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Female Genital Mutilation: A Gross violation of human rights

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ABSTRACT

How many of us are aware of the Female Genital Mutilation that has been taking place across various communities all over the world since ages? Even if people are aware, how many of them have taken an initiative to raise their voice against such an inhumane practice? Isn't it a gross violation of not just human rights but also the fundamental rights guaranteed to every citizen? Why has this practice been allowed in India under the blanket of Article 26 of the Constitution? There are a number of such questions which will be studied in this paper. In India, Female Genital Mutilation has been in practice since 1400 years and has now become an integral part of the Dawoodi Bohra community who regard it as an essential practice for their religious sect. However, the world has been witness to such an atrocious act since ages and it is still being carried on in several regions of several countries in the world. But in the recent times, this practice has been facing a lot of criticism. This paper looks into the concepts related to the practice of Female Genital Mutilation as well as several cases relating to it all over the world and how new legislations are being introduced to curb this practise. It further goes on to analyse certain data found regarding Female Genital Mutilation and suggests solutions to counter this menace.

Keywords: Circumcision, Cutting, Female Genital Mutilation, Violation.

I. INTRODUCTION

Female genital mutilation (FGM), commonly known as female genital cutting, is a horrific practise that takes place all throughout the world, not just in Africa. It is not just a matter of polishing in old social structures anymore. In India, young girls as young as six and seven are routinely circumcised. Mumbai teems with untrained midwives who keep on scarring little girls from the Bohra community, a Shia subsect.

FGM, or khatna as the Bohras name it, was a well hidden secret for a long time, a taboo to be avoided at all costs. FGM is the term used to describe surgeries that include altering or damaging the female genitalia for non-medical or cultural beliefs, and it is widely condemned across the world as a violation of human rights as well as the wellbeing and dignity of girls and

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women. In almost every case, a handful of the women victims of the Bohra tradition have chosen to speak up and make their voices heard. The annoyance has become a catalyst, and the desire to save other young girls from being maimed has inspired the others to act bravely.

(A) Literature review

The World Health Organization (“WHO”) defines female genital mutilation/ cutting (hereinafter, “FGM”) as “*any surgery involving partial or whole removal of external female genitalia or other damage to female genital organs for cultural or non-therapeutic reasons*” This practice has been termed as a gross violation of human rights as well as Art. 21 of the Indian Constitution. However, till date, there has been no legislation prohibiting such an inhumane practice.

Some precedents that have set a foundation against the Female Genital Mutilation are discussed below.

1. Sunita Tiwari v. Union of India²

Adv. Sunita Tiwari began the fight against the terrible practise of female genital mutilation in India by filing a PIL seeking a prohibition on the practise of Female Genital Mutilation (FGM) or Khatna or Female Circumcision (FC) or Khafd. The UN Convention on the Rights of the Child and the Universal Declaration of Human Rights had been cited for this reason. It was argued that the practise is inhumane and violates Article 21 of the Indian Constitution. It is argued that at this time, Female Genital Mutilation (FGM) should be considered a crime under the Indian Penal Code, and that unless such a provision is added into the Indian Penal Code, suitable sanctions should be imposed asking the Directors General of State Police to take the necessary steps to prevent such an inhuman conduct from occurring. According to the respondents, the practise is about 1400 years old and has formed an important element of the Dawoodi Bohra Community's faith, and protection in this respect is sought under Article 26 of the Constitution. The case was submitted to a larger bench in order to protect the rights of the general public as well as the minority group.

