

Beauty or Beast: Necessity of Having a Regulatory Mechanism on Cosmetic Surgery in Sri Lanka

Danushika Lakmali Abeyrathna^{1#}

¹Lecturer (Probationary), Department of Private and Comparative Law, Faculty of Law, University of Colombo, Sri Lanka

#For correspondence; <danushikamail@gmail.com>

Abstract— People like to have a perfect figure according to their vision of “perfection”. As per the recent statistics, women continue to drive the demand for cosmetic procedures worldwide, accounting for 86.4% in year 2017. There are incidents where several people have gone through near-death experiences and even end up losing their lives while undergoing cosmetics surgeries. Some have gone through many cosmetic surgeries to have their favorite celebrity’s look and ultimately they have become defacements. Even though it is difficult to find exact statistics, the advertisements suggest that there are places in Sri Lanka promoted for cosmetic surgeries. If something goes wrong, they can file a civil action or lodge a complaint with the Consumer Affairs Authority and Sri Lanka Medical Council based on the situation. Nevertheless, prevention is always better than cure. There should be a regulatory mechanism to maintain the standards and qualifications of these places and persons conducting cosmetic surgeries. The purpose of this research is to suggest a regulatory mechanism for cosmetic surgery in Sri Lanka. For this purpose, the research will focus on three basic issues; reasons and trends behind cosmetic surgeries, remedies for mistaken cosmetic surgeries, and reasons for having a regulatory mechanism. The research methodology is based on existing domestic and foreign legislation, academic articles, case laws and reports by recognized organizations/institutions mainly in Sri Lanka, USA, UK and Brazil. In conclusion, the research will recommend a proper regulatory mechanism on cosmetic surgeries in Sri Lanka.

Keywords— Cosmetic Surgery, Civil Action, Regulatory Mechanism.

I. INTRODUCTION

Most of the people confuse the words ‘plastic surgery’ and ‘cosmetic surgery’. Even though both cosmetic surgery and plastic surgery deal with altering a patient’s body, the overarching philosophies guiding the training, research, and goals for patient outcomes are different according to the “The American Board of Cosmetic Surgery” (ABCS). These two terms have different goals. While the procedures, techniques, and principles of cosmetic surgery are entirely focused on enhancing a patient’s

appearance, plastic surgery dedicated to reconstruction of facial and body defects due to birth disorders, trauma, burns, and disease.

Breast Reconstruction, Burn Repair Surgery, Congenital Defect Repair: Cleft Palate, Extremity Defect Repair, Lower Extremity Reconstruction, Hand Surgery and Scar Revision Surgery are examples for plastic surgery. Breast Enhancement, Facial Contouring, Facial Rejuvenation, Body Contouring and skin Rejuvenation can be categorised under cosmetic surgery. However, this research is focused only on cosmetic surgeries.

There are several interesting stories about the history of cosmetic surgery. Most of the writers believe that the cosmetic surgery’s roots are in ancient India and Egypt in 2000 B.C. Firstly, some of them believe that ancient physicians in India used skin grafts for reconstructive purposes in 800 B.C. Secondly, Aulus Cornelius Celsus, a Roman medical writer who lived in Greco-Roman period, wrote a De Medicina which included surgical methods of reconstructing ears, lips and noses.

Then, throughout the early Middle age, constructive surgery continued, but, Pope Innocent III declared that surgery in any form prohibited under the church law. Again with Renaissance, surgery technics were developed with the science and technology. Serafeddin Sabuncuoglu wrote an Islamic text named Imperial Surgery in fifteenth-century included material on maxillofacial surgery and eyelid surgery. According to literature, there was a protocol for the treatment of gynecomastia which is believed as a root of modern method of surgical breast reduction.

When it comes to the modern cosmetic surgery, there is a paper entitled ‘The Deformity Termed Pug Nose, and Its Correction by a Simple Operation’ written by John Roe of Rochester published in 1887. Hence, it can be argued that cosmetic surgery is not a new concept of modern introduction, but one that has existed and evolved throughout centuries.

II. METHODOLOGY

The research will analyze the primary and secondary data from Sri Lanka, USA, UK and Brazil where access to data is possible. International and national sources will be examined. USA, UK and Brazil selected as comparative jurisdictions since USA and UK has some kind of regulatory mechanism to regulate cosmetic surgery practices. Brazil was chosen because it has recognized 'right to beauty' which has a dark side too. By looking at these three different jurisdictions Sri Lanka will be able to learn good practices regarding this emerging area of law.

