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FEMALE GENITAL MUTILATION: RELIGION OR LACERATION?

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ABSTRACT

This research article aims at highlighting the social issue of Female genital mutilation and how this practice is violating the fundamental rights of various women and young girls from different parts of the world. The practice, in the shadow of culture and religion has been continued for long enough and has resulted in endangering the basic human rights that, enshrined in various documents of international covenants and various constitutions who aim at protecting the basic human rights and protecting its people from cruelty and torture. However, lack of proper implementation and legislative gaps has only resulted in continuation of this gruesome practice and has affected the very heart and soul of human rights. The research paper further explains in detail how this particular practice violates the fundamental rights of women and girls and the current standing of the Indian judiciary regarding this issue and the various international laws and documents guaranteeing protection against Female Genital Mutilation/Cutting of young girls and women. Further, the article highlights the physical and psychological impact of this practice on various girls subjected to this atrocity. Lastly the paper analyses the rationale behind conducting this practice explaining how culture and religion plays a humongous role in justifying this practice, ultimately affecting the right of young girls, who are not even aware of the atrocities they are being subjected to, completely denying the right to will and free consent.

Keywords: Female genital mutilations, cruelty, justice, women, girls, human rights, violation, health

INTRODUCTION

Women have bravely battled for their independence and safety throughout history, questioning deeply established social norms and standing out for their rights. Women have proven to be incredibly resilient in the face of hardship; campaigners fighting against gender-based abuse and seeking the right to vote are just two examples. They have spoken out against injustice and discrimination through marches and protests. Legislators and judges have heard their voices, and as a result, laws and policies safeguarding women's rights have changed. But even with these hard-earned successes, women continue to confront many obstacles. The mutilation of female genitalia is among these difficulties.

February 6 is celebrated as the International Day of Zero Tolerance for Female Genital Mutilation (FGM). The World Health Organization (WHO) estimates that more than 200 million girls alive today have undergone FGM in more than 30 different countries. The process is defined as the "the partial or total removal of external female genitalia or other injury to the female genital organs for non-medical reasons." The organisation has declared that FGM is a violation of the human rights of women and girls.

As of right now, there is no law in India prohibiting the practice of FGM/C (female genital mutilation/cutting). Most members of the Dawoodi Bohra group, a subset of Shia Muslims in India, engage in FGM/C, commonly referred to as "Khatna or Khafd."

It is equally important to work towards the legal prohibition or prevention of this heinous act as it is to raise awareness and educate people about the safety risks and health hazards this practice poses, the numerous and unreported deaths it causes, and the psychological scars it leaves on its victims in addition to their physical pain.

Even while there has been some progress in educating people about the terrible effects of FGM and pushing for its prevention, there is still much work to be done. In a world where everyone strives

for equality and decency, it is not acceptable to violate someone's rights in the name of tradition.

LITERATURE REVIEW

S.K. Chaturvedi and Shradha Baranwa explain in their research paper titled, *Female Genital Mutilation in India - Practice and Concerns*,¹ that in contrast to Africa and the Middle East, FGM is virtually exclusively practiced in secret in India. Due to its barbaric character and the enduring effects cutting has on a person's body and mind, FGM is a practice that should be opposed. Due to their own conviction that it is not in keeping with human nature and their concern for the social reaction to it, those who do it in India do so covertly. Such practices damage the reputation of the entire nation in contemporary India, which is always fighting to empower female children. As a result, they should be punished harshly, just like any other crime involving a woman's body. The paper further elaborates on how this practice affects the physical health of women, the present legislation and its practice in India, and the international conventions and declarations on this practice, however it fails to analyze how and why religion plays a pivotal role in the FGM, which is extensively covered in this research article.

In the journal titled, *In the hunt for 'Taharat' practicing the darkest secret of 'Khafd': Female Genital Circumcision a violation of Human Rights in India*, *Ankita Kumar Gupta*² elaborates on how the struggle against FGM in India is a battle against a long-standing custom that, in the eyes of the Muslim community, is a part of one's religious identity. However, a practice that contravenes fundamental human rights, such as the right to life or the right to bodily integrity, should not be permitted to continue only based on religion. It is further elaborated how the practice of FGM is another way that patriarchy attempts to restrict the identity and freedom of women, as well as their sexual behavior and reproductive abilities. The practice of FGM must be outlawed and eradicated as soon as possible. The journal however fails to provide any concrete suggestions and what course of action should be undertaken to reduce this heinous practice. However, this research article aims to bring forth not only the reasons behind FGM but also provides concrete suggestions that should

¹Chaturvedi, S.K. and Baranwa, S. (2020) *Female Genital Mutilation in India – Practice and Concerns*, pp. 80–84.

