

ERADICATING FEMALE GENITAL MUTILATION: LONG ROAD AHEAD?

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ABSTRACT

Female Genital Mutilation is practiced in more than 30 countries including India. The practice of female genital mutilation towards young girls is a very derogatory, barbaric and inhumane. FGM interferes with normal healthy female genital tissue and sexuality, and is a violation of every woman's right to the highest attainable standard of health. FGM violates a series of well-established human rights principles, norms and standards, including the principles of equality and non-discrimination on the basis of sex, the right to bodily integrity, the right to life (in cases where the procedure results in death), and the right to the highest attainable standard of physical and mental health. FGM reflects deep-rooted inequality and constitutes an extreme form of discrimination against women. FGM is practiced in India by the name of Khatna or Khafz/Khafd by Bohra community, a Shia sub-sect found most prominently in Gujarat, Rajasthan, Maharashtra, and Madhya Pradesh, although there are no official records on the same, but this has been going on behind the stage. This paper is an attempt to highlight the silent existence of this life-threatening practice behind the curtain of culture and religion, tracing the reasons for practice, its consequences, existing legislations, role of international organizations, lastly it emphasizes on the alarming need of a specific legislation on criminalization of Female Genital Mutilation in India.

Keywords- Discrimination, Human Rights Principles, Equality.

INTRODUCTION

“When you kill a person, you kill him once and he gets over it that very second. But when a girl or woman is subjected to FGM, she loses everything she has. Her career is over, mountain of trust demolishes and her societal pride dies.

Female Genital Mutilation (FGM) is procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. While it is mainly carried out on girls between the ages of 1 to 15 years, occasionally, adult and married women are also subjected to this procedure.

A Joint Statement of the WHO/UNICEF/UNFPA on Female Genital Mutilation classified FGM/C into four types based on the severity and extent of cutting.

Form 1 is the removal of the foreskin (clitoral hood), with or without the removal of all or part of the clitoris.

Form 2 is the partial or complete excision of the labia minora by extracting the clitoris.

Form 3 is the removal and stitching and narrowing of the vaginal orifice of part or all of the labia minora and/or labia majora. This is regarded as infibulation as well.

Type 4 contains all other forms of dangerous non-medical procedures for the female genitals, like clitoral pricking and piercing, cauterization, clitoral/labia stretching, rubbing, and the introduction into the vagina of corrosive substances.

Despite the global and national efforts to promote abandonment of the practice, FGM remains widespread in different parts of the world. Over 200 million girls and women have undergone FGM. The practice is most common in 30 countries across Africa and in some countries in Asia and the Latin America and among migrants from these areas.ⁱ

As far as Indian scenario is considered, Female Genital Mutilation, has recently been an eye opener for the Ministry of Women and Child Development and has set the mechanism in motion. While FGM practice is prevalent in India and since time immemorial, this issue has seen the light of the day when human rights lawyers raised this issue by filing a PIL in SC for

the issuance of the Mandamus writ or another direction banning FGM practice in Indiaⁱⁱ. Supreme Court has considered several factors, namely the female minors of a specific Muslim group which are subject to the practice of FMG, also known as khatna, which is a method of removing part or all of the female genitalia, are subjected to severe health problems, posing risks to their lives. Since this practice is an offence under Indian Penal Code sections 320, 322, 334, 335, 336, 337, 338 and 340, which is a general law and there is no specific law on the issue, the problem is further compounded. Constitutionally speaking, this practice is a gross violation of Article 15 & Article 21 of the Indian Constitution.

An estimated 200 million women and girls alive today are reported to have been subjected to FGM; FGM rates are growing, indicating the growth of the global population. Girls and women who have undergone FGM live primarily in sub-Saharan Africa and the Arab States, but it is also practiced select countries in Asia, Eastern Europe and Latin America. It is also practiced among migrant populations throughout Europe, North America, Australia and New Zealand.

