



Female Genital Mutilation: A Physical Attack on the Basic Human Rights of Young Women

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Abstract

There is no doubt about this universal fact that women across the globe especially young girls have been subjected to harassment and violence since time immemorial in the garb of customary practices and traditions. Mutilation of Female Genitalia (FGM) is also a type of barbaric tradition, blatantly violent and has no ethical and religious basis. It involves all the inhumane procedures relating to the semi or overall amputation of peripheral genital privates or erstwhile forms of harm in female reproductive organs for non-remedial purposes. It has been seen that women around about 200 million globally who had gone through the consequence of FGM and nearly 3.8 million females are at the risk of circumcision.³ This results in the severe violation of human rights which has been outlined in numerous international human rights documents. Despite all this, FGM is still flourishing globally and Dawoodi Bohras community in India is a prime example of that. Therefore, human right based legislation on FGM is the need of the hour. Hence, in this paper, the researchers have made an attempt to put forward the blueprint of exploitation and violence faced by females in the name of female genital mutilation which not only hampers their individual dignity and privacy, but it also puts a question mark on the so-called quest of women empowerment all around the world.

Keywords: Mutilation, Custom, Human Rights, Community, Adolescent girls, Discrimination, Circumcision, Religion, Legal norms, medical purposes

Introduction

It is a sad truth of our society that women have always been considered as a vulnerable group by the academicians and scholars even in this fast growing modern world, and the reason behind this categorization is that although women represents half of the human inhabitants, they also constitute for the 75% of the world's deprived and nearly 2/3 of uninformed populace as well, and the reason behind all this is the non-stop discrimination of women and young girls at the hands of mighty and dominant folks as they remain devoid of their basic rights and liberties which are inherent in them by virtue of being a human. Just because of their gender they suffer affliction and sexual abuse not just by their families, but also from the entire male dominated society.

One of such inhumane practice faced by women is the problem of genital wounding and female circumcision.⁴ This observance of tradition is mainly prevalent in Asian and African regions where the communities who profess this practice believes that it reduces a women's libido cum sexual desire and is conducted immediately following the female attaining puberty or prior to puberty. But on the contrary, FGM results in several health consequences such as bacterial and viral infections and other psychological problems that tend

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3 Unicef, "Female genital mutilation statistical overview and exploration of the dynamics of change," *Reproductive Health Matters* (2013), pp. 184–190; WHO (2016)

4 Maratha C Nussbaum, *Women and Human Development*, UK, (Cambridge University Press 2001)

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to hamper their healthy body growth.⁵ The designation of FGM adopted by WHO tends to encompass the psychological, physical, and human rights characteristic of this practice which is as follows-

“Female genital mutilation (FGM) denotes all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons”.⁶

With the objective of strengthening legislative frameworks plus policy incorporations and further to ease the path of medico-legal research and training about this issue, the WHO working group suggested the adoption of the classification of diverse categories of FGM in 1995 and again in 2007 which are mentioned herein-

Type 1: fractional or whole elimination of the clitoris.

Type 2: amputation of the clitoris and labia minora, with or without expurgation of the labia majora.

Type 3: constriction of vaginal opening, with or without clitoris removal, by severing and pulling jointly the labia minora and/or labia majora to form a sort of seal. The sliced margins of the labia are typically fused together, a process known as “infibulations.”

Type 4: All supplementary detrimental actions in connection with the genitalia of women for non-medical purposes, for example: pricking, piercing, etc.

The most common type of genital mutilation which is prevalent in most countries is the type 2 which tend to comprise up to 80% of all FGM practiced in different countries like Somalia, Ghana, Indonesia, India, Pakistan, etc. but the most extreme form is the infibulations.⁷

Although female genital mutilation is condemned and prohibited impliedly in various international instruments such as Article 25 of UDHR 1948 which states that “every individual has the right to a standard of living adequate for health and well-being”, this particular Article has been applied so as to put forward the notion that FGM hampers the right to well-being and physi-

cal veracity. In a similar fashion FGM is also violative of CEDAW 1979 and as it mainly experimented upon young girls in the age group of 1-15 years, therefore it is also violative of rights of the United Nations Convention on the Rights of the Child, which will be discussed in detail eventually in the paper.

