Expert Panel on Hymenoplasty

Ethical, legal, and clinical implications of hymenoplasty

Published 23 December 2021

Contents

Foreword from the Expert Panel co-chairs Dr Pallavi Latthe and Professor Sir Jonathan Montgomery

We are grateful for the opportunity to consider the question of whether the provision of hymenoplasty should be criminalised as part of the government's strategy to protect women and girls from violence. It has been a privilege to work with the panel, which has a wide range of expertise and experience.

The expert panel has concluded that the prohibition of virginity testing, which we all agreed will be an important step, would be undermined if hymenoplasty was not also banned. We recognise that this involves restricting the availability of services that some doctors are prepared to offer and that some women choose as a strategy to protect themselves. However, in many cases requests for hymenoplasty are the direct result of family coercion. Further, the belief that hymenoplasty would offer protection exists only where the context is a series of unacceptable attitudes and beliefs about virginity that put women at risk. These will persist unless we have the courage to tackle them.

We believe that a ban on hymenoplasty is necessary at this time. It would protect the rights and freedoms of those who are vulnerable and help the government's drive to promote a sound public morality in which women and girls are safe from violence. So long as the option of hymenoplasty is available, women will be placed under pressure to undergo the procedure. Only criminalisation will make it safe for them to refuse. We hope that the government will take steps to create an offence at the earliest opportunity.

Professor Sir Jonathan Montgomery, FMedSci

Professor of Healthcare Law, University College London; Chair of Oxford University Hospitals NHS Trust and Co-Chair of the Moral and Ethical Advisory Group

Dr Pallavi Latthe MD, FRCOG

Consultant Obstetrician and Gynaecologist, Birmingham Women's and Children's NHS Foundation Trust and Chair of the British Society for Paediatric and Adolescent Gynaecology

Introduction and executive summary

The UK government's Tackling Violence Against Women and Girls Strategy has proposed legislation to criminalise 'virginity testing', which is not a medically indicated procedure and is based on repressive and inaccurate views about female virginity and the hymen. This has been identified by the World Health Organisation as a violation of the victim's human rights.

The Strategy also announced a programme of enhancing awareness in community, education and clinical settings to tackle the harmful misconceptions and misbeliefs surrounding virginity.

Government was concerned that demand for hymenoplasty surgery - a temporary cosmetic procedure to repair the hymen - was driven by a repressive approach to female sexuality and closely associated with virginity testing. They established this independent expert panel to look further into the clinical and ethical aspects and to consider whether it should also be criminalised.

The Expert Panel on Hymenoplasty held two virtual meeting to discuss the ethical, legal and clinical implications of the procedure, reviewing the available evidence as outlined in the background paper and the need for further evidence prior to agreeing the recommendations set out in this report.

We have reflected on evidence on the lived experiences of individual women and girls who have been subject to hymenoplasty or been under pressure to consider it. We have examined more general principles about regulation and the role of the criminal law in our society in the light of these experiences. Our conclusions are based on bringing these concerns together.

We recommend that the government should introduce legislation to create a criminal offence of hymenoplasty at the earliest opportunity alongside the prohibition of virginity testing. We explain this primary recommendation and make further recommendations below.

We also recommend that the government invest in training, produce guidance, and provide resources to support charities and organisations aiming support women and girls who are victims and safeguard those who are placed under pressure to undergo hymenoplasty.

What is hymenoplasty and when is it carried out?

Hymenoplasty (also known as hymenorrhaphy or hymen reconstruction or hymen repair) is a surgical intervention which involves reconstructing the hymen. There are a number of different techniques to achieve this but generally it involves stitching the torn edges of the hymen together with dissolvable stitches. It is usually performed with the aim of ensuring the women bleeds when she next has sexual intercourse.

The physical risks of the procedure include

- infection
- acute bleeding during the procedure
- scarring and narrowing of the opening of the vagina
- reduced sensation/ increased sensation (pain rather than pleasure)
- sexual difficulties.

The psychological risks of the procedure include

- depression
- anxiety
- post-Traumatic Stress Disorder
- reduced or no libido
- suicide

The available evidence suggests that hymenoplasty is mainly carried out in the UK in private clinics by registered medical practitioners. Doctors who perform the procedure are reported as believing that it is in their patients' interests to protect them from pressure. However, there are no medical indications for the procedure and no medical benefits to women who undergo it.