III. RESONS AND TRENDS BEHIND THE COSMETIC SURGERIES

However, the existing issue is that plastic surgeries have become more common among the people, and a method that is most often resorted to in increasing numbers.

A. Reasons

One of the reasons to go through cosmetic surgery one's desire to be in line with socially accepted standards of beauty. They think that their appearance is not perfect according to their vision of "perfection". Hence, they want to have a better look than they own now and go through cosmetic surgeries. It can be argued that self-esteem and life satisfaction play a major role in cosmetic surgery.

For some, it is about emulating the look of their celebrity idols. There was a popular incident called 'Zombie Angelina Jolie', where an Iranian girl named Sahar Tabar (19 years old) went through fifty surgeries to have the look of her favourite actress Angelina Jolie.

Another reason for cosmetic surgery is social attraction. People with low self-rated attractiveness try to attract people by changing their appearance. Studies done by Langlois et al, suggest that people are differently treated according to their physical appearance. Based on this, it can be argued that the people undergo cosmetic surgeries to get more attention, and consequently, better social acceptance.

Recent studies done by Brown et al illustrated two more factors which motivate people to undergo cosmetic surgeries. Those factors are religious beliefs and media consumption. Accordingly, cosmetic surgeries are popular among females with little religious beliefs who were heavy television watchers.

B. Trends

According to the International Society of Aesthetic Plastic Surgery (ISAPS) report 2017, USA, Brazil, Japan are the top three countries for cosmetic surgeries.

Table 1: Ranking of the World's Top Eight Countries for Cosmetic Procedures

	Total Cosmetic	Total Non-Surgical	Total Procedures	World wide
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	Procedure s	Procedure s		
USA	1,562,504	294,396	4,310,180	18.4%
Brazil	1,466,245	961,290	2427,535	10.4%
Japan	294,396	1384214	1678610	7.2%

Source: ISAPS report 2017

According to the ISAPS the world's most popular cosmetic procedure is breast augmentation. The liposuction is the second and the third place goes to eyelid surgery.

Table 2: The Most Popular Cosmetic Surgical Procedures

Procedure	Number of surgeries
Breast Augmentation	1,677,320
Liposuction	1,573,680
Eyelid Surgery	1,346,886

Source: ISAPS report 2017

Furthermore, the report illustrates the fastest growing cosmetic procedures. Accordingly, Vaginal Rejuvenation (including Labiaplasty) showed the largest increase from 2016 and it is 23%. Lower body lift increased by 22% and the Buttock Lift increased by 17%. The biggest decrease showed by Facial Bone Contouring with 11% in 2017.

When it comes to gender disaggregation, women demand more cosmetic surgeries than men and it is accounting for 86.4%. There are 14.4% male cosmetic patients and it is a slight increase from 2016. Eyelid surgery, Gynecomastia and Rhinoplasty are the most popular cosmetic surgeries among men.

III. ACTIONS CAN BE TAKEN UNDER THE EXISTING LEGAL REGIME FOR MISTAKEN COSMETIC SURGERY

Unfortunately, there are times where all the cosmetic surgeries may not yield the expected results. Different countries have adopted various laws and regulations to address this issue. In this section, the researcher will only address the situation in Sri Lanka and the remedies which are available for the cosmetic patient or the consumer.

Mainly, there are three remedies which can address the situation. Firstly, complaint to the Sri Lanka Medical Council (SLMC). Secondly, lodging a complaint at the Consumer Affairs Authority (CAA). Finally, filing a Civil Action in a District Court based on professional negligence under law of delict.

A. Complain to the SLMC

Ceylon Medical Council (CMC) was established under the Medical Council Ordinance No. 24 of 1924 and then the name was amended as SLMC by the Medical (Amendment) Act No. 40 of 1998. Protection of the public and the uphold the reputation of medical profession are the main duties of the council. For this purpose, Council maintain and publish updated registers of qualified persons in various categories under section 20 and 26. Section 19D vested power to SLMC to conduct inquiries and take action against the registered person if it appears they have become unfit to practice and exercise the privileges of registration.

Even though there are no specific data to show how many cosmetic surgical service providers are there in Sri Lanka, the existing advertisements suggest that there is a considerable amount of places where they conduct cosmetic surgeries. If patients intend to undergo a cosmetic surgery, it is advisable to choose a registered medical practitioner in this field. Otherwise the chance to complain to the SLMC will be missed.

