

FEATURE ARTICLE

Many of us are familiar with mentally handicapped persons who have experienced non-consensual sterilizations that have occurred in the past as a result of ignorance and fear and manipulation. Something some of us may not be aware of is that this procedure is not a thing of the past in the respect that some family physicians continue to strongly advise parents to have their child sterilized.

Arguments in Favour of Non-Consensual Sterilization

A. Benefits to Society and State:

i) Sterilization for eugenic purposes, based on the assumption that certain types of individuals are socially more desirable than others, as well as the scientific claim about the inheritability of certain traits. Therefore attempts should be made to eliminate undesirable traits and to encourage desirable ones. The improvement of future generations is said to be accomplished in two ways 1) by increasing the percentage of desirable persons, by decreasing the rate of propagation of inferior persons, therefore eliminating the undesirable traits from the gene pool [negative eugenics]. This objective is met through use of non-consensual sterilization, marriage restriction, sexual segregation and permanent institutionalization (Ones who believe in this view argued that mental illness, mental retardation, epilepsy, criminality, pauperism and various social defects were almost exclusively hereditary), or 2) by encouraging the propagation of desirable persons by improving or encouraging the desirable characteristics in the gene pool [positive eugenics]. This objective is pursued by using such technology as screening and artificial insemination.

The primary emphasis of the Eugenics Movement was on negative eugenics and it was from this that much of the legal history of sterilization emanated.

The first eugenic sterilization law was enacted in Indiana in 1907 and by 1937, thirty-one states, and in Canada, Alberta (1928) and B.C. (1933) had adopted this legislation.

ii) The "Alberta Sterilization Act" was drafted in 1928 and was repealed in 1971. During the time it was in effect, 4725 cases were proposed for sterilization and 2822 approved. In the final year (1971) 78 cases were proposed, 77 approved and 55 sterilized.

Persons who could be referred to the Board for possible sterilization fell into five categories-

- 1) Psychotic patients
- 2) Mental defectives who suffered from arrest or incomplete development of mind which existed before they were 18 years of age whether arising from inherent cases or induced by disease or injury
- 3) Individuals suffering from neurosyphilis with deterioration not amounting to psychosis but not responsive to treatment
- 4) People suffering from epilepsy with psychosis or mental deterioration
- 5) People suffering from Huntington's Chorea

The two reasons for sterilization was the danger of the transmission of any mental disability or deficiency to offspring or the risk of mental injury to offspring.

There was also a provision in the Act that no person associated with the decision or its execution could be liable in a civil action. There was no appeal from decisions made by the Board.

Psychotics who the Board considered capable of giving consent, had to give that consent and for those incapable of giving consent, a spouse, parent, guardian or Minister of Health could give consent. For mentally handicapped persons, the consent of the individual/guardian was not necessary.

iii) Sterilization to relieve the burden of dependency - The argument is presented that society cannot afford the cost of long-term care and social services for the mentally handicapped and their offspring who may need the same care. If certain persons place a financial burden on the state that is greater than the benefit they provide, then the state can justifiably establish policies to reduce these costs. One way of doing this is for the state to decide who will be allowed to reproduce.

A less direct argument is that of population control. The tendency has been to assume that the selected group who should be chosen not to have children should be based on societal contribution. Groups spotlighted on this basis have tended to be mentally handicapped and those on welfare.

B. Benefits to the Handicapped Themselves:

- i) Therapeutic reasons - these include sterilizations performed to protect the physical health of the person.

Three general categories of physical conditions make sterilization medically advisable-

1. Diseases which make a pregnancy medically dangerous to the life and health of the mother
2. Diseases of a congenital or hereditary nature that makes it probable that a pregnancy will result in a still born or severely and incurably deformed children.
3. Cases of frequent pregnancies which increase the probability of complications with subsequent births (ie. series of prior births by caesarian sections.)

ii) Inability to parent - another argument is the mentally handicapped's supposed inability to raise children. This argument is raised both with respect to societal concerns and with respect to benefits to the "retarded" themselves. Societal good - Society has the right to protect itself from being swamped with mental retardation and the high financial cost. The children will have mental handicaps because of parental social inadequacies. Sterilization is justified on the basis that mentally handicapped persons make poor parents, that poor parents tend to produce children prone to crime or other social problems, and that to stop procreation by these people is an act of protection against a state interest in ensuring that children receive sufficient care and attention to develop normally. This concern is both moral and economic.

Mentally handicapped individuals are assumed to be unable to provide for the physical, intellectual and emotional development of the child. It is assumed that mentally handicapped persons might not be capable of providing a safe environment. It is also argued that sterilization frees the mentally handicapped person to be involved in sexual activity. Persons would have to be prohibited from sexual relations otherwise.

Finally, it is argued that frustration might develop from the person's attempts to deal with a developing child and it would benefit this person not to be put in this situation.

iii) Inability to Handle the Financial Burden - The cost of raising a child is compounded for mentally handicapped persons considering most are on social assistance or have low paid jobs. With the additional cost of a child, they may have to return to institutional care if unable to make ends meet within the community. Financial problems may lead to psychological or emotional problems.

iv) Personal Hygiene - A complete hysterectomy is seen as beneficial for those women unable to look after their menstrual care. It would relieve the burden of care placed on persons responsible for these persons, as well as reducing the unsanitary personal hygiene condition. The time and energy that would be involved in training personal hygiene could be used for training in other skills.