If FGM practices continue at recent levels, 68 million girls will be cut between 2015 and 2030 in 25 countries where FGM is routinely practiced and more recent data are available. This number of girls cut each year is projected to rise to 4.6 million girls in the year 2030. ⁱⁱⁱFGM is therefore a global concern.

FEMALE GENITAL MUTILATION: TRACING THE REASONING BEHIND THE PRACTICE

Depending on the region, there can be various reasons why FGM is performed. There is no uniform justification for FGM practice. Justifying views differ across time and cultures, but certain definitions such as psychosexual, sociological, and sociological are highlighted by the WHO

- **Psycho-sexual reasons** - FGM is carried out as a way to control women's sexuality, "which is sometimes said to be insatiable if parts of the genitalia, especially the clitoris, are not removed.

- **Sociological or cultural reasons-** It is seen as part of a girl's initiation into womanhood and an intrinsic part of a community's cultural heritage); FGM may also be associated with cultural ideals of femininity and modesty.
- **Hygiene and aesthetic reasons-** This may be the reason for those communities that consider the external female genitalia as ugly and dirty);
- **Religious reasons** (the UNFPA maintains that while FGM is not endorsed by Christianity or Islam, "supposed" religious doctrines may be used to justify the practice);
- **Socio-economic factors** (in some communities FGM is a pre-requisite for marriage, especially in those communities where women are dependent on men economically).
- To 'save' a girl for marriage
- Higher dowries for girls and women seen as more 'chaste'
- All causes are rooted in gender inequality

Other reasons cited by the WHO include- an attempt to ensure women's premarital virginity since FGM is believed to reduce libido, and therefore believed to help her resist extramarital sexual acts.

FEMALE GENITAL MUTILATION & ITS CONSEQUENCES

FGM has no health advantages whatsoever, but in many ways, it is seriously harmful for Girls & Women. It involves the removal and harm of healthy and normal female genital tissue and interferes with the natural functions of the bodies of girls and women. The risk of FGM increases with increasing severity (which correlates to the amount of damaged tissue), while increased health risks are associated with all types of FGM. Further, a WHO multicounty study confirmed that women who had undergone genital mutilation/cutting faced significantly increased risks for adverse events during childbirth, and death rates among babies during and immediately after birth were higher for those born to mothers who had undergone FGM/C.^{iv}

Immediate complications may include: extreme pain, heavy bleeding (haemorrhage), swelling of the genital tissue, fever, infections such as tetanus, urinary issues, and problems with wound healing, genital tissue injury, shock, and death.

Long-term complications can include: urinary problems (painful urination, infections of the urinary tract); vaginal problems (discharge, itching, bacterial vaginosis and other infections); menstrual problems (painful menstruation, trouble passing menstrual blood, etc.); (pain during intercourse, decreased satisfaction, etc.) Increased risk of complications of childbirth (difficult delivery, excessive bleeding, caesarean section, need to resuscitate the infant, etc.) and deaths of newborns; need for later surgeries: e.g., sealing or narrowing of the vaginal opening (Type 3) may lead to the practice of later opening the sealed vagina to allow sexual intercourse and childbirth (deinfibulation). Often genital tissue is stitched several times again, even after birth, so the woman undergoes frequent opening and closing procedures, raising both immediate and long-term risks further; psychological issues (depression, anxiety, post-traumatic stress disorder, low self-esteem, etc).

FGM AND HUMAN RIGHTS: INTERNATIONAL PERSPECTIVE

In 2012, the United Nations adopted a resolution banning FGM worldwide, stating that “all States should take all necessary measures, including enacting and enforcing legislation, to prohibit female genital mutilations and to protect women and girls from this form of violence, and to hold perpetrators to account.”^v

Due to the nature and consequences of FGM/C, it is a violation of the human rights of women and children. Female genital mutilation violates a series of well-established human rights principles, norms and standards, including the Principles of Equality and Non-Discrimination on the basis of sex, the right to life when the procedure results in death, and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment as well as the rights identified below. As it interferes with healthy genital tissue in the absence of medical necessity and can lead to severe consequences for a woman’s physical and mental health, female genital mutilation is a violation of a person’s right to the highest attainable standard of health.