B. Complain to the CAA

Under Section 13 (1) of Consumer Affairs Authority Act No. 9 of 2003, the Authority may inquire into complaints regarding the supply of any services which does not conform to the standards and specifications determined under Section 12. Section 12 provides the Notification published in the Gazette, from time to time, determine such standards and specifications to protect consumer and to ensure the quality of goods or services. According to the interpretation section, i.e., Section 75(h) includes medical and health in to the definition of "services". Hence, the cosmetic patient becomes a consumer under the Act. But, the consumer or the cosmetic patient has to file the complaint in writing within three months of the cosmetic procedure he/she underwent.

In the case of *Shell Gas Lanka Ltd Vs. Consumer Affairs*, Court of Appeal held that when conducting powers vested to the CAA under the Section 13 of the Act, Authority has to implement those powers according to the provisions of the Act.

C. File a Civil Action

If any person act in the capacity of a professional or s/he is engaged in something which requires professional skills, the law expects him/her to show the required amount of competence in applying his/her skills as another reasonable professional in the same capacity. Otherwise s/he will fall in to professional negligence. The reason behind this is society expects a higher standard of care from him/her than an unskilled person.

If the cosmetic patient underwent a cosmetic surgery under a medical professional and has resulting complications/problems, the patient can file a case in

District Court under medical negligence. In simple terms, medical malpractice or medical negligence denotes the breach of duty of care by a doctor towards a patient. This could happen by an act of commission or omission and the could cause damage to the patient.

There are four main criteria to prove medical negligence, namely;

- 1) The doctor owes a duty of care to the patient, who is under his care.
- 2) There is a breach this duty by an act of commission or omission by the doctor.
- 3) A causal relationship exists between the breach of duty, and the damaged caused to the patient.
- 4) Such act of commission or omission of the doctor is in fact caused damage or harm to the patient.

The court will decide medical negligence according to the "Bolem Test" which is introduced by the case of *Bolam Vs. Friern Hospital Management Committee*. Accordingly, "a person is not guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art, although there is a body of opinion who would take a contrary view. The risk involved in taking a precaution may actually outweigh the advantaged of taking it."

Further there is an important statement in the case by Justice Scott which can be relevant to the cosmetic surgeries as well. "Medical practitioner undoubtedly has a duty in certain circumstances to warn his patient of the risks involved in surgery or other medical treatment but that the difficulty is to determine when that duty arises and what the nature and extent of the warning must be." A patient's bodily autonomy should be respected at all costs. The Doctor must provide the details about the material risks and benefits of the treatment and then the patient can give informed consent. This has been confirmed in the land mark judgement of *Castel vs. De Greeff*.

Besides this, there is a concept called "Corporate medical negligence" where the hospitals are found vicariously liable for their staff's actions. Hence, if a cosmetic surgery goes wrong, the patient can sue against the doctor as well as his medical centre. Most of the patients think that the cosmetic surgeon is the only person they can sue against, but cosmetic company and/or the medical centre is also liable for the malpractice.

Moreover, it is necessary to mention illustrations for medical malpractice involved in cosmetic surgeries. Firstly, there can be procedural errors where the surgeon could not perform well in the surgery, or sometimes it could be post-operative infections. Secondly, the surgeon could be a person with less experience or even lacking required skills. Sometimes they may forego their professional ethics in pursuit of financial gain.

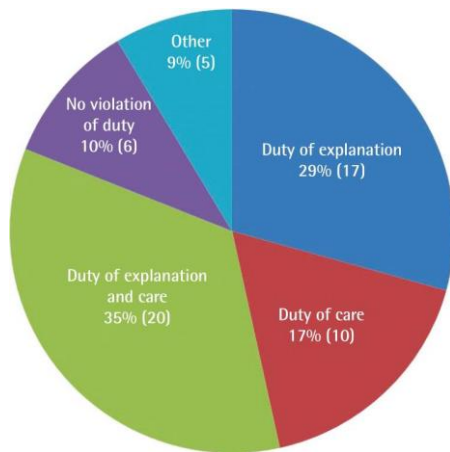


Figure 1:

Analysis of the violations of duties

Source: A Legal Analysis of the Precedents of Medical Disputes in the Cosmetic Surgery Field by Bo Young Park et al

Even though it is difficult to find global statistics, Bo Young Park et al has classified the South Korean courts from January 2000 to August 2013 according to the type of violation of duty. (Figure 01)

However, though the cosmetic patient files a case there are challenges to win the case. According to existing literature, certain biases of opinion can impact judicial decision making. For instance, judges tend to assume that these are not as usual medical negligence cases since the patients undergo surgeries to enhance their appearance, so they should not be in a hurry to blame the surgeon if something went wrong. Hence, most of the time surgeons get the benefit of doubt. In USA surgeons tend to sign off a consent form, on an arbitration agreement with their patients, and because of this, the patient will not be able to file a case in the court of law, directly. Further, this will take more time and money for the court procedure in a District Court like Sri Lanka.