²Gupta, A.K. (2022) 'In the hunt for "Taharat" practicing the darkest secret of "Khafd": Female Genital Circumcision a violation of Human Rights in India', *International Journal of Gender and Women Studies*, 10(2).

be undertaken to reduce this practice and to ensure that the human rights of millions of women worldwide are protected and not violated.

In the article *Female genital mutilation: Tradition versus human rights*, A.E. Groeneveld,³ has elaborated on how Female genital mutilation (FGM) is linked to cultural notions of modesty and femininity, including the assumption that girls are only "clean" and "beautiful" after having body parts that are viewed as "male" or "unclean." It ensures a woman's virginity before marriage and aids her in avoiding 'illicit' sex because it is thought to lower a woman's libido. The practice is more likely to continue under social pressure. FGM is typically performed using sharp objects such as human fingernails, cut glass, razor blades, scissors, or sharpened rocks in a traditional environment. The cutting must be done very quickly and is guaranteed to be crude because it is done without an aesthetic, frequently on a person who is kicking and shouting, without appropriate knowledge of the local anatomy.

RESEARCH METHODOLOGY

Doctrinal method is used for this study, which necessitates compiling information with several respected writer's works and doing a careful examination of multiple reliable news reports about the issue at hand.

Various literature is gathered, and in-depth research is conducted based on the gathered information to address the topic. Books, research papers, travelogues, and newspaper articles were among the secondary materials used in this study to enhance comprehension and promote a deeper grasp of the subject.

³ Groeneveld, A.E. (2013) 'Female genital mutilation: Tradition versus human rights', *African Journal of Urology*, 19(3), pp. 134–135. doi:10.1016/j.afju.2013.02.005.

RESEARCH OBJECTIVES

The research paper aims to study the following-

- The role played by religion and various religious orders in the justification of the process of Female Genital Mutilation.
- Impact of Female Genital Mutilation on the health and physical well-being of women and young girls.
- Human rights violation of women and young girls due to the practice of Female Genital Mutilation.

THE ROLE PLAYED BY RELIGION AND VARIOUS ORDERS IN THE JUSTIFICATION OF THE PROCESS OF FEMALE GENITAL MUTILATION

The most common defence of Khafd, or female genital circumcision, is custom; it is a long-standing cultural practice supported by the community. People have been performing the Khafd as a religious rite for generations. It is intended to prevent women from being promiscuous and to limit their freedom of choice about reproduction and sexuality. The community, including extended family members, puts pressure on one another to ensure that all of the family's girls engage in the practice in order to protect the Bohra community's distinctive identity.

The fundamental goal of performing the practice of Khafd is to reach Taharat, or purity. In terms of social pressure, Before Niqah with a Bohra Muslim, it is thought that Khafd is required. Not only that, but Khafd is supposed to control a woman's erotic desires, limiting them to those of her spouse. Nonetheless, it's also thought that engaging in Khafd practice helps one maintain their unique Muslim identity.⁴

⁴ Rajam, S. (2018) 'The Quest for Taharat: Sunita Tiwari v. Union of India', Socio-Legal Review [Preprint]. doi:10.1016/j.afju.2013.02.005.

While custom has generally strongly favoured circumcision, especially in the case of males, some jurists view it as a recommended (Sunna) rather than a compulsory (wājib) procedure. Consequently, the overwhelming evidence for circumcision found in Islamic tradition implies that Muhammad and his society just assumed it, even in the absence of clear support from the Qur'an.⁵ Hence, FGC although not explicitly supported by the Quran, it is a tradition that Islamic communities are following.

Increasing male sexual pleasure, maintaining a girl or woman's virginity, religion, societal approval, and making her "marriageable" are the most mentioned justifications for performing FGM. FGM is viewed as a need for marriage and a rite of passage into maturity in certain communities.

FGC is primarily performed on members of the Dawoodi Bohra Community in India. It is a branch of Islam's Shia School of thought. Although FGC is not officially recorded in India, investigations have indicated that up to 80% of Indian women who belong to the Bohra sect undergo the procedure. Therefore, Khafd, also known as FGC, is a well-kept secret that is performed in secret in India.

