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Female Genital Mutilation- Praying the Human Rights of the Girl Child

Vidya V Devan

ABSTRACT.

Female circumcision or Female genital mutilation (FC/FGM) is a painful and dangerous practice that alters the female genitalia a major human right violation and health problem, affecting up to 140 million women across 40 and above countries. FGM involves 'partial/ total removal of external genitalia or injury to organs, for cultural, religious or non-therapeutic reasons'. It is conducted in girl child between infancy and adolescence, by traditional circumcisers for non medical reasons. It has existed for over two thousand years. It is now widely recognized as child abuse and a serious human rights violation. However, it remains a practice shrouded in secrecy and which is not answered by State or any child protection system. This article discuss about FGM, its implications and imminent need for legislations to prohibit this barbarous practice.

Keywords:Female Genital Mutilation, Dawoodi Bohra community, Psychological and physical injury, Legislations to prevent FGM.

INTRODUCTION

Woman is mother, daughter, wife, and sister. She gives you life. In the present time every one pretends to understand this and raise voice for protection of women, equal status for women etc. At this juncture I would like to say something brutal which is undergone by women in certain countries – unfortunately including ours that is Female circumcision (FC)/FGM (Female Genital Mutilation). It is mainly practiced among some sects of Islamic and Christian communities.

FGM' is one of the worst physical and psychological scars a girl can ever be left with. Female Genital Mutilation comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons¹. It is also referred to as female genital cutting or female circumcision. FGM is concentrated in 27 African countries, Yemen and Iraqi Kurdistan, Asia, the Middle East, among Diaspora communities around the world. In India it is practiced among Dawoodi Bohra community.

The procedure is traditionally carried out by a woman with no medical training. Anesthetics and antiseptic treatments are not generally used, and the practice is usually carried out using knives, scissors, scalpels, pieces of glass or razor blades. Girls may have to be forcibly restrained. However more recently, in some countries it is also performed by trained health personal, including physicians, nurses and midwives.²

¹ WHO <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>,

² N. Toubia, Female Genital Mutilation: A Call for Global Action (2nd end), New York:RAINBO,1995, p 9

HISTORICAL BACKGROUND.

Researchers have traced the practice to Egypt in the fifth-century BC and argue that the geographical distribution of FGM suggests that it originated on the west coast of the Red Sea. Egyptian mummies show women infibulated and this is supported by a Greek papyrus in the British Museum dated 163 BC. A Greek historian and geographer in the second-century BC reported that a group along the eastern coast of the Red Sea cut their women in “Egyptian style” and that another group “cut off in infancy with razors the whole portion that others circumcise”.³ The practice is associated to controlling female sexuality and reproductive power.⁴

Types of FGM Practices

There are four main types of FGM:

- Type I: Clitoridectomy – removing part or the entire clitoris.
- Type II: Excision – removing part or all of the clitoris and the inner labia (lips that surround the vagina), with or without removal of the labia majora (larger outer lips).
- Type III: Infibulation – narrowing of the vaginal opening by creating a seal, formed by cutting and repositioning the labia.
- Type IV: Other harmful procedures to the female genitals, which include pricking, piercing, cutting, scraping and burning of the clitoris and / or surrounding areas⁵

³ WHAT ARE THE ORIGINS AND REASONS FOR FGM? <https://www.28toomany.org/blog/what-are-the-origins-and-reasons-for-fgm-blog-by-28-too-manys-research-coordinator/> 19 February 2013

⁴ Ann-Marie Wilson, *How methods used to eliminate foot binding in China can be employed to eradicate female genital mutilation*, Journal of Gender Studies (May 2012).

⁵Female Genital Mutilation. <http://www.nhs.uk/Conditions/female-genital-mutilation/Pages/Introduction.aspx>

In certain areas of Africa the wound is then stitched off by thorns from certain plants. It is a painful realization that it is even practiced in our country. In India FGM is widely practiced by the Dawoodi Bohra communities who have originated from the Shafi community whose members live in Gujarat, Maharashtra, Rajasthan, Madhya Pradesh and Kerala. Elder Bohra women beyond the age of 60 take up this profession which they have inherited from the family. The surgery is referred to as ‘Khatna or “khafz”’. Now many clinics have come up in north India. An Indian woman who has experienced it in the childhood says that she and her cousins spent years feeling shame and humiliation for a senseless act that they were subjugated to as children, incapable of defending their human rights to keep all organs of their body⁶. FGM is done on girls in childhood mainly between 7 years and 12. The cruel reason stated behind this is that the lady should remember the pain of it whole life.