IV. REASONS TO HAVE A REGULATORY MECHANISM

Even though there are several mechanisms to take actions against cosmetic surgeons, they can be utilized only if something went wrong. Nevertheless, prevention is always better than cure. Most people believe that cosmetic surgeries are easy and simple, and have unrealistic expectations thinking that they can gain a good appearance in just a few steps. But, that may not always be the case. Cosmetic surgery itself is highly complex and require advanced knowledge in the field, surgical skills as well as aesthetic appreciation. Cosmetic surgery can make you a beauty or beast depending on the skills of the surgeon. Even though, People tend to choose a surgeon by looking at the advertisement and price. This could cause

so many problems because all are not qualified to perform cosmetic surgeries. Therefore, it is necessary to have regulatory mechanism for the cosmetic surgery procedures.

Sri Lanka is still in the first stage of the industry. So, it is ideal to have a proper regulatory mechanism now itself. Since Sri Lanka does not have much experience, it is better to look at the practices by other countries. For this purpose, the research will mainly analyse the countries, USA, UK and Brazil.

A. USA

In USA there is "ABCS" for the promotion of safe and ethical practice in the cosmetic surgery specialty. There are only few laws to govern the opening and running of an office-based plastic surgery practices. But, they have to adhere to the ABCS's code of practice. Some of the key principles including in the code are accountability, compassion, integrity, respect, honesty, and surgical excellence. Use of standard examination and certification as well as a process of peer review to demonstrate high standards of expertise, knowledge, and training is the mission of the ABCS.

Even though this is not a legally binding document, this will help to maintain good practices in the USA cosmetic surgery industry. ABCS's code of practice can be used as a guideline for Sri Lanka as well. Because principles such as accountability, compassion, integrity, respect, honesty, and surgical excellence are important without boarders. If the surgeons are hoping to start a private practice, they should be obtaining the certifications, sometimes, Accreditation Association for Ambulatory Health Care (AAAHC) and/or American Association for the Accreditation of Ambulatory Surgical Facilities (AAAASF) accreditations.

According to the web advisements published by the cosmetic practitioners in Sri Lanka, there is no such requirement. But, having a certification for the business will improve the quality of the service.

B. UK

General Medical Council (GMC) in the UK is taking actions on cosmetic surgeries. According to their direction in 2016, doctors have a responsibility to irresponsible advertising and aggressive inducements. This is a significant requirement since these advertisements can easily mislead the consumers. This happens in Sri Lanka. There are so many advertisements sharing among the general public through social media. Further, the doctors have responsibility to personally manage the consent process and ensure patients know who to contact in the event of complications. In Sri Lanka this will depend on the surgeons' consent since there is no rule to regulate the process. These rules cover all cosmetic procedures people get to improve their appearance.

There are professional standards specifically for cosmetic surgery supplemented to the GMC rules, issued by the Royal College of Surgeons (RCS). This includes the two-week cooling-off period. Breach any of these two set of guidelines could lead to the GMC launching a fitness-to-practice investigation. There are no such investigation procedures on cosmetic surgery practitioners other than doctors in Sri Lanka. Hence, the cosmetic practitioners behave freely since they do not have a fear of cancellation their license.

According to the directions there are several things to do and do not by the doctors. Firstly, it is forbidden to offer procedures as prizes. Secondly, doctors should stop allowing salespeople to misrepresent treatments. Thirdly, they are required to maintain comprehensive record of consultations and outcomes. The RCS launched a certification scheme and this allows patients to search for a surgeon with the appropriate training and insurance for the procedure they are considering, more easily.

The UK is going to further strengthen their rules since according to the British Association of Aesthetic Plastic Surgeons, which is part of the RCS, more than 51,000 Britons (a record number) underwent cosmetic surgery and it is necessary to protect these patients.

It can be argued that the UK have a better regulator mechanism at the moment. Even though there are no legislations in this regard, they have guidelines and rules.

