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Female Genital Mutilation Custom or Curse

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ABSTRACT

According to World Health Organization, Female Genital Mutilation means a situation where total or partial removal of female external genitalia is done. This removal does not have any scientific reason or any medical justifications. Removal of a healthy organ from the body without any medical reason that too without the consent of the victim is an extreme violation of Human Rights guaranteed to us. The act causes hurt or grievous hurt to the victim depending upon the intensity. No tradition which is harmful, abhorrent and brutal should be carried out. The act not only leaves a physical scar, but the pain and trauma the girl is gone through leaves a permanent mental scar on them. The act reflects the deep-rooted inequality between the sexes. The practise violates a person's right to health and physical integrity, the right to be free from torture and cruel act and sometimes right to life when the result of procedure causes death.

I. INTRODUCTION

Female genital mutilation refers to a situation where the external female genitalia is either fully or partially removed. The removal is not backed up with any scientific reason as per the WHO. The female genitalia are brutally cut by the means of knives, razors, scissors or even a pair of glass. Now imagine if we ever get a scar using these objects it would be nightmare for us with all the blood and pain but in FGM that's a tradition. The removal is not just restricted to these sharp objects but sometimes fingernails have also been used to pluck out the clitoris of the babies.²

The whole operation is generally performed by an elderly lady of the same community specially designated for this task, who might also be in most of the situations be a traditional birth attendant. In the new age people are also approaching medical clinic to carry out the same in a more hygienic and aseptic way but what is done in those four walls too is against the law because even if it is carried out in a hospital or any medical setting, cutting out or wilfully damaging a healthy organ for nontherapeutic reasons, It violates the injunction to "do no harm",

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²FGM, A Students Manual, WHO (Apr.10,2020,05:10 PM)
https://www.who.int/gender/other_health/Studentsmanual.pdf

and is highly unethical.

II. ORIGIN

It is not exactly traceable how this tradition emanated but some people believed that the practice was initially started in Egypt. Apparently, the whole tradition started during the slave trade system, when the black slave women entered ancient Arab society so that they won't be raped or get pregnant as it would decrease the efficiency of work done by them. It is also believed that it all began when Islam came to some parts of Sub-Saharan Africa. While the rest believed that it developed independently among certain traditional groups as part of puberty rites.

When, Who and WHY?

Female genital mutilation is generally carried out on girls between the age of 0 and 15 years. But there also have been various instances where a married woman has also been subjected to the procedure.³

FGM is practised by the followers of different religions including Muslims, Christian, and Animists, also by some of the non-believers in the countries concerned. Female genital mutilation is believed that it ensures girls virginity as virginity is a pre-requisite for marriage and it is also an essential in order to maintain the family's honour. Some practice this tradition because of peer pressure from their traditional groups, while some mark it as an occasion accompanied by ceremonies to mark the occasion of a girl entering womanhood. Some practise because they believe that these external genitalia are dirty, and they can grow bigger if not cut or cutting them will make the girl hygienically or spiritually clean.

III. FGM AND HUMAN RIGHTS.

Constitution

There are commonly three identified types of FGM: *Sunna*, in which the hood of the clitoris is cut off; *excision*, in which the entire clitoris is cut off an *infibulation*, in which the clitoris, the labia minora and much of the labia majora are cut off. This brutal practise infringes right to life and physical integrity, right to health and right to freedom from torture, cruel and unusual treatment and violence. Since it is practised on girls under 18, it is also a violation of rights enshrined under UNCRC⁴ not just the girl also becomes a victim of discrimination on basis of

³Eliminating Female Genital Mutilation: A interagency Statement, UN, (Apr.08, 2020, 10:00 AM)
https://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf

⁴ OHCHR, Convention on Rights of Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

sex that compromises the recognition and enjoyment of her fundamental rights and liberties.⁵

No fundamental rights can be absolute in a modern state so the freedom of religion cannot be absolute. Many countries where FGM is prevailing on the surface has separate law for the same. But in a country like ours where the practise is persisting way below the land does not have any specific law for it, but the brutal act violates article 14, 15 and 21