- The right to be free from all forms of discrimination against women
- The right to life and physical integrity, including freedom from violence
- The right to health
- The rights of the child

FGM is a violation of the human rights of women and girls as recognized in numerous international and regional human rights instruments. Few are listed below:

The Universal Declaration of Human Rights, 1948: provides a broad foundation for the protection of women against the practice of FGM. Article 3 states that “Everyone has the right to life, liberty and security of person.” Under Article 5, “No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. Article 7 states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 8 declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Article 12 protects an individual’s privacy while Article 25 addresses motherhood and childhood. More generally, Article 28 states: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

International Covenant on Civil and Political Rights (ICCPR) (1966): Prohibits discrimination on the basis of sex, and mandates states parties to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” (Article 2) In addition, the ICCPR protects individuals from “torture or cruel, inhuman or degrading treatment” and arbitrary or unlawful interference with his or her privacy. (Articles 7 and 17) The ICCPR states that everyone has the “right to liberty and security of person” and that “[e]very child shall have ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” (Articles 9 and 24)

The preamble to the International Covenant on Economic, Social and Cultural Rights (1976): acknowledges that human rights “derive from the inherent dignity of the human person.” Article 3 declares that the state parties must “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” Article

12 protects the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, and the Convention on the Rights of the Child (CRC), 1989, focus on the rights of women and girls and also provide a basis for the elimination of FGM as a human rights violation. CEDAW also defines discrimination against women as:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (Article 1)^{vi}

The right to life is considered a basic human right and is protected by a number of international instruments, including Article 3 of the UDHR, Article 6(1) of the ICCPR and Article 6 of the UNCRC.

In the early years, FGM/C was framed as a health issue and its elimination focused more on the health consequences of FGM/C. This led to increased medicalization of the practice with FGM/C being carried out by medical professionals rather than traditional practitioners. However, from a human rights perspective, medicalization of FGM/C does not, in any case make it acceptable as the practice itself violates a number of basic human rights.^{vii} The focus thus shifted to elimination of the practice itself. In addition to agreeing that FGM violates these fundamental rights, a number of methods provide that governments have a responsibility to ban the practice and to protect vulnerable women and girls. This duty is performed by the introduction of legislation and the introduction of other social and cultural education methods. Legislation encompassing these human rights and governmental obligations relevant to FGM practice should be enacted:

- The duty to modify customs that discriminate against women;
- the duty to abolish practices that are harmful to children;
- the duty to ensure health care and access to health information; and

- The duty to ensure a social order in which rights can be realized.

FGM AND MEASURED BY WORLD HEALTH ORGANIZATION

From the perspective of public health, FGM is not only a human rights issue, but also a matter of concern. FGM has been labelled a dangerous practice by the World Health Organization (WHO) and has been correlated with increased health risks in the short and long term.

In 2020, the United Nations called for a decade-long resolution to eradicate the practice of FGM by 2030 under Sustainable Development Goals on Gender Equality.^{viii}

Timeline of measures adopted by the WHO:

- 1997- The WHO, along with the United Nations Children's Fund (UNICEF) and the United Nations Population Fund, released a joint statement against FGM practice.
- 2008, WHO released a statement on the abolition of FGM in favor of increased campaigning for its abandonment, called: "Eliminating female genital mutilation: an interagency statement," along with 9 other United Nations partners. This statement provided information about the practice of FGM accumulated over the previous decade.
- In 2010, in collaboration with other main UN agencies and international organizations, WHO published a "Global strategy to stop health care providers from performing female genital mutilation"
- A UN General Assembly resolution on the abolition of female genital mutilation was adopted in 2012. Building on a previous 2013 study, UNICEF released an updated report in 2016 to document the prevalence of FGM in 30 countries, as well as global values, perceptions, patterns, and programmatic and policy responses.
- WHO initiated the first evidence-based recommendations on the management of health complications from FGM in 2016, in partnership with the UNFPA-UNICEF Joint Programme on FGM. Based on a systematic analysis of the best available data on health interventions for women living with FGM, the guidelines were established.