C. Brazil

In Brazil they refer to cosmetic surgery as “plástica”. In late 1950s’ “Pope of Plastic Surgery” named Pitanguy, convinced President Juscelino Kubitschek that the “right to beauty” is also a basic as other health need, because being ugly caused so many psychological problems. In 1960s he opened an institution to do plastic surgeries for the poor. So, unlike in the USA, the cost for cosmetic surgeries in public hospitals of Brazil is free or inexpensive. Because of this there are long queues in these hospitals and it is obvious because Brazil is the second-largest consumer of cosmetic surgery in the world, according to the ISAPS report 2017.

But, right to beauty has a dark side too. The government has to spend more money on to support poor people and are thus forced to extract these funds from allocations for other essential needs. According to research, women in Brazil state that being ugly is a bigger risk. So, they love to have cosmetic surgeries despite any other necessities.

According to the articles regarding cosmetic surgeries in Brazil suggest the bad influence of ‘right to beauty’ and this should be considered by the Sri Lankan law makers when deciding a law on cosmetic surgeries.

However, it is also unwise to assume that the USA, so far, offers the best remedies for issues arising out of these surgeries. Each country has introduced systems and standards that are within the gamut of their experience and resources available, and it is imperative that Sri Lanka too takes the necessary steps.

Countries like Brazils shows the dark side of the popularity of cosmetic surgery. Sometimes, it can be burden to the tax payed general public who are not interested to undergo any cosmetic surgery.

V. CONCLUSION AND RECOMMENDATIONS

To conclude, cosmetic surgeries are at an infant stage of popularity Sri Lanka. But, it can be said that in near future, this industry will be more popular in the country and sometimes cosmetic tourism also will be developed due to the cost effectiveness comparative to the other countries. Existing advertisements are testament to this.

Hence, it is important to introduce certain regulatory practice, pre-empting possible issues. When preparing a regulatory mechanism for cosmetic surgeries in Sri Lanka, it is not advisable to copy-paste the same regulation from another country. According to the above comparative analysis it can be argued that the none of these countries have perfect regulatory mechanisms to protect their cosmetic consumers. All these countries are in a trial period since this an emerging area of medical technology. Things have become more complicated than in the age where cosmetic surgeries first came in to world.

Some of countries experience negative impacts because of the most lenient laws and regulations on cosmetic surgeries. Brazil is a good illustration for this. Since USA and UK also experienced negative impacts they show more tendency to develop their laws and regulation in the field. Hence, they even have separate institutions for this. Every country experiences the impacts differently, and they are trying to adopts laws accordingly.

Hence, Sri Lanka has to look into its own social – cultural – economical background before preparing a regulatory mechanism. Following are few guidelines for the regulation.

Sri Lanka is not in a position to accept “right to beauty”, because of the financial issues and there are many important fields that require far greater attention, including the development of state-funded facilities such as universal health care and education. Hence, Sri Lanka is not in position to promote cosmetic surgeries with government assistance. This should be consider when preparing a law in this regard.

Certification system for private practice of cosmetic surgery like AAAHC and/or AAAASF in USA is a better idea to implement in the Sri Lankan context. It is advisable to make it compulsory to display these certifications and qualification to the cosmetic patient. Cosmetic practitioners should obtain a proper training before they enter into the business. Otherwise this certification should not be issued. There should be a government authority which has powers to issue and revoke these certifications. If there is a reasonable complaint against a cosmetic practitioner, the licence should be cancelled or suspended after a proper disciplinary inquiry. This will help to maintain the reputation in the industry. Moreover, these licences to perform cosmetic surgeries should be renewed at least once a five years.

The separate institution which regulates the cosmetic surgeries in Sri Lanka can be functioned under SLMC. Further, it should be mandatory to gain permission from this institution to broadcast any advertisement on cosmetic surgery and there should be rules on these advertisements like in the UK. Only the SLMC qualified doctors should be permitted to perform cosmetic surgeries in Sri Lanka.

The officers in this institution must visit these places where cosmetic surgeries are performed frequently without any prior notice to observe the condition and equipment. The cosmetic practitioners will keep the places and equipment clean and neat when there is this kind of obligation. This will help to get a quality service in the business.

Finally, it is advisable to have a code of practices for cosmetic surgeries in Sri Lanka. This should include accountability, compassion, integrity, respect, honesty, and surgical excellence like in USA. Even though this is non-binding document, this will help cosmetic practitioners to form their behaviours.

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