While the practice is well-documented around the world, in India the veil of secrecy around the practice has meant there is no official data on its prevalence. In 2018, a study published by WeSpeakOut, a survivor-led movement, revealed that 75% of daughters (aged seven years and above) of all respondents in the sample, from the Bohra community, were subjected to FGM/C.⁷

⁶ Break the silence. Save our daughters from this sin we commit against them.

<https://breakthesilencespeakthetruth.wordpress.com/February 21st 2016>

⁷Female Genital Mutilation in India, <https://amnesty.org.in/female-genital-mutilation-in-india/>

HEALTH CONSEQUENCES

FC/FGM has serious potential health consequences for girls and women. These include the risk of physical complications as well as psychological effects.⁸

a) Immediate complications

The practice can cause immediate complications, including severe pain, excessive bleeding and problems urinating. Other after effects are chronic vaginal and pelvic infections, abnormal periods, and persistent urine infections, kidney impairment and possible kidney failure, damage to the reproductive system, including infertility, cysts and the formation of scar, tissue.

b) Long term complications

Long term complications include Complications in pregnancy and newborn deaths, pain during sex and lack of pleasurable sensation, psychological damage, including low libido, depression and anxiety, the need for later surgery to open the lower vagina for sexual intercourse and childbirth. Many girls and women experience fear, submission or inhibition and suppressed feelings of anger, bitterness or betrayal. Studies from Somalia and Sudan indicate resulting in negative effects and self esteem and self identity.⁹

There are religious, psychosexual, sociological, and hygienic justifications for female circumcision.

⁸N Tobia, Caring for women with circumcision, New York:RAINBO,1999 & Tobia & Izzt Female Genital Mutilation

⁹ Anika Rahman, Nahid Toubia, Female Genital Mutilation: A Practical Guide to Worldwide Laws & Policies

By Center for Reproductive Law & Policy, RAINBO

- **Hygiene:** There is a belief that female genitalia are unsightly and dirty. In some FGM-practicing societies, un mutilated women are regarded as unclean and are not allowed to handle food and water. Christianity and Islam and members of other indigenous religions in Africa label un circumcised women “impure”.¹⁰
- **Control over women’s sexuality:** Virginity is a pre-requisite for marriage and is equated to female honour in a lot of communities. FGM, in particular infibulation, is defended in this context as it is assumed to reduce a woman’s sexual desire and lessen temptations to have extramarital sex thereby preserving a girl’s virginity.¹¹
- **Gender based factors:** FGM is often deemed necessary in order for a girl to be considered a complete woman, and the practice marks the divergence of the sexes in terms of their future roles in life and marriage. The removal of the clitoris and labia — viewed by some as the “male parts” of a woman’s body — is thought to enhance the girl’s femininity, often synonymous with docility and obedience¹².
- **Cultural identity:** In certain communities, where mutilation is carried out as part of the initiation into adulthood, FGM defines who belongs to the community. In such communities, a girl cannot be considered an adult unless she has undergone FGM.¹³

It is seen by some as a right of passage into womanhood and a condition of marriage. These beliefs are very strong and parents genuinely think that they are doing the right thing for their daughters. Some people practice FGM as part of their religion and there can be huge pressures by the

¹⁰ Why it is practiced? www.endfgm.eu/en/female-genital-mutilation/...fgm/why-is-it-practised/

¹¹ ibid

¹² ibid

¹³ ibid

community to make girls have it done. But FGM is not recommended by any religion or in any religious texts. It is not religious but might have become symbolic in some communities as a demonstration of faith. In fact it is not a condition of belonging to any faith group.¹⁴

The saddest fact is that nothing about such a practice is discussed by the mother or any ladies before the girls undergo this bitter experience. So FGM creates the feeling of betrayal, depression and anger in the children which will affect their proper development. It is illegal in many countries. It is a serious criminal offence in the UK, with a maximum penalty of 14 years in prison. Even then it is practiced in an age where we treat our daughters equally like our sons and encourage the empowerment of women globally we need to know that there are many women and girls who are still living under the veil of ignorance and fear. There should be proper legislation to prohibit FGM.