The practise of FGM is an act which targets women with the objective of curbing girls and women's sexual desire which also leads to their ill health effects. Women and girls are often seen as objects with sexual desires that needs to be curbed to protect them from being violated by other men. Such practise is unconstitutional as it is genders stereotypes women and girls and thus violates article 14 and 15. Such practise, in the grab of religion and with the object to protect girls and women, victimizes them and violates their rights to physical autonomy. The women should be in control of their own bodies and to be protected from physical violence and mental trauma and thus it is also violative of their right to life guaranteed under Art. 21.⁶ Gender stereotyping is contrary to the principles of equality as enshrined in the Indian Constitution and India's international obligations under CEDAW as have elaborated earlier. The SC in *Anuj Garg v. Hotel Association*⁷ observed that "The present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by state for pursuing the ends of protection should be proportionate to the legitimate aims.

International conventions

Apart from the local laws that are in respect of Female Genital Mutilation, there are various other conventions and declarations which talk about protection of child and women. It is important to know that the rules must be strictly adhered. These conventions and declarations ensure that no discrimination is done to any women or child even under the name of religion. While some of them do not specifically talk about FGM but just women and child health and safety but there are some conventions which specifically talk about FGM. Some of them are:

The Programme of Action of the International Conference on Population and Development: which added a recommendation on eliminating FGM by encouraging government and communities to urgently take step to stop the practise.

The Platform of Action of the Fourth World Conference on Women: It included a section on the girl child and urged governments various international organizations as well as

⁵ 'Female Genital Mutilation: A Matter of Human Rights', Centre for Reproductive Rights (New York, 2006) at p. 14

⁶ *Supra*

⁷ 2008 (3) SCC 1

nongovernmental groups to develop programmes and policies to eliminate all forms of discrimination against the girl child, including female genital mutilation.⁸

IV. FGM AND IPC

In the present time female genital mutilation should be regarded as an offence under the Indian penal code and unless such a provision is incorporated, appropriate directions should be issued to the Director Generals of State Police for taking requisite measures so that such a bestial act does not take place.⁹ In India, various forms of violence against women are dealt within IPC. Section 319-326 address various degrees of hurt and grievous hurt. According to WHO, the immediate complication of FGM can include excessive bleeding, genital tissue swelling, injury to surrounding genital tissue, wound healing problems, shock or death while the long term consequences include urinary problems, maturational problems, vaginal problems etc.¹⁰ Former Director of the CBI, R.K Raghavan, has noted that even though FGM is not explicitly an offence under Indian Penal Code, but on a complaint, the police are obligated to register the case under Section 326. Section 3 of The Protection of Child from Sexual Offences (2012) addresses penetrative sexual assault by any person on any child, inter alia defines it as insertion of any object into the vagina of the girl.¹¹ It is established precedence that penetration need not be complete penetration. In fact, Explanation 1 of Section 375 categorially states that the term vagina includes labia majora. FGM which requires insertion of sharp object into the vagina of a child may be covered under section 3 read with explanation 1 of S/375. FGM in any format a form of child abuse which is done to minors in secret. There can be absolutely no excuse to legitimise such an abhorrent practise in any way.

Who may be Penalised?

Khatna (circumcision) is either carried out by the Mullanis, women who have semi religious standing or by the traditional cutters or doctors.¹² According to 2008 UNFPA report titled 'A Qualitative Study on FGM among the Dawoodi Bohra Community', it was observed that the religious beliefs regarding Female Genital Mutilation were not changing in the community but very few minor changes in approach regarding the appropriate age of girls (as to when they

⁸ FGM: A Students Manual, WHO (Apr. 12, 2020, 10:00 AM)

https://www.who.int/gender/other_health/Studentsmanual.pdf

⁹ Sunita Tiwari Vs. Union Of India & Ors, Writ Petitions Civil Nos.286/2017

¹⁰ FGM Fact Sheets, WHO (Apr. 12, 2020, 10:00 AM) <http://www.who.int/mediacentre/factsheets/fs241/en/>

¹¹ Section 3(b) of POCSO: "Penetrative sexual assault. - A person is said to commit "penetrative sexual assault" if- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person"