C. Benefits to Future Generations:

Children of such parents would be spared an uncertain rearing and future in which they might become as dependent as their parents. It is morally irresponsible to conceive and knowingly bear a child with genetic defects and/or to bear a child who will not have the opportunity to develop normally because of parental incapacity.

Every child has the right to reasonable mental and physical health, right to a good mental life and right to be free of genetic defect.

Arguments Against Non-Consensual Sterilization

A. Genetic Fallacy: There is not enough scientific evidence to support sterilization as a method of reducing the number of genetically defective persons. To have a significant impact on the proportion of mentally handicapped in the population would require substantially broadening the categories of persons being prohibited from having children.

Causes of mental handicaps may be divided into 3 categories-

1. Genetic factors - purely genetic causes, some are transmitted by a dominant gene and some by a recessive gene.
2. A combination of genetic and other factors - although genetic, it requires the influence of other factors to produce the mental handicap, ie., PKU
3. Factors that do not relate to genetics- mental handicap may result from non-genetic factors, ie, trauma and meningitis, may cause brain injury and mental handicap.

In addition, an impoverished intellectual or emotional environment may stunt mental growth and development.

When the mental handicap is attributable to a dominant gene the risk of a mental handicap to their children is 50%. Since the mentally handicapped parent carries at least one defective gene and since it is dominant, the gene (and hence the mental handicap) will appear statistically in 1/2 of the offspring.

A recessive gene results in mental handicap only when both

parents carry and pass on the recessive genes. If a mentally handicapped person (mental handicap caused by recessive genes) marries a non-carrier, the child will carry the gene but not manifest the trait. If both parents carry the recessive, defective gene, there is a 25% chance that the child will be mentally handicapped, while 50% will be carriers of a recessive gene.

The logic of applying statutes to all classes of mentally handicapped persons without regard to the dominant or recessive genes or fact that only certain forms of mental handicaps are genetic at all is obviously faulty.

There is an estimated 89% of all inherited mental handicaps that are transmitted by persons who themselves are not affected. Even if all mentally handicapped persons were sterilized, there would be approximately 11% reduction in the mental handicaps in the following generation.

A sterilization program for this purpose, would require the sterilization of all carriers of genetic abnormalities, which would involve the sterilization of at least 10% of the population.

B. Socio-Political Consequences - Some writers have maintained that the medical/genetic reasons given in support of sterilization may be only justifications for rationalizing the extermination of a certain group of people.

In a study of the Board's operation, the following results were found.

- 40.9% male and 59.1% females were approved for sterilization
- 35.3% males and 64.7% females were actually sterilized.

They did not only approve more sterilizations for women but a disproportionately high number were actually sterilized. Reason suggested for this, was related to the fact that the grounds "incapable of intelligent parenthood" were applied only to females recommended for sterilization.

A high percentage of children were presented for sterilization.

Children were more likely to be sterilized than adults. Children were more likely to be diagnosed as mental deficient rather than psychotic or schizophrenic, therefore could be sterilized without consent.

Where consent was needed, parents tended to listen to advice of "experts".

Sterilization of people "not employed" was comparatively high and the proportion of "domestics" sterilized was very high. None of the "professionals" presented to the Board were sterilized.

A small number of British and West European ancestry were presented to and approved by Board. On the other hand an large number of East European, Indian, and Metis origin were presented and approved.

The argument of sterilization has been presumed to be both scientifically valid and socially acceptable. The eugenic rationale, the unfitness to parent rationale, and intelligence tests has been scientifically disproved for the most part. IQ tests can be attacked on a number of grounds. The fitness to parent issue - criteria used to measure that ability are not reliable. We do not have an inbred expertise to put on diapers, feed or provide emotional support, etc... These are generally learned experiences after a parent has a child.

The presumption that a mental handicap necessarily precludes the ability to parent cannot be justified.

How Did This Ever Become Legislation?

1. The scientific facts convinced the public of the morality of the action. There was public pressure to do something about the belief that the mentally handicapped were a threat to the gene pool, an overwhelming financial burden, danger to well-being of children. It reflects fear of sexuality, fear of the difference, fear of quality of species and suggest that such fear in turn spawns hatred of races, classes and social categories.

2. Families often suffer from guilt for having a mentally handicapped child. They feel responsible for the handicap and the need for services for their child, and are the victims of irrational fears from members of the community.

The same stigma results in the mentally handicapped person who sees himself as having less social worth and incapable of raising children.

C. Psychological Impact of Sterilization - Effect on a person, who has been sterilized without consent, is the definition of

In a recent article of "Canadian Medical Association Journal" it states that such consent is not "sufficient protection for a Physician where the operation is not essential for the treatment of the patient". Even if the guardian consents, in "the best interest of the individual" this is not sufficient to relieve the physician of criminal or civil liability.

The court appointed guardian has the power and authority "to consent to any health care that is in the best interests of the dependent adult". It is likely that therapeutic sterilization is included under this definition, however, it would be difficult to justify non-therapeutic sterilization.

Information obtained from:
Protection of Life - Sterilization
Law Reform Commission of Canada
