

PREVALENCE OF FGM IN INDIA

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INTRODUCTION

FGM refers to practices that include the partial or complete removal of the external female genitalia or other harm to the female genital organs for non-medical purposes. While it is typically performed on girls between the ages of 1 and 15, married and adult women are also occasionally exposed to this operation. FGM is still common in several regions of the world despite national and international attempts to encourage its cessation. More than 200 million women and girls have had FGM¹. The majority of nations where the practice is practised are in 30 countries in Africa, as well as certain countries in Asia and Latin America and among immigrants from these regions.

FGM has a variety of socio-cultural causes that differ from location to region. However, there is widespread prejudice towards women and girls that lies at the heart of all these causes. FGM has been justified in a variety of ways, including as a religious need, a feminine hygiene help, and as a method to regulate or curtail female libido. The practice is frequently connected to a rite that marks the transition into womanhood and coming of age in various locations. According to a research done among Dawoodi Bohra women, the technique is widely practised for three major reasons: religious obligations, traditions and customs, and the desire to limit the girl's libido.

FGM is frequently seen as a method of purging a girl of unclean ideas and desires. It is believed that a female who has been circumcised does not become as excited as one who is in 'qalfa,' which refers to having a clitoral hood or having an intact clitoris. Girls and women are seen as needing "protection" from their sexual desires. This apparent defence goes beyond defending the daughter to defending the standing of the entire family. The core of a tradition that precedes Christianity is the idea that the clitoral region is "unwanted skin" or a "spring of sin," which

will cause people to leave their marriages. The clitoral hood was sometimes referred to as a "haraam ki boti," or an immoral lump of flesh.

FGM has negative short- and long-term impacts on the victims' physical and mental health. The extent of the mutilation or cutting directly relates to the damage done. There is a great deal of discomfort because the sufferer is rarely given anaesthesia during the process. Other immediate health hazards include excessive bleeding, vaginal edoema and inflammation, infection, urinary issues, and in very severe circumstances, even death. Chronic vaginal infections, recurrent UTIs, uncomfortable sex sessions, complications during pregnancy, difficult labour, increased chance of birth defects, and psychological effects including post-traumatic stress disorder (ptsd) and depression are some of the long-term effects. FGM therefore has an impact on girls' and women's health and social development. Contrary to male circumcision, FGM does not. Extreme incidences of FGM can also result in death or may even be a factor in maternal and neonatal fatalities.

INTERNATIONAL LAWS

FGM violates women's and children's human rights because it interferes with their right to life, their right to bodily integrity, their right to health, and their right to be free from torture, inhuman treatment, and abuse. FGM breaches both the provision of non-discrimination and the rights entrenched in the United Nations Convention on the Rights of the Child, 1989 (UNCRC), as it primarily affects girls under the age of 18.

Numerous international human rights treaties ensure freedom from gender discrimination.ⁱⁱThe definition of "discrimination" in Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), is: "Any distinction, exclusion or restriction made on the basis of sex with the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, and cultural In accordance with a variety of international agreements, notably Article 3 of the UDHR and Article 6(1) of the ICCPR, the right to life is recognized as a fundamental human right.

Female genital mutilation was divided into four categories in a joint statement from the World Health Organization (WHO), United Nations Children's Fund (UNICEF), and United Nations Population Fund (UNFPA). These categories were based on the practices and methods that are used.

Types

- Type I: Excision of the prepuce as well as partial or complete excision of the clitoris
- Type II involves the removal of the clitoris and all or part of the labia minora (inner labia).
- Type III is sometimes referred to as infibulation. This includes restricting or sewing the vaginal entrance as well as the removal of the external genitalia in whole or in part.
- Type IV: This category includes any procedure that involves pricking, piercing, incising, burning, injecting corrosive material, or otherwise harming the female genitalia.

THE INDIAN SCENARIO

Is FGM Prevalent in India?

The Indian government has asserted that there is still no data on FGM in existence. It's crucial to note, however, that there is no accurate way to count the instances because FGM is not prohibited by any specific laws in India. Numerous research groups have performed small-scale studies and conducted individual interviews to provide insight on the pervasive supremacy of this ritual, particularly within Dawoodi Bohra community. The Dawoodi Bohra women who participated in an online poll by the non-governmental organization Sahiyo revealed that 80% of the respondents had undergone FGM.

FGM is so definitely a problem in India, notably amongst Dawoodi Bohras. However, compared to the other three categories, type I female genital mutilation is more common in India. Locally, FGM is known as "khatna" or "khafz." On girls around the age of 7, it is carried out in a private environment by a traditional woman circumciser known as "Mullani."

THE COMMUNITY OF BOHRA

In India, the Bohra group is mostly where FGM is practised. It is well-known that there are two main Muslim sects: Sunnis and Shias. The Shia sect includes the Bohras. They may be found across India, but are particularly prevalent in Gujarat, Rajasthan, Maharashtra, and Madhya Pradesh. Additionally, they reside in a large number of other countries throughout the globe, including Pakistan, Singapore, Sri Lanka, East African nations, the United Kingdom, Canada, Australia, and the United States of America. One million people are said to be in their whole global population.

