Should There be a Limit to Reproductive Rights?

Swan Medal Essay Prize

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"Imagine a being who is omniscient, omnipresent and omnipotent. What does such a being lack? The answer? Limitation" (Peterson, 2018). This old Jewish moral teaches an interesting concept: that limitations aren't flawed or restricting, rather beneficial and necessary. Does that hold true for issues on reproductive rights?

Those delving into reproductive rights may naturally jump to the national and international debate of legal and safe abortion. In 2017, the US reinstated its prohibition on American foreign aid to health providers promoting abortion (Sengupta, 2017). In Ireland, the recent campaign to repeal the 8th amendment of the Irish Constitution was successful (Kelly, 2018). However, reproductive rights is an umbrella term; the W.H.O. describes it as encompassing contraception, access to reproductive healthcare, protection from female genital mutilation, and this essays particular topic of interest, freedom from forced sterilization (World Health Organisation, 2009). Forced sterilization is the practice of rendering a person infertile through surgical (vasectomy/ salpingectomy) or other means. Forced sterilization is outlawed in multiple treaties such as the 2011 Istanbul Convention. Article 39 within this treaty references "the following international conducts are criminalised...performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure" (Council of Europe, 2011). This process is claimed to be justified by population control, therapeutic, punitive or eugenic reasons. Should there be total freedom from forced sterilization or are there situations that could justify its usage? This essay will explore multiple groups connected with forced sterilization, such as ethnic minority women, HIV women, Intellectually Disabled (I.D.) people, intersex and transgender people.

UNICEF, WHO, UN Woman, OHCHR, UNAIDS and other organisations wrote cooperatively "Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement" (World Health Organisation, 2014). It notes that women are particularly targeted by forced sterilization across the globe such as in Uzbekistan and India (Kumar, 1999; Holt, 2012). Ethnic minority women are especially vulnerable. For instance, Romani women were systemically sterilized in the late 1900's in communist countries like the Czech Republic. Allegedly, this was done to disrupt the traditionally high reproductive rate among the Roma population (Denysenko, 2007). Following on from this at the turn of the new century, a total of 5 Romani women brought 3 separate cases in front of the European Court of Human Rights (E.C.H.R). In V.C. vs Slovakia, a woman was forcibly sterilized in 2000 whilst delivering her second child. She was pressured during labour to sign a limited declaration for sterilization under the false pretence that she or her baby would die if she didn't comply. She was unaware what sterilization entailed, later learning that it was not necessary to save her life, but merely as a form of contraception. Given that supposed consent was obtained under a level of unethical duress and misinformation, it was deemed invalid. In 2011 the E.C.H.R. ruled in favour of V.C. based on "her right to private and family life, and her right to freedom from inhuman and degrading treatment." These are expressed under Article 3 and 8 of the European Convention on Human Rights (European Court of Human Rights, 2011; Patel, 2017).

Ethnic minority women aren't the only vulnerable group; women with HIV are also at risk of forced sterilization. The autonomy and freedom of these women can often be overlooked by health-care providers through deception, fear-mongering and misconceptions regarding HIV transmission. Sterilization in this group continues, despite evidence that the simultaneous use of antiretrovirals treatment pre/post pregnancy, and safer infant feeding practices can limit transmission rates to less than 5% (World Health Organization,

2010). These women are being coerced under blackmail threats of not receiving adequate health care, unless they cooperate (Open Society Foundation and Stop Torture Healthcare, 2011). A 2015 study revealed that a quarter of 285 women with HIV from El Salvador, Honduras, Mexico and Nicaragua felt pressured at some point by their health-care provider to undergo sterilization (Kendall and Albert, 2015).