¹² R. Ghadially, *All for 'Izzat': The Practice of Female Circumcision among Bohra Muslims*, Manushi, No.66, September- October 1991

should be operated), increasing dependence on private doctors and nurses rather than traditional FGM performers were somehow silently creeping in the society.¹³ In most of the countries, there are specific FGM laws where performing and participating or even attempting to subject a girl or women to FGM is a criminal offence. Most laws penalise both accomplices such as family members as well as principal perpetrators. A study conducted by an organization which is based in London stated that while it is too easy for us to think that FGM is barbaric or uncaring practice but in reality, parents or grandparents are often doing it in a context where not circumcising a girl is unthinkable for a long established social reasons.¹⁴ One of the most common perception is that it is ultimately the parent's decision to decide whether their child should be circumcised. However, they often undergo immense pressure from their extended family or when they are in their country of origin.¹⁵

V. CUSTOM OR CURSE

There is no evidence that FGM is anyway good for health. Removing of a healthy part merely in the name of custom is barbaric. There is no documentary proof to show as to why this tradition started and why it is so essential for the people to follow. The long-term effect of this practise is only harmful with no health benefits. The instruments used here is also extremely unhygienic and it enhances the chances of infection. Also, the traditional compound (e.g. containing ash, herbs, soil, cow dung) is applied to the wound which may result to tetanus or other infections. FGM is extremely painful and it permanently disfigures the female genitalia, exposes the women to many potentially life-threatening complications, including bleeding, infection, psychological trauma, urine retention, stress, shock as well as damage to the urethra and anus. It can also result in permanent loss of genital sensation in the victim and adversely affect sexual function.¹⁶ FGM not only reduces their sexual desires and performance but the act was so traumatic that they still get nightmares. It affects not only physically but mentally as well. The people who want to continue this tradition only wants to do it because of peer pressure and nothing else. Both corporal punishment and religious practice are grounded in parents' beliefs as to the best interest of their child, and as the parental control over their child's upbringing does not justify cutting their child as punishment or even as any religious exercise.¹⁷

¹³ Dr. Farida Shah, *A Qualitative study on FGM/FGC among Dawoodi Bohra Community*, at p. 19

¹⁴ FORWARD (Safeguarding Rights and Dignity) and Options Consultancy Services, *FGM is always with Us: Experiences, Perceptions and Beliefs of Women Affected by FGM in London*, July 2009 at p. 23

¹⁵ *Ibid.*, at p. 25

¹⁶ *Cissy Segujja Mazzi, Petitioner, v. Loretta E. Lynch, Attorney General, Respondent, United States Court of Appeals for The Fourth Circuit*, 662 Fed. Appx. 227; 2016 U.S. App. Lexis 21477.

¹⁷ *The State of Washington v. Edwin Bruce Baxter*, No. 32766-0-II, 134 Wn. App. 587; 141 P.3d 92; 2006 Wash. App. lexis 1812

The term “violence against women” prohibits FGM wherever exists and provide vigorous support to efforts among religious institutions and community organization to eliminate such practices.¹⁸ The WHO estimates that around 100-140 million girls and women in the world have undergone some form of FGM. Around 3 million girls undergo this practise alone in Sub-Saharan Egypt and Sudan every year.¹⁹

Sati pratha was also an essential custom but it was abolished because how ferocious it was. India is not witnessing much FGM cases but the Dawoodi Bhora communities still practise them in the dark. The whole act is done is so secretly that people other than that from the community does not even know about it.

VI. CONCLUSION

Tradition are custom, belief of a community which influence and govern the community’s behaviour. These are habits which are passed on from generation to generation. Traditions are often guided by taboos which are not easy to change. These taboos can be good, bad or neutral. But where a healthy organ is cut merely for the sake of tradition or for the sake of curbing your sexual desires there can be no justification for such an abhorrent act. The act is still practised in the dark and not only people should be made aware about the consequences, but specific laws should also be made to prevent the same. This practise should be rooted out from the society and strict measures should also be taken.

¹⁸ Beijing Declaration and Platform for Action: Available at:
<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

¹⁹ Rights of the child: Available at: https://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf,
Dated 29 August, 2006