There is very limited evidence to show how common the practice of hymenoplasty is. The Independent Healthcare Provider Network informed the panel that they were

unaware of any members who carried out the procedure.[1] Although journalists have identified a number of clinics who offer it, it is not clear how often they carry out the procedure or what proportion of those women and girls who do undergo the procedure travel to the UK for it.

There are no data on whether hymenoplasty is being carried out in the UK by non-clinicians, but it is possible that this does occur. One of the case studies provided to the Panel described a women who 'failed' a virginity test after being raped, she was then gang-raped by male relatives and subsequently forcibly 'sewn up' by her aunties in order to restore her honour and 'virginity'.

Although prevalence is unclear, there is significant evidence of women and girls being under intense pressure to undergo hymenoplasty, including in order to enable families to place them under further pressure to marry a person of the family's choice. This is not limited to young women and there is evidence of women in their 30s being subjected to a hymenoplasty.

There are media reports of women and girls seeking hymenoplasty, believing that it will give them protection from being shamed and subjected to honour abuse.[2] While this suggests that there may be occasions when the procedure is regarded as the 'lesser of two evils', the panel is not aware of any evidence that women see hymenoplasty as beneficial in the absence of background cultural and family pressures.

[1] The Independent Healthcare Providers Network (IHPN) is the representative body for independent sector healthcare providers. IHPN England has 69 members drawn from a diverse range of healthcare sectors including acute, primary, community, clinical home healthcare, diagnostics and dentistry.

The harms caused by hymenoplasty

In addition to the direct harms caused by hymenoplasty, the availability of hymenoplasty causes indirect harm to women and girls by reinforcing myths and attitudes that place many women at risk. These include

- the myth that all women who are virgins will bleed on their first sexual intercourse
- the belief that if a woman does not bleed on her wedding night, this brings shame on their family
- the attitude that virginity is a 'sexual status' that dictates the 'worth' of women
- the attitude that women who are not virgins are shameful.

The Panel concluded that the carrying out of hymenoplasty implies that there is an acceptable basis for these myths and attitudes.

These unacceptable attitudes are directly linked to honour-based abuse and violence. This includes in some cases killings, coercive control, and also suicides by those placed under pressure.

It is the need to prevent these harms that has led the government to propose the criminalisation of virginity testing. They are similar to the harms that lie behind the practices of female genital mutilation (FGM) and forced marriages that are prohibited by the criminal law.

Women and girls who seek hymenoplasty usually do so under intense family pressure, sometimes subject to coercive control and sometimes when they are at risk of forced marriages. This means that there is no significant difference between the repressive contexts that lead people to request procedures of hymenoplasty and virginity testing.

It is intended that hymenoplasty would ensure that women and girls bleed when they next have sexual intercourse, but as with women and girls that have a naturally intact hymen bleeding is not guaranteed. It is possible that such a 'failure' of the procedure to achieve the intended result would increase the risks that women who have been subjected to it will become victims of honour-based violence.

Permitting hymenoplasty accentuates these unacceptable pressures by 'normalising dishonesty' and can expose women and girls to further risk of abuse if the fact that they have undergone the procedure becomes known. [3]

The Panel concludes that failure to prohibit hymenoplasty would undermine the government's commitment to address the violence against women and girls by criminalising virginity testing. Virginity testing is inextricably linked with hymenoplasty. Hymenoplasty will usually be preceded by an illegal (once the proposed legislation is passed) virginity test. The continuing availability of hymenoplasty would serve as an incentive for families to seek virginity testing of women and girls.

[3] 'Britain's 'Virginity' Clinics Uncovered' Hardcash Productions, broadcast 1 November 2021.

The case for criminalisation

Criminal offences should only be created when there is clear case to do so. This would usually be based on convincing evidence that they are needed in order to protect people from harm. The Panel is satisfied that hymenoplasty causes significant harm to both individual and communities of women and girls.

It is not possible to assess prevalence precisely, but in the absence of benefits to women of the procedure, the clear evidence that hymenoplasty is openly offered in UK clinics calls for a response.

The Panel considered that the criminalisation of FGM, even when data on prevalence in the UK were very limited, has played an important role in challenging cultures that regard FGM as acceptable. Criminalisation has

- signalled to those who seek to perpetrate the practice that their intentions breach fundamental human rights
- legitimated agencies challenging communities to change their practices
- clarified that apparent consents are given under impermissible pressure.

