainant or her relatives prior to conducting her operation, which comes in the category of medical negligence and deficiency in service. It is established that due to surgeries of the complainant, conducted by the surgeon, pus formation occurred and three surgeries were required, even then deformity was not cured.

5.4 Richfeel Health & Beauty Pvt. Ltd. vs Vikas Kumar ³⁶

In April 2017, the complainant, Sh. Vikas Kumar, spent Rs. 70,948/- to Defendants for Hair Transplant Surgery. Although he was told that there would not be any gap between grafts following the procedure, but the hair's density was unsatisfactory and poor. The defendant asked additional Rs. 23,000 to fill more grafts and boost the density of hair. The Defendants dallied the case for a variety of reasons when the complaint refused to pay extra money. The complaint attempted to serve the defendants with a legal notice but was ineffective.

District Commission accepted a complaint against the appellants; therefore, the appellants' appeal may be rejected. The appellants charged the complainant an extra Rs. 23,000 for additional operations, and the District Commission noted that even after the procedure, hair did not grow as predicted. Rejected are the appellants' allegations that they implanted fewer grafts than they reported, as well as the document's date editing, which suggests their operation was not transparent. Additionally, the District Commission decided that the appellants' conduct was misleading the complainant, the patient was under the influence of a doctor at the operation table. The District Commission ordered the appellants to reimburse the complainant for the money they had been charged, plus interest at the rate of 9% per year, and to pay damages and legal fees.

Discussion Here in this case appellants suggested for further second surgery for more density for additional sum, but it was no result. The commission noted that appellants manipulated the complainant for accepting for consent for successful result, in the end by the outcome it showed that lack of service and unfair trade practices.

5.5 Azhar Rasheed vs State Nct of Delhi and Ors ³⁷

Athar Rasheed, a 35-year-old man from New Delhi, he faced severe complication in scalp and died due to septic shock with multi organ failure which is known a Stevens-Johnson Syndrome. Negligence of Death caused by hair transplantation procedure done by United Hair Studio with unqualified professionals. During the investigation it was clear that deceased has paid the amount of Rs.30,000/- for hair transplantation and technicians namely Mohit and Vijay involved in the procedure. This case was decided by the Delhi High Court as technicians do not any valid certificate course on hair transplant and when involving in the hair transplantation Surgeries Complication are severe which may even lead to irreversible damage or loss of life, as in the Ashar Rasheed case in the absence of professional medical surgeon.

Discussion The concern of this Court remains that no harm befalls on innocent patients undertaking such procedure without being aware that the same needs to be carried by professionals with requisite competence and knowledge of hair transplantation. Court ordered on Imperative action to be taken by the Delhi Commissionerate of Police with strict action for unqualified aesthetic procedures to be necessitated.

³⁶ Appeal No.40/2020, Complaint No. 284/2018 (7State Consumer Disputes Redressal Commission decided on 28 March, 2022).

³⁷ W.P.(CRL) 115/2022, decided by Delhi High Court.

5.6 Reviva Clinic Chandigarh vs Grant David Alexander Lewis³⁸

After seeing a brochure of 100% guaranteed hair transplant which was uploaded in the internet and its successful advancement complainant who came from Australia for hair transplant treatment for his bald head. He also paid Rs. 4 Lakhs for treatment but there was no result and he reported the same, they offered to complementary surgery. Even after, there was no result of second surgery, this clearly establishes that 100% guaranteed of result in the brochure is just to attract and allure the costumers to extract the money. For the said treatment complainant came twice from the Australia could yield any results. As regards forum held that to pay compensation Rs.10 lakhs to the complainant for deficiency in service and negligence resulting in mental agony and harassment; expenses incurred by the complainant i.e. twice for visiting India for treatment & also for filing the appeal, towards airfare, hotel accommodation and taxi charges etc. To pay to the complainant Rs.65,000/- as costs of litigation.

Discussion This case establishes that for luring customers with misleading attractive guarantee is punishable led to enhancement of compensation for travel, suffering of complainant and repeated visits to India. Hence, the amount of compensation is increased from Rs.6 Lakhs to Rs. 10 Lakhs to meet the end of justice.

These cases highlight the potential risks and complications associated with cosmetic surgery implied with therapeutic misadventure and the importance of choosing a qualified and experienced surgeon for such procedures. Patients who suffer from botched surgeries may seek legal recourse through civil lawsuits, as well as through medical boards and regulatory authorities.