In the Indian context, the patriarchal structure of the community is responsible for all these kinds of social and gender related inequalities which come to the forefront in the name of FGM. This is one of the major secrets of contemporary Indian prejudice, or more precisely, the cruel treatment of women. It is commonly practiced by the Syedna-led Dawoodi Bohras group in India, a sect of Shia Muslims. Locally, this heinous conduct is known as “Khatna.” And with the filing of a writ petition for the ban on FGM against the Bohras community in the case of *Sunita Tiwari v. Union of India*⁸ it became quite evident that FGM is not only followed in African and Gulf countries but also in Indian sub-continent as well, which not only requires strong legislative framework and policy for its elimination, but also a pragmatic shift in the minds of people who have followed it as a part of their essential customary and religious practice.

International Endeavors and Response Towards the Problem of Genital Mutilation (FGM)

For fulfillment of the objective and its commitment towards eliminating the menace of female genital mutilation, the United Nations and its various different specialized agencies like WHO, UNICEF, UNGA, UNHRC etc. has from time to time produced several different international human rights instruments and conventions which has expressly discussed in detail about the protection of human right to dignity, bodily integrity, privacy and sexual orientation rights of woman⁹ like for example under Article 1 of the “Convention on the Elimination of All Forms of Racial Discrimination

5 M. Donohue, *Female Genital Cutting: Epidemiology, Consequences, and Female Empowerment*, 2006, <http://www.medscape.com/viewarticle/546497> (Aug 14, 2022)

6 World Health Organization, *Eliminating Female Genital Mutilation: An interagency statement*, WHO, UNFPA, UNICEF, WHO, Geneva, p.4, (2008).

7 S. Abdel-Azim, “Psychosocial and sexual aspects of female circumcision”, 19, *African Journal of Urology*, (2013)

8 WP (C) 286/2017, AIR 2018 SC 442

9 UNICEF, “The UN Role in Human Rights Respect, Convention on the Rights of Child”, www.unicef.org/crc/files/Survival_Development.pdf (last visited on July 06, 2022)

Against Woman (CEDAW) 1979, right to be free from gender discrimination has been enshrined. Whereas Article 2 of the same Convention explicitly defined violence against women that includes physical, sexual and psychological violence and with broad interpretation FGM comes under its ambit. General comment No. 25 of CEDAW imposes duties upon the member States of the CEDAW Convention to make sure that there is no direct or indirect bias being committed in opposition to women in their laws and they must be provided effective safeguarding not only from any physical harms but also mental and racial bodily injuries or exploitation¹⁰

In the year 2006 UNGA expressly discarded any socio-religious beliefs and practices as validation for any kind of sexual violence against woman. It expressly endorsed a resolution against in 2012 and 2014 to launch a ban on the evil of FGM on a global and municipal scale.¹¹

Even the UN Woman Commission has sanctioned a pledge for closing the practice of FGM but despite it, nearly about 75% of women put their daughters to the barbaric custom of genital mutilation in Dawoodi Bohras community in India.¹²

United Nations Organisation since its establishment, has been able to bargain above 70 human rights treaties and conventions which aimed mainly on the human rights of helpless groups like women and children and International Bill of Rights is a prime example of that which created a culture of human rights upliftment all around the world by incorporating rights like the right to existence, right to bodily veracity, right to freedom from torture for which a separate convention was constituted in 1984, right to privacy, right to sexual orientation, right to utmost reasonable corporal and mental health which is specifically provided in Article 12 of ICESCR¹³ and all these above mentioned rights comes on the verge of violation when anywhere in world female genital mutilation is practiced and followed. How-

ever, the acceptance by agreement of the “UN General Assembly Resolution Intensifying Global Efforts for the Elimination of Female Genital Mutilation” in 2012 of which India is also a signatory is a testimony of this fact that increased commitment by member states has been pledged to end this harmful practice of FGM. *Genital mutilation of females* is now acknowledged globally as an infringement of their rights and keeping this in mind February 6th is now renowned as *Global Day of Zero Tolerance for Female Genital Mutilation* with the aim of ending the practice of FGM till 2030 as global United Nations goal. General recommendation No.14 and 19 respectively of CEDAW (1979) stated that gender based violent behaviour that discords the gratification of human rights of women is discrimination within the scope of Article 1 of CEDAW and therefore effective measures needs to be taken with a view of eradicating the practice of FGM. This practice, however, also comes under the purview of United Nations Convention Relating to Persons with Disabilities 2006 of which India is a party and there is no denying of the fact that FGM disables a female everlastingly from being able to enjoy sexual contentment at her own will. Hence there is clear cut case of sensory impairment in genital mutilation.