If legislation were to criminalise virginity testing but permit hymenoplasty, this would be interpreted as a signal that the government was tolerant of the myths and attitudes around virginity and only concerned to ban some extreme practices. This would perpetuate the cultural context that fosters disrespect for women's and girls' human rights. The Panel believes that a criminal offence of hymenoplasty would therefore play an important part of the government's strategy to reduce violence against women and girls and that without such a step the strategy would be undermined.

In most areas of medical practice, the requirement of consent ensures that patients decide for themselves whether the benefits to them of any procedure, outweigh any risks involved. The use of the criminal law to prohibit hymenoplasty would deny women and girls access to the procedure, but it will also enable women to refuse it on the grounds that it would be illegal and not by reference to their specific circumstances. This reduces the risk that they will be accused of being disrespectful to their families. This legitimation of refusal without specific explanation is one of the rationales for using a minimum age of consent to protect young people against being pressurised into unwanted sexual activity. The Panel believes that women and girls need to have similar protection from pressure to undergo hymenoplasty so that they do not need to justify their refusal to accept the procedure.

The creation of a criminal offence in the UK would make it clear that the harmful myths and attitudes around female virginity are not acceptable. This would provide a societal mandate to empower campaigners for the rights to women and girls to tackle honour-based abuse, violence and coercion. It would also legitimise the work of agencies who support women and girls who are placed under unacceptable pressure to conform with expectations about virginity. Only criminalisation can express the categorical disapproval of these pressures.

Regulatory options

The Panel has considered a range of regulatory options. These include the potential for the law of consent to provide sufficient protection, regulation of individual practitioners offering hymenoplasty, and organisations providing the premises on which they might be performed. It has concluded that only the criminal law can hope to provide women and girls with adequate protection. In this section we explain this view and consider whether, if a criminal offence is not created, regulatory options might provide women and girls with sufficient protection.

Regulation may be important even if hymenoplasty is criminalised as it is possible that this step might drive it 'underground' and away from regulation. This would increase the risks to women and girls of infections and other complications from the procedure.

The requirement of consent

Medical procedures can only be performed with the free consent of the patient. If a hymenoplasty were to be performed on a woman or girl who had not validly consented, then this would constitute both a criminal offence and a civil wrong.

The circumstances in which an apparent consent will be found to be ineffective in law are narrow and require consent to be vitiated by undue influence or duress. Consent may remain valid even when the person consenting is reluctant to do so due to pressure being placed upon her. Only where her ability to resist is overborne would duress invalidate an apparent consent. This line is difficult to assess even in court proceedings.

In many cases, women and girls will be faced with extensive pressure from their families and communities. This may not always be easy for clinicians to assess. Guidance could be issued/strengthened to state that requests from hymenoplasty must be treated as a safeguarding concern, however, the evidence from lived experiences suggest to us that this is unlikely to provide sufficient protection in these circumstances. Therefore, the Panel does not believe that it is viable to rely on the legal requirement for consent to prevent women being coerced.

No one may give a consent on behalf of an adult women. For those adults who lack capacity consent, then health care professionals are required to act in what they believe to be in their patient's best interests.[4] The lack of any medical indication for the hymenoplasty, the fact that it often fails to ensure that women bleed on next

[4] Mental Capacity Act 2005, s5. Adults with Incapacity (Scotland) Act, s 47. Mental Capacity Act (Northern Ireland) 2016, s 9.

intercourse, and the concerns over pressure being placed on women, all suggest that a court would be unlikely to accept that the procedure was in the best interests of an incapacitated woman if it was asked to rule on a contested case. However, the fact that hymenoplasty is known to be offered in UK clinics demonstrates that individual practitioners may reach a different conclusion. Only prohibition would prevent them arguing that they believe a woman benefit.

It is unclear whether consent to hymenoplasty on a minor could be validly given by a parent. Male circumcision has been held to be within the scope of parental consent, although a consent from one parent has been held to be ineffective in the face of opposition from another.[5] Parental consent is not permissible in relation to FGM because the practice has been criminalised. The Panel believes that it should be made clear that parental consent to hymenoplasty would never be permissible and the best way to achieve this would be prohibition of the procedure as with FGM. If hymenoplasty is not criminalised, then it should be specifically provided that parental consent would be invalid and only a court could authorise the procedure.