2. In re X (FGM Protection Order) (No 2) (Fam)2019-07-24

A British woman converted to Islam and married a local man while working in Egypt. She returned to England to give birth to their daughter but the father was not granted permission to enter the country. The mother, giving the impression that she wanted professional help, raised the issue of female genital mutilation (“FGM”) with a health worker as she was aware of the

² (2019) 18 SCC 719

prevalence of the practice in Egypt and shortly intended to travel there with the child. What precisely was said became a matter of dispute but it was clear that the mother was concerned about the attitude towards FGM either of the father or of the father's immediate and extended family. After a referral to social services, pursuant to section 5A of and Schedule 2 to the Female Genital Mutilation Act 2003³, as amended, the local authority successfully obtained an FGM protection order. The judge at the final hearing determined that the risk of the child suffering FGM was so great that an ancillary order ought to be made prohibiting the mother from travelling anywhere outside the jurisdiction with the child until the child had attained the age of 16.

- This case clearly mentions that Female Genital Mutilation is a criminal offence.

3. A and another v A and another (Female Genital Mutilation Protection Orders : Immigration Appeals) [2018] EWHC 1754 (Fam)⁴

- The mother and father, a married couple who were both Nigerian citizens, applied for female genital mutilation protection orders ("FGMPOs") in respect of their daughters aged seven and five. The two named respondents to the application were the respective heads of their families in Nigeria. Despite the fact that the two daughters were born in England, they were not British citizens, and none of the family was legally present in the nation. The parents argued that because they were members of the Yoruba tribe, where female genital mutilation was still a mandatory practise, there was a great danger, virtually a certainty, that if one of their daughters was in Nigeria, she would be genitally mutilated.
- This case clearly demonstrates how the practise of FGM is a severe violation of rights as well as a significant threat to persons.

4. Jessica Magerer v. Republic⁵

- On the 28th of November 2015, at approximately 6:00 a.m. in the village Lelaitich location of Chepalungu - Bomet county, the above-mentioned Appellant knowingly and unlawfully aided the commission of female genital mutilation upon N C K, F N, J K, and M K by offering them custody in her house after their clitoris had been severed. She intentionally and unlawfully permitted her premises, over which she had authority or responsibility, to

³Female Genital Mutilation Act 2003, s 5A, as inserted : "(1) Schedule 2 provides for the making of female genital mutilation protection orders. (2) In that Schedule— (a) Part 1 makes provision about powers of courts in England and Wales to make female genital mutilation protection orders ..."

Sch 2, para 1 : see post, para 20 .

⁴ [2018] 4 WLR 105

⁵ 2016 SCC OnLine Ken 6239

be used for the purpose of conducting female genital mutilation, resulting in the clitoris of N C K, F N, J K, and M K being severed in her premises.

- The aforementioned Appellant was found guilty and sentenced to pay a fine of Ksh. 200,000/- in default of serving three years in prison for aiding the commission of female genital mutilation contrary to section 20 (9) as read with 8.29, failing to report for assisting in the commission of female genital mutilation in violation of section 20 (9) as read with 8.29, failing to report the commission of the offence in violation of section 24 as read with 8.29, and allowing genital mutilation on her premises in violation of section 22 as read with 8.29 of Kenya's prohibition of female genital mutilation act no 32 of 2011.

5. M M D v. Republic⁶

On December 2, 2014, in Kuria East District, Migori County, the appellants were aware that genital mutilation had occurred but neglected to disclose to a law enforcement authority. Failure to disclose the offence of female genital mutilation is a violation of Kenya's Prohibition of Female Genital Mutilation Act No. 32 of 2011. As a result, they were charged with neglecting to notify the act of female genital mutilation, which is a violation of Kenya's Prohibition of Female Genital Mutilation Act, Cap 62B Laws.

6. S M G v. Republic⁷

The appellants are a married couple. They neglected to disclose the offence of female genital mutilation (FGM) to a law enforcement officer on December 15, 2012, at [Particulars Withheld] in Kuria East District, despite knowing that it had been committed to their daughter BM. They were tried, convicted, and ordered to pay a Kshs. 300,000 fine and four years in prison after pleading not guilty.