Legal Issues Involved in FGM: Statistical and Data Based Overview of the Problem

As far as the cruel practice of female genital mutilation is concerned, there are two main legal intricacies involved in this problem, that is, the blatant violation of very basic human rights to bodily integrity, privacy, sexual manifestation, and health and the other one is the notion of gender inequality which brings in the element of discrimination.¹⁴ Very recently Nigeria has actually brought forward a statute banning FGM and in this way taking the tally to a number of 23 nations forbidding

10 Richa Verma, “Female Genital Mutilation –Know about This Barbaric Practice Existing in India and Worldwide”, *The Logical Indian*, 2016, (Jul. 8, 2022) thelogicalindian.com > Story Feed > Awareness.

11 GA Res 69/150, UN Doc A/69/481

12 Shalini Nair, ‘At least 75% Bohras women admit female genital mutilation, says study’ *Indian Express* (Feb. 6, 2018) <https://indianexpress.com/article/india/75-bohra-women-admit-female-genital-mutilation-study-5052869/>

13 ICESCR: Article 12, *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

14 McCaffrey M, Female genital mutilation: consequences for reproductive and sexual health. 10, *Sexual and Marital Therapy*:189–200 (1995)

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the custom of FGM in Africa only.¹⁵ United States has also been active in regard to curbing this practice as it drafted a federal law prohibiting the taking out of the girls from U.S. for the purposes of performing FGM. Campaigns have also been stated by equality now calling upon the agencies of U.N. to bring into the limelight this serious issue of human right demolition in front of the whole world.

Not to mention the consequences of this practice over the world has seen many young girls and women suffering from several health complications such as severe bleeding, infections, tetanus, pain shock, sexual dysfunction and other psychological damages which hampers their overall growth and development of mind.¹⁶

Now, it is correct that evidence and data gathering about FGM has played a major role in bringing positive developments in the form of laws, regulations, resolutions and guidelines to eliminate this practice from the society. Evidence is essential to comprehend not only the field area of the practice but also to find out how and where the practice is shifting, so in this way social dynamics about the problem comes on the forefront that ultimately helps in policy formulation and implementation of programmes related to abandonment of FGM. In one report of UNICEF¹⁷ it has been mentioned that as many as more than 30 million girls are at the jeopardy of being circumcised over the upcoming decade, if the present trend about the FGM will continue to persist. While FGM is nearly widespread in Somalia, Djibouti and Egypt, it tends to affect only 1% of girls all across the world. However, in nations where it is not extensive, it mainly determined to precise places of a particular nation and is not forced to the municipal borders. According to facts and data, FGM occurs not only in African nations, but also in Colombia, India, Malaysia, Oman, Saudi Arabia, and the United Arab Emirates, with intricate variations in the type performed, circumstances surrounding the practise, and the scope of affected pop-

ulation groups in these areas. Female genital mutilation also exists in some regions of Europe and Australia and North America as well which for the several last years have been the destination for the migrant population that still practice this menace of genital mutilation in their respective nations. The attitude of the woman and girls towards the FGM practice also deviates and varies across countries as the highest percentage of support for the practice is found in countries like Mali, Sierra Leone, Guinea, and Gambia and in Somalia but in most countries in African region and in the Gulf with the rep data on the behavioural patterns and preferences, bulk of the girls and woman are of the view that this practice should be extinguished in the guise of woman's human rights protection and upliftment.¹⁸ Over the past three decades, FGM has generally become less common. Around 1 in 3 females aged 15 to 19 years have engaged in the practise today, compared to 1 in 2 in the 1990s, among the 31 countries having nationally representative prevalence statistics. However, not all nations have advanced, and the rate of deterioration has varied. In nations with varied levels of FGM incidence, such as Burkina Faso, Egypt, Kenya, Liberia, and Togo, there has been a rapid fall in the number of girls between the ages of 15 and 19 years. Over the past 30 years, there has been an overall drop in the occurrence of FGM, although not all nations have made improvement, and the rate of decline has been uneven. Because of its ingrained social and cultural practises, FGM has proven to be very resistant to change. However, mounting data indicates that education can be a potent tool for influencing attitudes against FGM and, eventually, altering behaviour. Compared to girls whose mothers have little education, those whose mothers have a primary education have a 40% less chance of being circumcised by their family groups. Women with a secondary education are even less likely to continue the practise in many nations' future generations. The SDG target 5.3, which calls for the elimination of FGM by 2030, can be