This practice gained attention in 2018 after Delhi-based attorney Sunita Tiwari filed a Public Interest Litigation (PIL) in the Supreme Court under Article 32 to prohibit the practice of FGC since it violates Article 21 of the Indian Constitution. However, some argued that "the practice has been mistakenly referred to as female genital mutilation (FGM)." The practice dates back about 1400 years, and orders from the appropriate religious authorities have deemed it an essential component of the Dawoodi Bohra Community's religion. As such, protection is requested under Article 26 of the Constitution.⁶

India is evolving as the FGC epicentre of today. Due to the absence of any laws specifically pertaining to FGC, it is simpler for foreign nationals to do FGC in India before returning home, where it is prohibited. The practice of Bohra families who live outside of India travelling to India for a vacation and to perform the Khafd ceremony is known as "Vacation Cutting." It's also because,

⁵ Gupta, A.K., *supra* note 2, at 5.

⁶ Sunita Tiwari v. Union of India W.P. (C) No.286/2017

as the Australian High Court decided in a recent ruling, the practice of khafd will fall under the definition of female genital mutilation and will be prohibited, many nations where FGC was previously lawful are now making the procedure illegal.⁷

FGM crosses religious lines and is engrained in the customs of many tribes. The belief in social solidarity and tradition drives the continuation of FGM. It is thought to guarantee that girls are regarded as suitable for marriage and are welcomed and respected in their communities. Women who have not had FGM may experience prejudice or social marginalization.

Several nations with most Muslims have already made the practice illegal, indicating unequivocally that the practice of FGM/C is not a necessary component of Islam and, as such, cannot be considered a fundamental aspect of the faith. This heinous practice has no documented health benefits and is not just physiologically harmful to young girls and women but affects them psychologically. The practice is generally not carried out with proper sterilized types of equipment resulting in posing serious health threats to these women and young girls.

IMPACT OF FEMALE GENITAL MUTILATION ON THE HEALTH AND PHYSICAL WELL-BEING OF WOMEN AND YOUNG GIRLS.

"The pain inflicted by FGM does not stop with the initial procedure, but often continues as ongoing torture throughout a woman's life,"

- Manfred Nowak, UN Special Rapporteur on Torture.

The term "female genital mutilation" (FGM) refers to any procedure that involves modifying or hurting the female genitalia for purposes other than medical ones. It is acknowledged on a global scale as a violation of girls' and women's health, human rights, and integrity.

"Traditional circumcisers or cutters who lack medical expertise frequently practice FGM. However, a medical expert may perform it in certain nations. The usual tools used for FGM include knives,

⁷ Female genital mutilation/cutting: United States government's response: Fact sheet (2022) U.S. Agency for International Development. Available at: <https://www.usaid.gov/news-information/fact-sheets/female-genital-mutilation-cutting-usg-response> (Accessed: 08 April 2024).

scissors, scalpels, bits of glass, or razor blades; anaesthetics and antiseptics are rarely utilised. Female genital mutilation frequently occurs without the consent of the girl, and she might need to be physically restrained.

There are 4 main types of FGM:

- Type 1 (clitoridectomy) – removing part or all of the clitoris.
- Type 2 (excision) – removing part or all of the clitoris and the inner labia (the lips that surround the vagina), with or without removal of the labia majora (the larger outer lips)
- Type 3 (infibulation) – narrowing the vaginal opening by creating a seal, formed by cutting and repositioning the labia.
- Other harmful procedures to the female genitals, including pricking, piercing, cutting, scraping, or burning the area.⁸

Girls undergoing Female Genital Mutilation face short term implications like severe pain, excessive bleeding, infections, difficulty in urinating shock, the complications extend to sexual, reproductive, and mental health.

It also leaves women with a variety of long-term medical, sexual, and psychological repercussions. Major consequences include sadness, low self-esteem, and post-traumatic stress disorder. Sexual dysfunction can lead to a loss of closeness, which can cause social health difficulties for victims and indirectly for significant others.⁹

Menstrual and urinary issues, infertility, further surgery (defibulation and reinfibulation), and painful sex are among the other dangers associated with infibulations. Only after the infibulation has been opened by surgery or penetrating sexual contact can there be sexual activity. As a result, the first few weeks following sexual initiation are usually difficult for the parties involved, with the male partner potentially experiencing pain and issues as well.

⁸ Female genital mutilation (2024) World Health Organization. Available at: <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (Accessed: 08 April 2024).