ARTICLE 21 V. ARTICLE 25&26

The practice is a manifestation of gender inequality and discrimination against girls and women. This is violative of the constitutional guarantee of right to life, and also violative of Article 15 guaranteeing protection discrimination on grounds of religion, race, caste, sex or place of birth. It is a crime punishable under the Indian Penal Code and the Protection of Children from Sexual Offences Act (POCSO Act). Any touching of genital with the exception of for medical reasons is an offence¹⁵."

¹⁴Daughters of Eve –working to protect and empower girls and young women.<http://www.dofeve.org/about-fgm.html>

¹⁵ 375. Rape.—A man is said to commit “rape” if he— (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:— First.—Against her will. Secondly.—Without her consent

This is a matter related to the woman's right to bodily autonomy, to privacy, to health which is guaranteed under Article 21 of the Constitution. Article 21 guarantees an individual's right to life and liberty, FGM posed serious health hazards for women, that the bodily integrity of a girl child could not be confused with essential religious practice under Article 25

This atrocious custom is practiced at a very tender age of the girl child mostly between 7 and 12 years, they are not able to understand the consequence of it and they are not at a maturity to give the consent for this. When talking about consent there are two things which have to be mentioned. First to give consent they are not informed about such a practice before hand and second even if they consent for this as a religious practice they are not adults to give a legally valid consent.

LEGAL MEASURES TO PROHIBIT FGM

International position

In 1997, the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) issued a Joint Statement on Female Genital Mutilation (WHO, UNICEF, UNFPA, 1997) which described the implications of the practice for public health and human rights and declared support for its abandonment. Decades of prevention work undertaken by local communities, governments, and national and international organizations have contributed to a reduction in the prevalence of female genital mutilation in some areas. In 2008 OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, NIFEM, WHO made - An interagency statement-Eliminating Female genital mutilation. This Statement is a call to all States, international and national organizations, civil society and communities to uphold the rights of

girls and women. It also call on those bodies and communities to develop, strengthen, and support specific and concrete actions directed towards ending female genital mutilation.¹⁶

The practice has been banned by 42 countries out of which 27 countries are in Africa. Many western countries, including the United Kingdom and the US have also outlawed the practice. In December 2012, the UN General Assembly adopted a unanimous resolution to eliminate the practice.¹⁷

In 2016, Australia sentenced three Dawoodi Bohras to 15 months in jail under the country's female genital mutilation law. In 2017, United States officials arrested two doctors in Detroit for allegedly cutting the private parts of six girls; the trial is still underway.¹⁸

Indian position

In India till now there is no specific legislation for prohibiting and punishing it. The FGM cases are dealt with the provisions of IPC and POCSO Act.

A Public Interest Litigation has filed by Sunitha Tiwari in 2017 for prohibiting these practices and uphold the integrity and dignity of girls and women¹⁹.The SC has questioned the practice of FGM or *khatna* or khafd or female circumcision (FC) as a violation of fundamental rights and integrity of the girls. In fact, the practice of FGM as “essential religious practice” has also been questioned. The Supreme Court after hearing Ms. Tiwari’s petition sought a response on the issue from four States —

¹⁶ Female Genital Mutilation <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>

¹⁷ Gupta, Moushumi Das (29 May 2017). Govt will end female genital mutilation if Bohras do not: Maneka Gandhi. Hindustan Times. Retrieved 9 November 2018.

¹⁸ SOUMYA ABROL, YES, FEMALE GENITAL MUTILATION HAPPENS IN INDIA; HERE'S EVERYTHING

YOU NEED TO KNOW, INDIA TODAY.

<HTTPS://WWW.INDIATODAY.IN/AMP/LIFESTYLE/PEOPLE/STORY/FEMALE-GENITAL-MUTILATION-INDIA-CLITORIS-PLEASURE-MUSLIM-BOHRA-COMMUNITY-1162510-2018-02-06>

FEBRUARY 2018

¹⁹ *Sunita Tiwari v UOI* (2017), WP (C) 286/201

Maharashtra, Delhi, Rajasthan and Gujarat — and four Ministries: Women and Child Development, Health and Family Welfare, Law and Justice and Human Resource Development.²⁰