In 2008, Resolution WHA61.16 on the elimination of FGM was adopted by the World Health Assembly, stressing the need for sustained action in all sectors - health, education, finance, justice and women's affairs.

World Health Organization (WHO) efforts to eliminate female genital mutilation focus on:

- Enhancing the response of the health sector: creating and implementing protocols, resources, training and policies to ensure that health care providers are able to provide girls and women living with FGM with medical care and therapy and to collaborate in order to stop the practice.
- Evidence building: awareness creation about the causes, effects and costs of the procedure, including why the practice is carried out by health care professionals, how to abandon the practice, and how to care for those who have undergone FGM.
- Increased advocacy: development of publications and advocacy resources for international, regional and local efforts to end FGM, including tools for policy makers and advocates to evaluate FGM's health burden and the possible benefits to public health and cost savings of preventing FGM.

FGM: AN INDIAN PERSPECTIVE

FGM is widely practiced in India by the Dawoodi Bohra, a sub-sect of the Shia community. FGM is also practiced by other Bohra sects, such as Sulemani Bohras and Alavi Bohras, as well as some Sunni groups in Kerala. As per religious books, "khafz" is the colloquial term used for FGM by individuals who practice FGM in India. In India, among the Bohra community, this practice is popular, where the ritual is referred to as "Khatna" or "Khafz/Khafd." In general, Khatna involves cutting the tip of the clitoris of a girl when she is 6-7 years old^{ix}.

In India, the Government has claimed that there is no record of data on FGM. *Although it is important to note that since FGM is not banned by any specific legislation in India, there can be no concrete record on the number of cases.

Female Genital Mutilation violates constitutional rights and promotes gender inequality. Courts interpret laws and apply IPC and POCSO Act to deal with it.

- FGM violates Article 21^{xi} of the Indian Constitution, which is enshrined in the Constitution of India as a constitutional right to life and personal liberty. This also entails the denial of the right to privacy. FGM abuses Article 15^{xii} of the Indian Constitution which is also a fundamental right, prohibiting discrimination based on caste, sex, religion or place of birth.
- **The Protection of Children from Sexual Offences Act, 2012 (POCSO Act)** addresses penetrative sexual assault by any person on any child, further The Goa Children's Act, 2003 defines 'Sexual assault' and specifies it as "deliberately causing injury to the sexual organs of children".
- **INDIAN PENAL CODE:** Section 320 in The Indian Penal Code provides for grievous hurt, i.e., if any person causes hurt to another person in any of the way specified in the said section, he shall be liable for causing grievous hurt which is a punishable offence. Further, Section 326 in the Indian Penal Code: It states whoever, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death is liable for the offence under this section. FGM is a practice in which a part of the clitoral hood is cut with a knife or a blade or any other sharp object. Thus, it would be an offence under S. 326IPC. Touching of female genitals except for medical purpose is perpetuating a crime which could be thus punished by IPC and requires no any penetration.
- India is a signatory of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, which specifically mentions FGM as a form of gender-based discrimination and violence against women. The CEDAW clearly states that it is the responsibility of States Parties to take "all appropriate measures" to "modify the social and cultural patterns of conduct of men and women" in an effort to eliminate practices that "are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".

- **The National Children's Policy, 2013 (NPC)** states that: "The State is committed to taking legislative, policy or other affirmative measures to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom, particularly those who are marginalized or disadvantaged; to ensure equal opportunities for all children; and to ensure that no custom, tradition, religion or religion is allowed to violate or restrict or prevent children from enjoying their rights. It also recognizes and prioritizes the right to health, survival, development and protection as inalienable rights of children. It commits to creating a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces, and protecting children from all forms of violence, abuse, exploitation and discrimination, or any activity that harms their personhood or impedes their development.
- The centrally sponsored **Integrated Child Protection Scheme (ICPS)**, launched in 2009 by the Ministry of Women and Child Development, aims to create and establish an efficient protective system for vulnerable children. Its objectives include institutionalizing and integrating essential services and strengthening structures for emergency outreach, institutional care, family and community-based care, counselling and support services; strengthening child protection at family and community level, and promoting Preventive measures to protect children from situations of vulnerability, risk and abuse. Children in difficult circumstances, through an interface with various sectors, including health, education, judiciary, police, and labour, among others. Systems under ICPS promote right to privacy and confidentiality of the child and institutionalization of the child is seen as a measure of last resort.