The interagency statement previously mentioned also discusses forced sterilization of people with I.D. People with I.D. may be considered as vulnerable because of their inability to comprehend the consequences of their sexual desires. In the early 20th century, negative eugenics (limit procreation of individuals considered "unfit") was a driving factor for this movement (Friedl, 2015). Justice Oliver Wendell Holmes infamously said in the Buck vs Bell Supreme Court case (1927) "society can prevent those who are manifestly unfit from continuing their kind...three generations of imbeciles are enough" (University of Virginia, 2007). This mentality became recognised as unethical and the practice was made illegal. Following this, the concept of patients' "best interests" came into consideration. It is noteworthy that best interests are not solely medical, but also incorporate emotional and welfare issues. Re F (1990) was one of the first cases to explore this when a 36 year old female with a child's mental age formed a sexual relationship with a fellow inpatient. The concern was that of pregnancy and her inability to cope with motherhood leading to a decision in favour of sterilization (E-law cases, 1990). Whereas in the case of Re A (2000), a 28 year old male with Down Syndrome, the original ruling that sterilization wasn't necessarily in the patients best interests was upheld despite appeal (COURT OF APPEAL, 2000). In terms of minors rulings also vary. In Re D (1976) an 11-year-old girl suffering from Sotos syndrome was going to be sterilised when a psychologist challenged the decision. This resulted in the child being made a ward of the court. The judge refused to approve the operation, citing the welfare of the child, that the operation was premature and would remove the child's basic woman's right to reproduce. However, in contrast, in Re B (1988) the English House of Lords approved the forced sterilization of a 17 year old I.D. girl as she was unable to understand the causal link between sex and pregnancy (COURT OF APPEAL, 1999).

These cases illustrate that there is not one underlying template to follow for all scenarios of I.D. individuals. This ability to differentiate their individual merits and case specifics is a very important safeguard. As one paper argues it is positive that courts have a stricter reign to protect I.D. people and "the only exception should be the particular case in which all medical and social factors having been taken into account..." (Rowlands and Amy, 2017). It is stated that setting the threshold too low could mistakenly hinder someone's reproductive freedom.

Finally, transgender and intersex people are also victims of forced sterilization. A European Union statement on discrimination of trans and intersex individuals states that bias against transgender people "manifests itself most clearly in the enforcement of certain unnecessary, yet obligatory medical treatments and procedures e.g. sterilisation... to access certain rewards... (e.g. change of name and issuance of identification documents in the appropriate gender") (Office for Official Publications of the European Union, 2012). Lee's paper stated that, in 21 Council of Europe countries, proof of sterilization was required in order to change one's legal sex categorization. The author argued that LGBT treaties would need to be established to protect this breach of human rights. (Lee, 2015) The Commissioner for Human Rights of the Council of Europe said this process did not demonstrate respect for individuals, especially because it seemed to make transgender people the only European people under threat of state-enforced sterilization. We are seeing a shift away from this mentality as demonstrated by rulings in the Federal Supreme Court of Germany and the Austrian Administrative High Court that a prerequisite to gender change cannot be mandatory sterilization surgery (Office of the UN High Commissioner for Human Rights, 2013). Intersex children or those born with atypical sexual characteristics may undergo sex normalising surgery or non-medically indicated cosmetic surgery, which may entirely remove their reproductive ability. The argument in favour of this practice is psychosocial, allowing the child to clearly identify themselves as one sex for better social and developmental function. However, Juan E Mendés, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment condemned this process of non-consensual intervention, which can leave individuals with "permanent, irreversible infertility, and causing severe mental suffering" (Special Rapporteur

Report, 2016). The interagency report recommended that health-care professionals delay interventions until maturity has been reached by the child in order to allow them to participate in informed decision making (World Health Organisation, 2014).

There are various fascinating areas of reproductive rights to debate on. This essay explored multiple groups connected with forced sterilization, such as ethnic minority women, HIV women, I.D. people, intersex and transgender people. It appears that the vast majority of cases that do occur, are unethical and unnecessary. Therefore, people deserve near total freedom from forced sterilization and to have control over their own reproductive rights. It could be argued that there are only a few circumstances where a limit is acceptable, and sterilization may be necessary. Such as cases of intellectually disabled people where thorough evaluation has concluded sterilization is in the patient's best interests. For the majority of other cases, people shouldn't have sterilization forced upon them.

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