ⁱⁱⁱThe Bohras are known for having a great emphasis on education and being successful businesspeople. The ladies in the neighbourhood have advanced degrees. Thought to have originated from the community's origins in Egypt and Yemen, khatna, or clitoral mutilation is believed to be practised by it as the sole Muslim community in India on girls as young as seven. Although the Dawoodi Bohras are the largest Bohra sect, FGM is also practiced by the Sulemani and Alvi Bohra sects. Although the Quran forbids female circumcision (also known as khatna or khafz), the Bohras' preferred theological source, Daimul Islam, supports the procedure on females beyond the age of 7 for sanitary reasons. It is also held by certain Bohras.

INDIAN LAWS RELATING TO FGM

The Indian Penal Code, 1860 addresses several kinds of violence against women in India (IPC). The WHO states that while excessive bleeding (haemorrhage), genital tissue inflammation, wound healing issues, injury to surrounding genital tissue, shock, and death are among the immediate complications of FGM, the long-term effects include menstrual problems, sexual problems, ureteral problems, vaginal problems, etc., and as a result, those who perform FGM may be charged under the IPC. IPC sections 319 through 326 deal with minor injuries and severe injuries.

For example, "voluntarily inflicting injury" and "voluntarily causing grave hurt" are both punishable by imprisonment and fines under Sections 324 and 326 of the Indian Penal Code, respectively. R.K. Raghavan, a former director of the Bureau of Investigation (CBI) has stated

that while FGM is not specifically listed as a crime under the IPC, the police are required to file a case under Sec. 326 of the Indian Penal Code in response to a complaint.

The insertion of any item into the girl's vagina is one of the definitions of penetrative sexual assault under Section 3 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), which addresses sexual assault on children. It has long been established precedent that sexual offences don't always require full penetration. In reality, the term "vagina" explicitly covers the labia majora in Section 375 of the IPC's Explanation 1. FGM, which involves inserting a sharp instrument into a child's vagina, may be covered under Section 3 of the POCSO Act when read in conjunction with Interpretation 1 of Section 375 of the IPC. This practice is protected by Articles 25 and 26 of the Indian Constitution, according to proponents, who claim that it is a "essential religious practice" of the Dawoodi Bohra Community in India and cannot be criminalized as a result. Let's first focus on the genesis of the practice of FGM in order to determine if it qualifies as an "essential religious activity" or not.

Female circumcision was largely practised in Egypt and Yemen before being introduced to India in the 1500s with the movement of Dawoodi Bohra Muslims to Gujarat. The habit of female circumcision is not addressed in the Quran anywhere, however, several Hadiths can be read in a specific way to support the practice. Applying the idea of "essential religious practise" necessitates that the practice be an essential component of the religion. The Dawoodi Bohra community's designation of FGM as a "important religious practice" is, however, fraught with ambiguity.

"Freedom of conscience and free profession, practise, and spread of religion" are guaranteed under Article 25 of the Indian Constitution. This liberty is, however, "subject to public order, health, and morals." The act of female circumcision has a profound effect on a person's physical, sexual, and mental health. Therefore, it is obvious that the health of the women who must have FGM poses a risk. Therefore, the practice cannot be justified under Article 25 when considered in light of the harm it causes to a woman's health. The argument for FGM is frequently based on the profoundly sexist presumption that a woman's sexual desire should be restricted so that she won't deviate from her marital responsibilities.

The state may enact "special legislation" for women in order to improve their situation, according to article 15(3) of the constitution of India. More significantly, additional restrictions

included in Part III, which refers to the basic rights of the Indian Constitution, apply to the freedom of religion as specified in Articles 25 and 26 of the Indian Constitution. FGM imperils the right to life and the freedom of the individual, which is protected by article 21 of the Constitution of India

NEED FOR SPECIFIC AND COMPREHENSIVE LEGISLATION ON FGM

The frequency of FGM-related cases hasn't decreased noticeably even after the passage of legislation like POCSO and several related sections in the IPC. highlighting the gaps in the current criminal code that do not handle this offence. Due to the fact that FGM is both a crime and a complicated socio-cultural problem, it has not yet been made a crime. It is important to recognise that despite the fact that these behaviours are covered up under the pretence of culture as being normal or even desirable. They eventually amount to a murderous act or a malicious act of hurt caused by the offenders.

Criminal activity violates society's common morality in some way. However, the rules created to control such crimes need to be stricter when the people in society as a whole do not feel that such acts are bad according to cultural reasoning. Thus, the only way to address these issues is through passing thorough, targeted legislation.

CONCLUSION

For the sake of a more equal society, it is time to abolish such customs that oppress women. Even though it seems obvious that women have the same status and rights as males, it is upsetting that they still need to struggle and work for their rights. Legal reform has the power to trigger social change when societal norms and practices are out of date and restrict people's freedom. Additionally, it has been seen on a global scale that it is essential to establish a specialised legislation addressing the issue, one that covers not only punishment but also prevention, educating, raising public awareness, alleviation, and rehabilitation. Therefore, it is clear from the debate above that a separate law for FGM is required for the same reasons, that

is, to draw attention to the issue and treat it as a dangerous criminal behaviour rather than a legitimate religious one.

ENDNOTES

ⁱ IPLEADERS, <http://bitly.ws/wIre>, (Last visited Nov. 15th, 2022)

ⁱⁱ LAWCTOPUS, <http://bitly.ws/wIr7>(Last visited Nov. 15th, 2022)

ⁱⁱⁱ LEGAL SERVICE INDIA, <http://bitly.ws/wIrv> (Last visited Nov. 15th, 2022)