⁹ 5 ways female genital mutilation undermines the health of women and girls (2019) United Nations Population Fund. Available at: <https://www.unfpa.org/news/5-ways-female-genital-mutilation-undermines-health-women-and-girls> (Accessed: 08 April 2024).

The scar tissue may rip during childbirth, or an incision may need to be made to provide room for the baby to emerge. Some ethnic cultures' women are frequently sewed up again after giving birth in an effort to make them "tight" for their husbands—a practice known as reinfibulation. Scar tissue hurts when a woman's genitalia are sliced and stitched like this.¹⁰

According to a multi-country study conducted by the World Health Organisation in six African nations, genital mutilation has a deleterious effect on the newborns of mothers who have experienced FGM, and women who have undergone FGM are substantially more likely to experience unfavourable events during childbirth.

Following the Millennium Development Goals (MDGs), all UN member states endorsed the 2030 Agenda for Sustainable Development in 2015. The seventeen Sustainable Development Goals (SDGs) are an international call to action for nations to cooperate in eradicating poverty, enhancing health, lowering inequality, and fostering economic growth while also protecting the environment. Sustainable development Goal 5, that ensures Gender Equality, includes Elimination of FGM/C is a specific target of SDG Goal 5: Achieve gender equality and empower all women and girls.¹¹

Female Genital Mutilation impedes gender equality, women's empowerment, and violates human rights. It hinders the fulfillment of the sustainable development goals and undermines legislative frameworks against discrimination and violence. Protection policies must be implemented to safeguard women and girls from this cruelty, ensuring their rights are guaranteed and cruelty is eradicated.

HUMAN RIGHTS VIOLATIONS OF WOMEN AND YOUNG GIRLS DUE TO THE PRACTICE OF FEMALE GENITAL MUTILATION.

¹⁰ World Health Organisation (2001) Module 4: Management of women with FGM during pregnancy, labour, delivery, and the postpartum period from female genital mutilation integrating the prevention and the management of the health complications into the curricula of nursing and midwifery.: A student's manual on JSTOR, World Health Organisation. Available at: <https://www.jstor.org/stable/resrep28048.9> (Accessed: 08 April 2024).

¹¹ Carter, G. (2020) Ending female genital mutilation by achieving SDG 5: Gender equality, Ending Female Genital Mutilation by Achieving SDG 5: Gender Equality | Joint SDG Fund. Available at: <https://jointsdgfund.org/article/ending-female-genital-mutilation-achieving-sdg-5-gender-equality> (Accessed: 08 April 2024).

The silence must be broken — all voices must be heard, all realities known. We must act united against this dreadful practice.

- *Michelle Bachelet, UN High Commissioner for Human Rights.*

Female Genital Mutilation is an horrendous act often inflicted on girls aged from infancy to 15 years, is a grave violation of their fundamental rights. Despite various reasons cited for its practice, it remains a social evil deeply engrained in society. This cruel procedure denies girls and women their basic human dignity and autonomy over their health and bodies. Many victims are too young to even comprehend the magnitude of what they endure.

There isn't currently a legislation in India prohibiting young girls from performing female genital mutilation. Dawoodi Bohra girls between the ages of 6 and 7 have their clitoral hoods removed whole or in part because they believe it to be a "immoral lump of flesh" that keeps them from reaching "taharat," or purity. Since young girls are usually the ones who suffer from the practice, FGM/C has an impact on the rights of both women and children.¹²

A petition seeking the complete prohibition of FGM/C and the classification of the procedure as illegal and unconstitutional was filed with the Supreme Court of India in May 2017. The matter was subsequently transferred to a larger constitutional bench, where it is still pending, without an interim injunction being issued.¹³

The petition has faced opposition from the Dawoodi Bohra community, who are represented by the Dawoodi Bohra Women's Association for Religious Freedom (DBWRF). They argue that the Indian Constitution's provision of freedom of religion would be violated by enacting a law that forbids FGM/C.

Article 25¹⁴ and Article 26¹⁵ of the Indian Constitution provide the right to freedom of religion, however this right comes with reasonable restrictions, that includes public health, morality and order. FGM/C poses a severe risk to the health of women and girls and can lead to serious health

¹² Khan, N. and Fatima, S. (2020) 'Female Genital Mutilation in India', International Journal of Law Management & Humanities, 3(3), pp. 102–108.

¹³ *Id.* at 14.

¹⁴ INDIA CONST. art. 25.