Regulation of individual practitioners

The available evidence suggests that in the UK hymenoplasty is generally carried out by registered medical practitioners. They must be registered with the General Medical Council (GMC) which has the power to revoke a doctor's registration and therefore right to practise if they fail to comply with professional standards. These are set out in 'Good Medical Practice' and associated guidance, including in relation to consent.

The GMC's guidance on 'Decision making and Consent' advises doctors on how to support patients who are vulnerable and experiencing domestic or other forms of abuse. It states that they 'should not proceed with treatment if they do not think it will serve the patient's needs'. The specific guidance on cosmetic surgery also stresses that doctors must assess whether an intervention is likely to meet a patient's needs, and satisfy themselves that the patient's request is voluntary. It states that

> 'If you believe the intervention is unlikely to deliver the desired outcome or to be of overall benefit to the patient, you must discuss this with the patient and explain your reasoning. If, after discussion, you still believe the intervention will not be of benefit to the patient, you must not provide it.'[6]

The Panel considers that if this existing guidance was properly applied, then it would preclude doctors from offering hymenoplasty. The procedure cannot guarantee that a

[5] Re J (A Minor) (Prohibited Steps Order: Circumcision) [2000] 1 FLR 571.

patient will bleed on intercourse and therefore be perceived as a virgin. It is also unlikely that requests are wholly voluntary. Furthermore, regulatory action against doctors who carry out hymenoplasties first requires a complaint to be made and there being sufficient evidence that the doctor had not met the expected standards of good practice. Based on what we have heard about the experience of individual women or girls, it does not seem reasonable to put the burden on them to raise complaints with the regulator. This cannot on its own drive out unacceptable practice.

The Royal College of Obstetricians and Gynaecologists has indicated its opposition to hymenoplasty. It would be possible to work with the Royal College of Surgeons and other Professional Societies to issue guidelines explaining why hymenoplasty is not an appropriate procedure for their members to undertake. However, such guidance would not enable these bodies to discipline doctors who do not follow it. This would not be sufficient to protect women and girls.

Regulation of provider organisations

Hymenoplasty is currently a regulated activity, this limits the premises on which the procedure can be offered and provides some assurance about safety. It would be possible for the regulatory agencies to establish standards for the provision of hymenoplasty. However, to do so would imply that it is an acceptable procedure provided that those standards are met. For this reason, it is not appropriate to rely on regulation under the Health and Social Care Act 2008 and/or devolved nation equivalents.

Potential exemptions or defences

It is rare for the law to deny people access to procedures that clinicians are prepared to offer. This is permissible under Article 8 of the European Convention on Human Rights where people's autonomy is limited to protect the rights and freedoms of others. Such limitation must be no more than is necessary in a democratic society to protect the rights of others or health and morals. There must be a fair balance between the rights of individuals whose choices are limited and the interests of the community.[7]

Where the law restricts the availability of procedures it commonly also defines some exceptions or defences to deal with cases where the underlying rationale for prohibition is thought to be outweighed by the patient's rights or interests. This is the case in relation to terminations of pregnancy, where statutory defences exist to the prohibition of procuring a miscarriage. The courts also recognise that it may be appropriate to use drugs that might briefly shorten life if they are palliative as part of proper end-of-life care. The Panel has considered whether criminalisation of hymenoplasty should be accompanied by exemptions or defences.

We do not consider that a medical exemption would be necessary or appropriate for the offence that we propose. We do not believe that the scope of offence would capture other procedures that are required for women's medical care. This places hymenoplasty in a different category to FGM, where it has to be made clear that women can still be offered medical procedures such as an episiotomy during childbirth and perineorraphy for prolapse symptoms. Nor is there any need to create an exemption for forensic examinations. A medical exemption is therefore unnecessary to protect clinicians.

We have noted that some of the medical and bioethical literature considers hymenoplasty to be a form of cosmetic labial surgery, which is permissible in the UK but is still a contested practice.

Some clinicians believe hymenoplasty protects women against honour-based violence, abuse and coercion. It is not clear that it does so. Hymenoplasty is not a reliable protection as it may well be ineffective in its attempt to ensure that women bleed. It exposes them to additional risks if the fact that they have undergone the procedure is discovered.