15 Dare FO, Oboro VO, Fadiora SO, Orji EO, Sule-Odu AO, and Olabode TO, Female genital mutilation: An analysis of 522 cases in South-Western Nigeria. 24 *Journal of Obstetrics and Gynaecology*, 281–283 (2004)

16 UNFPA "Female genital mutilation (FGM) Frequently Asked Questions," www.unfpa.org/.../female-genital-mutilation-fgm-frequently-asked-quest..., (last visited on Feb 09, 2022)

17 United Nations Children's Fund and Gaeta Rao Gupta. "Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change." *Reproductive Health Matters*, vol. 21, no. 42, 2013, pp. 184–90. *JSTOR*, <http://www.jstor.org/stable/43288321>

18 Tale, Female circumcision in Africa and beyond: the time frame of a difficult issue. In: Hernlund Y, Shell-Duncan B, eds. *Transcultural bodies: female genital cutting in global context*. New Brunswick, Rutgers University Press: 91–106 (2007)

achieved by acting on this perception to hasten the fight against the practise of FGM.

India and the Problem of Female Genital Mutilation

If we look into the structural threads of Indian society both of the major Hindu and Muslim communities, we will find that gender prejudice continues to be a mammoth problem as women have been shifted to the inferior status both within the household and in the work platforms as well due to the existence of deep rooted traditional patriarchal norms. But as far as this problem is concerned the bloat or the stigma of female genital mutilation which is levied upon India is mainly because of Dawoodi Bohras group which is a sub-sect of Shia Muslim, and they call this evil practice with the name of Khatna. In addition to that this practice is also rampant in Bohras of Pakistan. Women in this sect are made to believe that FGM is pivotal so as to certify the recognition of their people and because of the dominant patriarchal set up generally women are scared and embarrassed to raise their dissent against such oppression.¹⁹ However unlike other countries like Nigeria, India till now do not possess a specific women centric law against this particular practice, but we certainly have laws and guidelines that tends to prohibit any kind of sexual violence and sexual assault on young and adult women like the Indian Penal Code and POCSO Act of 2012. In this line, the Indian judicial system has also played a very vital role in upholding the very basic human rights that relates to the body of an individual. For example the case of *K.S. Puttaswamy v. Union of India*²⁰ is a prominent example of this fact that our courts are sensitive towards the issue of the right to physical integrity, privacy and personal dignity of human that includes young girls and women which has been incorporated in Article 21 of the Constitution of India via judicial interpretation. Even in the POCSO Act of 2012 it has been provided that if someone touches the genitals of a female who is a minor or a young girl perhaps for any reasons which are not related to medical procedures then the person who is committing the act can be punished with the prescribed punishment as provided therein. Also, if

someone causes any kind of grievous hurt as provided in section 320 of the IPC, then that individual will be held liable under the provisions of section 326 of IPC 1860. Another national policy for children that came in 2013 pointed out that any religious practice should not be used to stop children from enjoying their fundamental rights and if we read all this in consonance, we will find that the Indian government is obligated to eliminate the practice of FGM and punish any individual and community engaged in the continuance of female genital mutilation. And yes, although there is no such mention of FGM either in the Indian Penal Code, or in any other women statute and regulation like POCSO Act, yet provisions of these can be brought into effect in the name of sexual violence to order to curb the practice of FGM. Every Indian resident has the basic right to exercise, profess, and promote their religion, as stated in Article 25 of the Constitution of India. The Apex Court has eliminated the exception for “important religious practices” that are excluded from constitutional protection, even though it is not expressly specified in the Indian Constitution. According to this view, courts have the authority to determine what constitutes an “important” practise and what does not, as well as to ultimately exempt such practises from the examination of fundamental rights. In the Indian perspective, the case of *Sunita Tiwari v. Union of India* proved to be a stepping stone in order to curb completely the practice of FGM from our country.²¹ In this case a three Judge’s bench of Justice AM Khanwilkar, Justice Chandrachud, and Justice Arun Mishra while pointing out some important issues to be dealt with referred the case to the Constitutional Bench which necessitates an evaluation of the fact if woman circumcision is an indispensable sanctified tradition or not. And apart from that does it infringes upon the privacy of the girls upon whom the modus operandi is performed without their approval or whether it infringes the basic corporal autonomy of woman and girls provided in Article 21 of the Indian Constitution, and lastly whether the practice of FGM will be considered as an essential religious practice under Article 25 and 26 of the Constitution of India.