¹⁵ INDIA CONST. art. 26.

issues. FGM/C has a substantial detrimental influence on an individual's psychological and emotional health and well-being in addition to causing physical harm, which has a substantial impact on the girl's bodily integrity and autonomy.

The FGM/C further violates Article 14¹⁶, which upholds the right to equality Article 15¹⁷, which forbids discrimination based on sex, religion, color, and other factors, Article 21,¹⁸ which upholds right to life and liberty.

This situation also calls for the application of the “*essential practice test*”¹⁹, a theory developed by the Indian Supreme Court that pinpoints the tenets and rites of a religion that are significant to the faith itself. Because FGM/C is an essential component of the Dawoodi Bohra community's religion, they have stated that interference with it should be avoided. However, given that FGM/C is required, it becomes unlikely that the religion of the Dawoodi Bohra community can survive. A 2017 Supreme Court decision held that the core principles of a religion are regarded as an essential part of religion.

FGM violates girls' and women's autonomy and control over their lives by denying them the ability to make an autonomous decision about an intervention that will have a long-lasting effect on their bodies. International law safeguards both the freedom of religion and the right to engage in cultural activities. The freedom to express one's religion or views, however, may be subject to restrictions imposed by international law to safeguard the fundamental liberties and rights of others. Consequently, it is not acceptable to use social or cultural justifications to support female genital mutilation.²⁰

Actions justified by religious beliefs are often deemed essential practices. However, the illegality of FGM in several Muslim-majority nations underscores its non-essential nature in Islam. This practice extends beyond local boundaries and recognized internationally as a violation of human rights of women's and girl's, perpetuating gender inequality. Primarily targeting minors, it violates

¹⁶ INDIA CONST. art. 14.

¹⁷ INDIA CONST. art. 15.

¹⁸ INDIA CONST. art. 21.

¹⁹ Durgah Committee v. Syed Hussain Ali 1962 SCR (1) 383.

²⁰ UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, <https://www.refworld.org/legal/agreements/unga/1966/en/17703> [accessed 08 April 2024]

their rights to life, security, physical integrity freedom from torture and health. Female genital mutilation, driven by discriminatory social norms, poses significant threats to the well-being and rights of women and girls, including mental sexual and reproductive health.

Children are entitled to special protection under human rights law because of their vulnerability and need for care. "The best interests of the child" is the key priority and one of the guiding principles of the Convention on the Rights of the Child. The benefits of female genital mutilation are seen to exceed the hazards for parents who choose to have their daughters undergo this operation. But this view does not support a long-term, potentially transformative practice that violates girls' fundamental human rights.

The Convention on the Rights of the Child and other United Nations Human Rights Treaty Monitoring Bodies have repeatedly raised female genital mutilation as a violation of human rights, calling upon State Parties to take all appropriate and effective steps to abolish the practice. The Convention on the Rights of the Child explicitly mentions harmful traditional practices.²¹

Practices like female genital mutilation pose significant barriers to achieving gender equality and empowering women and girls. They undermine the respect, protection, and fulfillment of their human rights, hindering their development as equal partners with men and boys. Additionally, these harmful practices obstruct progress towards Sustainable Development Goals. It's clear that such practices greatly hinder the effective implementation of laws and norms that aim to ensure gender equality, human rights, and the prevention of gender-based discrimination and violence.

CONCLUSION

The practice of Female Genital Mutilation (FGM), confronts one with a stark choice: Is it a matter of religion or a brutal laceration of human rights? This perplexing dilemma encapsulates the heart of a deeply divisive issue that continues to affect countless women and girls worldwide.

While some proponents of FGM cite religious justifications, it is essential to emphasize that no religion condones harm to its followers. FGM, when viewed through a human rights lens, becomes an unequivocal violation of some of the most fundamental human rights, including the right to

²¹ *Id.* at. 17

physical and mental integrity, the right to be free from discrimination, and the right to health. These violations are not compatible with the core teachings of any faith that advocates compassion, respect, and dignity for all.

In conclusion, the laceration of human rights is a stark reality when it comes to FGM. We must recognize that religious interpretations are not static, and they evolve. Ultimately, the resolution of this dilemma lies in respecting the sanctity of individual lives and rights while embracing the true essence of religion—love, empathy, and the celebration of human dignity. FGM should be unequivocally condemned as a practice that inflicts suffering and denies women their inherent dignity. As we strive for a world free from FGM, we must remember that true faith and culture are aligned with the principles of love, compassion, and respect for the rights of all individuals, regardless of gender.