In September 2018, Sunita Tiwari, a human rights activist, filed a public interest litigation calling for the practice (of Khatna) to be prohibited. The practice is closely related to female genital mutilation, she claimed. She argued that the practice is discriminatory against women, violating the right to equality, the right to privacy and the right to personal liberty of Dawoodi Bohra women.

A ban is opposed by the majority of Dawoodi Bohras. They claim that circumcision is a religious practice and is thus covered under the Constitution's Articles 25 and 26^{xiii}. They disagree with the argument that there is discrimination against women in their practice. Both women and men are expected to be circumcised in the culture.

Mr. A.M. Singhvi, a lawyer representing community members, argues against the use of 'female genital mutilation' to characterize the practice of the community. He argues that Dawoodi Bohras performs female circumcision in a healthy and non-mutilating manner. The validity of the WHO study is challenged by Mr. Singhvi, provided that it addresses FGM, not circumcision. On 24 September, 2018, the Division Bench referred the case to a Constitution Bench. The Division Bench held that the case necessitates an assessment of whether female circumcision is an essential religious practice^{xiv}.

According to the World Economic Forum's Global Gender Gap Index 2020, India ranks **112th** out of **153** countries in providing equal opportunities to women and men.^{xv} Unfortunately, India does not have any laws that ban FGM, the primary reason being that Indian lawmakers and the society at large denies its existence.

Due to prohibition of FGM in several countries, including Australia and USA, India is soon becoming the new hub for FGM, this calls for an urgent need to put forward a legislation which will criminalize the same.

CONCLUSION

The Research confirms that the practice of FGM is indeed an outcome of social consequence affecting numerous young girls and women socially, physically and psychologically thus overburdening them with numerous challenges.

The practice of FGM/C regardless of being a religious practice of the *Bohra* community or not, is subject to constitutional morality. In accordance with Article 26 of the Constitution of India, such activity will not get immunity. Gender justice, that is, at least, non-discrimination, is part

of India's constitutional morality. As explained previously, to the degree that it runs contrary to gender equity, the practice of FGM/C is violative of Articles 14 and 15. The Right to Freedom of Religion and the Propagation of Religious Practices does not refer to the infringement of the other fundamental rights given in Part III of the Constitution of India.

While it is clearly given that women have equal status and rights as men, it is only distressing that they still have to strive for it and fight for it. When social standards and procedures are rigid and limit the rights of individuals, legal reform will lead to social change. There was no noticeable decrease in the number of cases related to FGM even after the implementation of POCSO Act. One of the reasons FGM has not been criminalized yet is because it is not merely a crime, but also a complex socio-cultural issue. Any act of crime is against society's collective morals. The problem of FGM will be understood and debated in the public domain if legislation combating this practice were implemented. The main challenge is not only to protect women who are at risk at present, but also to ensure that those who are born in the future are free from the dangers these practices. This is particularly important given that FGM-concentrated nations are typically experiencing rapid population growth and have significant numbers of young people.

ENDNOTES

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^{xi}INDIA CONSTITUTION art. 21.

^{xii}INDIA CONSTITUTION art. 15.

^{xiii}INDIA CONSTITUTION art. 25, art.26.

^{xiv} Sunita Tiwari v. Union of India, WP (C) 286/2017.

^{xv} Ministry of Women and Child Development, *Global Gender Gap Index*, PIB DELHI, (Feb. 07, 2020, 04:44 PM) <https://pib.gov.in/PressReleasePage.aspx?PRID=1602397>.