Clinicians who support offering the procedure do so because they wish to provide relief from the harmful myths and attitudes that the Tackling Violence Against Women

[7] R (Aguilar Quila) v Sec State for the Home Department [2012] UKSC 1 AC 621; In the matter of an application by the NI Human Rights Commission for judicial review [2018] UKSC 27.

and Girls Strategy aims to tackle. Those who adopt this approach suggest that the need for cultural change should not be regarded as relevant to current clinical decisions. Yet continuing provision serves to reinforce these oppressive cultural pressures. We consider that it would not be appropriate to permit doctors to provide hymenoplasty for non-medical reasons as this would provide such a significant loophole as to undermine the rationale for criminalisation.

We have considered the position of women and girls who might seek hymenoplasty after rape as a restorative process and part of their recovery from the wrongs against them. The Royal College of Obstetricians and Gynaecologists (RCOG) and Institute of Psychosexual Medicine (IPM) have reviewed this issue and advised the Panel that there is no evidence that hymenoplasty supports physical, emotional or psychological recovery from rape or other forms of sexual violence. They also advise that it may actually cause flashbacks to the previous rape or sexual violence experienced by an individual, causing further psychological damage.

The Panel has concluded that surgery is unlikely to provide significant benefits to survivors, might cause them harm, and that a focus on physical response would undermine the holistic support that women are entitled to receive. We therefore do not believe that there should be any exemption from the offence to enable hymenoplasty to be offered to rape survivors.

The need for additional actions

As with the ban on Virginity Testing, it will be necessary to engage with communities to educate them on why it is necessary to prohibit hymenoplasty. Resources will be required to ensure that this is effective, including for those working with children and young people.

There will be an urgent need to provide guidance and training for agencies as criminalisation may prompt significant contacts in the short term and place women and girls at risk as communities adjust to the new legal position.

It is likely that a request for hymenoplasty will indicate that there are safeguarding issues. Those receiving such a request should always consider whether action is required to protect the women and girl in question and other family members. There will be a need for guidance on risk assessment and referrals after requests for hymenoplasty, which should be consistent with the responsibilities of professionals and agencies when concerns arise in relation to FGM, forced marriages and honour-based violence. The Panel recommends that an expert group should be convened to produce comprehensive guidance on these issues.

A prohibition on advertising the provision of hymenoplasty should be created alongside the ban on the procedure itself in order to facilitate engagement with the communities who promote it.

An offence of procuring or arranging for hymenoplasty on another person should be created. This offence should cover the whole of the UK and have extra-territorial effect in order to avoid woman and girls being taken to other countries to have hymenoplasty forced upon them.

It should be made clear that the woman or girl who has been subjected to hymenoplasty cannot be liable under the criminal offences, which are designed to protect her.

The Panel recognised that there is limited research on hymenoplasty in the UK context and that there are risks of undesirable consequences when criminal offences are created. These may include driving the practice ‘underground’, possibly reducing contact between services and women and girls at risk. We therefore recommend that the impact of a ban on hymenoplasty should be formally reviewed after an agreed period to consider its implementation. Issues to be considered would include whether the desired cultural change has been achieved, prohibition has led to unregulated practice, enforcement, and the effectiveness of safeguarding of the women and girls affected.

Recommendations

The government should introduce legislation to create a criminal offence of hymenoplasty alongside the prohibition of virginity testing. This should also

- Prohibit the advertising of hymenoplasty procedures
- Make procuring or arranging for hymenoplasty to be performed on another person an offence, including when carried out abroad.
- Make it clear that the woman who has been subjected to hymenoplasty cannot be liable under the criminal offences

There are no grounds on which a medical exemption would be necessary or appropriate, and no defence would be required for health professionals.

No exemption is appropriate for the victims of rape as this would risk further harm to them.

Risk assessments should be carried out by professionals who receive a request for hymenoplasty to see whether action is required to protect the women and girls in question or other family members, including referral to appropriate agencies. Guidance should be provided to support decisions on this matter, which should be consistent with the approach to other areas of honour-based violence against women and girls. An expert group should be convened to draw up comprehensive guidance, which will be required for many different agencies.

Adequate resources should be provided for engagement with communities (including children and young people) on the prohibition of hymenoplasty, education and training for agencies, and for support of those at risk.

The impact of a ban on hymenoplasty should be formally reviewed after an agreed period to consider its implementation, including whether the desired cultural change has been achieved, prohibition has led to unregulated practice, enforcement, and the effectiveness of safeguarding of the women and girls affected.

Published to GOV.UK in pdf format only.

[Directorate/Division/Branch]

www.gov.uk/dhsc