6. CELEBRITY WORLD AESTHETIC MATTERS

There have been several cases of victims of cosmetic surgery in India. In the present generation everyone giving much importance to their looks and beauty conscious. To specify celebrities, influence on cosmetic surgery on elegance became popular in recent years. If you not feeling good on your skin, you can change anytime, many patients find that doing plastic surgery boost their self-confidence. But it comes along with terrifying tales of misadventures in their latter part of life.³⁹ One of the notable examples was Micheal Jackson and his surgeries.

6.1 MICHEAL JACKSON COSMETICS SURGERY

Michael Jackson is one of the most famous examples of a celebrity who underwent multiple cosmetic surgeries over the course of his life, and many people consider him to be a victim of the cosmetic surgery industry. Jackson's appearance changed significantly over the years, and he underwent a number of procedures, including a face more symmetrical and younger-looking, including lip reductions, cheek implants, eye contouring, and botched nose surgeries.⁴⁰ Some have criticized that Jackson is a prime example of a contemporary performer, continually changing his body to look better to get attention. But this all driven by race as an effort to supress, transcend his racial identity as his logical reason behind his surgery.⁴¹ While some of Jackson's surgeries were initially successful, he reportedly suffered from complications and was left dissatisfied with the results. He underwent multiple corrective surgeries to try to fix issues with his nose and other facial features, and his appearance became increasingly unnatural over time. Jackson's surgeries also had a significant impact on his health, and he reportedly suffered from chronic pain and had to take prescription medications to manage his symptoms.⁴²

Michael Jackson's transformation began at 16 years old with his eccentric identity and love of hip-hop music. He wanted to appear nice, be noticed, and feel unique. He underwent numerous cosmetic procedures, including a chin implant and nose job in his 20s, which altered his face appearance. He also underwent a nose job in his 20s due to a tumor on his face. Despite his fame, there is no evidence to support the claim that he underwent any surgical alteration. His nose was the only aspect of his facial characteristics that evolved from childhood to adulthood. He later underwent reconstructive surgery to remove extra skin from the nose's tip. There are no records of any plastic surgery during his lifetime.⁴² Micheal has been taking drugs in a therapeutic range for both SLE and prostatic hyperplasia, but it came addiction to Jackson. However, drug intake caused his death which is certainly proved in Jackson autopsy report. Furthermore, Jackson deliberately injected the legal dose before his death which primitive example of drug addiction

³⁸ Appeal No. 4/2019, (Chandigarh State Consumer Disputes Redressal Commission decided on 5 March, 2020).

³⁹ Staughton D, Celebrity Plastic Surgeons around the world, SPE Special Practice Excellence, (Feb 11, 2024 05:29 PM), <https://specialistpracticeexcellence.com.au/blog/celebrity-plastic-surgeons-around-the-world/>.

⁴⁰ Saanvi (2023), Micheal Jackson Transformation: How much Plastic Surgery Did He Actually Have, https://scpsmag.org/celebrity/transformations/michael-jackson-transformation/#google_vignette, accessed on Feb 11, 2024.

⁴¹ Davis, Kathy, "Surgical Passing: Or Why Micheal Jackson's Nose Makes 'us' Uneasy", *Feminist Theory*, 4(1), 73-92, (2003).

⁴² *Id* at 40.

without any standard value.⁴³ Consequently, stars have been exploring numerous surgeries and to suppress the pain they administer to surpass level of medication leads to contretemps.

7. CONCLUSION

Cosmetic surgery is a medical specialty that involves improving a person's appearance through surgical or non-surgical interventions. While it can provide positive results and help individuals feel more confident and comfortable in their own skin, it is important to approach cosmetic surgery with caution and awareness of potential risk. Some of the benefits of cosmetic surgery include improved self-esteem, a more youthful appearance, and enhanced physical features. However, it is important to note that the results of cosmetic surgery are not always permanent and may require maintenance or additional procedures over time. Securing valid consent is a sine qua non in all medical surgeries and procedures. Cosmetic surgeries and procedures are no exception. From the standpoint of the doctor, a valid consent acts as a valid defence and prevents legal complications that may arise in case the patient alleges that he or she was subjected to treatment without consent. There are also potential risks associated with cosmetic surgery, such as infection, scarring, and anaesthesia complications. Additionally, cosmetic surgery can be expensive and may not be covered by insurance, making it inaccessible for some individuals. Ultimately, the decision to undergo cosmetic surgery should be carefully considered, and individuals should seek the advice of a qualified and experienced medical professional. It is important to have realistic expectations and to understand both the potential benefits and hazards of the procedure before making a final decision.

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