In April 2018 India's Attorney General K.K. Venugopal asked a bench of the Supreme Court to issue directions regarding the case, saying that female genital mutation was already a crime under existing law. The bench adjourned the case and issued notices to Kerala and Telangana, having earlier notified Maharashtra, Gujarat, Rajasthan and Delhi²¹

The SC bench observed that no one has the right to violate the bodily privacy and integrity of women in the name of religion. The petitioner contended that it is a crime which may be brought within the ambit of the Protection of Children from Sexual Offences (POCSO) Act, 2012. It protects minor girls from sexual assault. The respondents argued that FGM or khafd is integral to religious and cultural beliefs and hence protected under Articles 25 and 26 of the Constitution (right to practice and propagate religion). , Justice D Y Chandrachud countered these contentions and asked: “Why should the bodily integrity of a woman be subject to some external authority? One's genitals are extremely private affairs.” the court had orally observed that the Constitution does not allow a person to cause injury to another

ARGUMENTS IN FAVOUR OF FGM

The majority of Dawoodi Bohras are opposed to a ban. They argue that circumcision is a religious practice and hence is protected under Articles 25 and 26 of the Constitution.²²They disagree with the

²⁰ Shelar Jyoti. (11 May 2017). Waging a legal battle to ban Female Genital Mutation. Retrieved 9 November 2018.

²¹ Shweta Mishra, Amit Kumar Pandey. Female Genital Mutilation Violation of Fundamental Rights. Indian Journal of Health & Medical Law. 2019;2(1): 8–14p.

²² Ban on Female Genital Mutilation, <https://www.scobserver.in/court-case/ban-on-female-genital-mutilation>

claim that their practice is discriminatory against women. Both women and men in the community are required to be circumcised.²³

At the initial stage the case was heard by a three-judge bench. On 24 September, 2018, the Division Bench referred the case to a Constitution Bench, a five judge bench. On November 14, after a year of silence on the female genital mutilation/ cutting (FGM/FC) case the Supreme Court of India mentioned that the case will be referred to a seven-judge Constitution bench. The case will now be heard in conjunction with three other petitions dealing with women's rights and freedom of religion: cases about Hindu women's entry into the Sabarimala temple, Muslim women's entry into mosques, and the entry of Parsi women married to non-Parsis into fire temples.

Quite unfortunate to consider this as a matter of religious practice like three other cases as they are related to the violations women's rights, women's freedom etc . This is not a case which simply affects the rights which guarantee dignity of life. This indeed affects the physical, mental health of a woman throughout her life; this is an extremely brutal, uncivilized practice which causes injury to the mind body of the girls.

²³ ibid

CONCLUSION AND SUGGESTIONS

- The National Commission for Protection of Child Rights (NCPCR) and the National Commission for Women should take combined efforts to eradicate this age old practice.
- The community which practices it may not be properly aware of the fact that this practice is illegal and violates the right to life of the individual. So proper awareness programmes should be conducted.
- They should be made aware of the psychological and physical aftereffects which a woman has to face throughout their life.
- We must strive for more effective legislative measures and awareness programs both at international and national level.

Till last decade FGM was a dark secret of India. We never dare to open up about it and also there was no official data regarding it. Now many of the victims of this practice have come up to voice their painful experience and to fought against this brutal act. The mothers and elder relatives of these victims, who once made this event happen to the little girls, who were themselves victims, are now supporting the endeavor to end this humiliating practice. “Sahiyo” a collective effort headed by some victims and others as well is working to empower Asian communities to end FGM. They conducted the first online survey about this practice and are requiring support from the world in the efforts to ban FGM.

Young girls have suffered serious psychological and physical damage because of genital cutting. Thousands more will continue to do so unless a firm stand is taken against it.²⁴To curb any type of

²⁴ *Ipsita Chakravarty*, The Daily Fix: What explains Centre's contrasting stands on triple talaq and female genital cutting? Sep 26, 2018 · 09:30 am, <https://scroll.in/article/895845/the-daily-fix-banning-of-female-genital-cutting-should-not-have-been-a-constitutional-question>

social evils at the grass root level the legislations are essential. We have an example of prohibiting 'sati' through social awareness as well as legislation. Likewise we need to have a proper legislation which addresses this matter sufficiently. Let us hope that Supreme Court of India will give an effective decision in this regard in the PIL pending before it. Let us all join the efforts to ban FGM and to lead to a positive social change without hurting the feelings of any one.