7. Secretary of State for the Home Department v Suffolk County Council and others, [2020] EWCA Civ 731⁸

The child, a Bahraini citizen of Sudanese origin, entered the United Kingdom as a visitor with her family. Her mother made an application for asylum, contending that if removed to Bahrain, the child would be subject to female genital mutilation ("FGM"). The Secretary of State refused the application and the First-tier Tribunal dismissed her appeal, finding that there were no substantial grounds for believing that there was a real risk of the child being subjected to any form of FGM. The mother's appeal rights were subsequently exhausted after she was twice

⁶ 2017 SCC OnLine Ken 3913

⁷ 2015 SCC OnLine Ken 2839

⁸ [2020] 3 WLR 742

refused permission to appeal and was refused permission to proceed with a claim for judicial review of the second refusal. The local authority applied in the Family Court for an FGM protection order in relation to the child, pursuant to Schedule 2 to the Female Genital Mutilation Act 2003⁹. The matter was transferred to the President of the Family Division to determine various issues, including the question of the role of the Family Court and/or Family Division (together, “the family courts”) in assessing the risk of a child being subjected to FGM in circumstances where the risk had been assessed by the First-tier Tribunal and dismissed as a basis for asylum with all appeal rights exhausted. The President rejected the Secretary of State’s submission that the tribunal’s assessment would have to be the starting point or default position which the court should only deviate from if there was good reason to do so.

This case stands to be a perfect example of how the mere apprehension of going back to a country where such an inhumane practice is followed, poses a threat to the life of an individual.

(B) Research Methodology

The methodology applied is qualitative research based on secondary data collected from articles, books, journals, websites, newspapers and other sources for the study on the contemporary issue of Female Genital Mutilation. The researcher has tried to analyse the topic by studying various authors, experts, articles, etc.

(C) Findings And Analysis

Despite the fact that the United Nations General Assembly passed a resolution against female genital mutilation (FGM) in December 2012, attempts to end this form of discrimination against women remain far from universal, and the number of women and girls affected continues to rise.

According to UNICEF, at least 200 million women and girls alive today have been exposed to the practise globally as of 2016 (UNICEF, 2016). The majority of them dwell in Africa (in 27 nations stretching from east to west across the continent, including Egypt), portions of the Middle East and Southeast Asia (Iraq, Yemen, Indonesia, and Malaysia), and countries in the North where there is conflict of immigration.

The first research related to FGM, performed from an anthropological standpoint, focused on the ceremonial components of FGM, which was referred to at the time as "female circumcision." When the United Nations initially reviewed these processes in 1958, they were

⁹ Female Genital Mutilation Act 2003, Sch 2, para 1 : see post, para 22 .

classified as "**customs including ritual practises**," a euphemism adopted by WHO a year later. Under the influence of feminist movements in the mid-1970s, FGM was recast in a new light; the connection with male circumcision was rejected, and focus was placed on its negative consequences on the health of women and girls (Hosken, 1979). Following then, the practise was challenged from a health and human-rights standpoint and referred to as "mutilation" (Shell-Duncan and Hernlund, 2001). Since 2013, UNICEF has been using the phrase "genital mutilation in women/ "Female genital mutilation/excision in English and mutilations génitales féminines/excision (MGF/E) is the French equivalent.

FGM raises concerns about discrimination, human rights and the right to health, public health in terms of risk prevention for girls, and sexual, reproductive, and maternity health for women who have had the procedure. As a result, during the 1990s, international groups dealing with these issues have been increasingly active. However, FGM raises concerns regarding the role of Northern and Southern countries in the formulation of an international ideology, the status of minorities in multicultural society, and the relevance of hegemonic explanations. FGM is still a contentious issue.

Progress has been recorded in the following areas during the last four decades:

- In terms of legislation, 16 of 29 African governments in states where FGM is common passed anti-FGM legislation in 2009.
- At the moment, 18 nations have passed national laws prohibiting FGM.
- Twenty-five of these 29 nations have signed and approved the African Union's Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, which was enacted in 2003.
- This agreement urges States Parties to ban FGM by legislative and sanctioned measures. Furthermore, 14 African nations have signed the Convention on the Discrimination against women in all its forms.