19 Pinak Datta, “*Female Genital Mutilation: An Open Secret in India*”, Youth Ki Awaz, available at www.youthkiawaaz.com/.../female-genital-mutilation-an-open-secret-in-i... (last visited on Jul 09, 2022)

20 (2017) 10 SCC 1

21 AIR 2018 SC 442

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No doubt FGM has always remained a grave issue and will remain to be one until and unless effective steps have been taken to eliminate it completely from its roots. It can also be said that FGM is basically equivalent to telling a woman that her body is there just for the purposes of carrying the baby.²² FGM will still be practised in secret on the streets, regardless of how much one complains or how many rallies they organise with others who share their views. No one will follow the lead in this manner; it is known as the positive deviant method. Therefore, requesting a ban on the conduct is a means to an end rather than the objective itself. As far as prohibition goes, it is the first, not the ultimate step. We must take action right away because the crisis and lockdown have raised the likelihood that FGM instances will raise. And now it is all up to the upcoming Constitutional Bench of the Supreme Court who will dispose the writ petition of Sunita Tiwari to look into the matter with utmost sincerity and must direct our legislature to frame an effective and time bound law so as curb FGM.

Conclusions and Suggestions

Female genital mutilation is a kind of a monstrous tradition which indulges in it the health hazards and social stigma, the impacts, or repercussions of which not only affects its sufferers but also impacts the family and the society at large.²³ In the background, legal intervention on the part of the government and courts provides a ray of hope to annihilate this practice in its very roots. Education and legal awareness among the women about their bodily rights at the very basic primary school level is a promising step to develop enlightenment in their minds about the harms which they usually sustain because of the cruel practice of FGM. Role of NGO's and semi-governmental institutions and organisations dealing with upliftment of the woman's right is very crucial in this regard as they can initiate door-to-door programmes and campaigns mainly among those communities who practice FGM to make them aware about the harmful impacts of this tradition. Political will is also required to make long lasting changes as too many governments across the whole world are failing to implement the laws so to eliminate FGM. So even in

presence of a law to curb this practice, there are high chances that the practice will remain relevant if the executive authorities do not reflect enough will and might change the scenario that is existing in the current times. The realisation that FGM results from gender disparity and the inferior standing of women in the social order must serve as the foundation for all efforts to eradicate the practise. Therefore, promoting equality between men and women as well as between girls and boys must be a part of anti-FGM campaigns. So far as data-based research is concerned on FGM, it has been found out from the reports of UNICEF and WHO that rapid revolution currently under process has gained pace and there are bright chances that millions of girls soon will be spared from the fate of their mothers and grandmothers. It is also quite possible to eradicate FGM by allocating resources effectively. Future studies should examine the results of intervention measures to prevent FGM. Targeted interventions can involve cultural and ethnic proponents of the problem.

However, the Indian picture reveals that in spite of the implied provisions of IPC and POCSO Act dealing with bodily protection of woman and young girls so as to protect them from any kind of sexual violence, evidences has suggested that FGM is still practiced and followed in the Dawoodi Bohras community in India, Hence, there is a need for special clause or amendment in these laws to expressly bring in the notion of female genital mutilation along with preventive and rehabilitative procedures so as to enable the courts to deliver complete justice in regard to effectively eliminate this practice from Indian society. FGM is just a brutal tradition that causes its victims to suffer pain, sadness, and emotional injury for the rest of their life. Such traditional practise may grow more prevalent in a culture where women are governed by the whims of conservative males of their community. Women should understand their rights over their bodies from an early age, and the community must acknowledge these rights. FGM might be perceived as being highly private, even though it is prohibited, to avoid punishment. It is high time for India to enact explicit legislation against the barbaric practise of FGM to put an end to it forever.

22 Ghadially R, Update on female genital mutilation in India. *Women's Global Network for Reproductive Rights Newsletter*, January–March (1992)

23 G.I. Seroura, *Medicalisation of Female Genital Mutilation*, 19, *African Journal of Urology* (2013)