Types of Female Genital Mutilation

Female genital mutilation can be classified into four types.

Type 1: partial or total removal of the clitoral glans and/or the prepuce/clitoral hood (the external and visible component of the clitoris, which is a sensitive area of the female genitals) (the fold of skin surrounding the clitoral glans).

Type 2: removal of the clitoral glans and labia minora (the vulva's inner folds), with or without

removal of the labia majora (the outer folds of skin of the vulva).

Type 3: A constriction of the vaginal opening caused by the development of a covering seal. It is sometimes referred to as infibulation. This is a vaginal aperture restriction induced by the development of a covering seal. The seal is created by cutting and repositioning the labia minora or labia majora, as well as occasionally sewing, with or without excision of the clitoral prepuce/clitoral hood and glans (Type I FGM).

Type 4: This category includes any non-medical procedures that are harmful to the female genitalia, such as pricking, piercing, incising, scraping, and cauterising the vaginal area.

Deinfibulation is the technique of cutting open a woman's sealed vaginal opening after she has been infibulated, which is frequently essential for enhancing health and well-being, allowing intercourse, or facilitating delivery.

Female Genital Mutilation has no health benefits but instead harms the health

FGM has no health advantages and affects girls and women in a variety of ways. It entails the removal and damage of healthy and normal female genital tissue, as well as interfering with the natural processes of girls' and women's bodies. In general, the dangers of FGM rise with severity (which here correlates to the quantity of tissue injured), however all kinds of FGM are connected with an elevated risk of health.

Immediate problems can include the following:

- ❖ extreme discomfort
- ❖ a lot of blood shed (haemorrhage)
- ❖ enlargement of genital tissue
- ❖ fever
- ❖ Infections such as tetanus
- ❖ urinary issues
- ❖ wound healing issues
- ❖ vaginal tissue damage in the surrounding area
- ❖ shock
- ❖ Death

Long-term consequences may include:

- ❖ urinary issues (painful urination, urinary tract infections);

- ❖ vaginal issues (discharge, itching, bacterial vaginosis and other infections);
- ❖ menstrual issues (painful menstruations, difficulty passing menstrual blood, etc.);
- ❖ scar tissue and keloid;
- ❖ sexual issues (pain during intercourse, decreased satisfaction, etc.);
- ❖ increased risk of childbirth complications (difficult delivery, excessive bleeding, cesarean section).

The above discussion clearly states that the practise of Female Genital Mutilation is very harmful in nature and should be stopped at all costs. It not only leads to violation of human rights but also exploits the individuals mentally and sexually.

II. CONCLUSION

Female Genital Mutilation is an age-old practise and the defence that is being brought by the communities practising it is that it is an integral part of their religious community and that is why it shouldn't be curbed. But the question here is, are these practices being a part of a religious community so important that we can choose to subsidize the violation of basic human rights of the fellow girls and women. It is likewise imperative to abolish oppressive practices against women in order to achieve a more equitable society. While it may appear that women have the same position and rights as males, it is disheartening that they must still campaign and struggle for rights. When social norms and practices are out-of-date and restrict people's freedom, legal change might be used to bring about social change.

Female genital mutilation is a degrading, cruel, and inhumane procedure perpetrated on young girls. It's common in India, and it's done under the guise of culture and religion, but it has to be stopped. There are several rules in India that might be utilized to put a stop to this practise, but they are insufficient. As a result, strong regulations prohibiting this activity, as well as their appropriate execution, are required. The government should also take steps to raise awareness about such practices. As a result, both policymakers and the general public must work together to combat this practice. This heinous practice involves mutilating the sensitive and healthy parts of the human body and thus is a violation of right to dignity. No individual should be subjected to such grievous offence and all measures must be taken to put an end to it.

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