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Female Genital Circumcision (F.G.C) and Legal Arena

SWANKIT KUMAR NANDA ¹

ABSTRACT

This research paper talks about FGC and its religious view point arena. It goes on to the details about different types of Circumcision as categorized by W.H.O & its short terms and long terms impacts on the women physical and mental health. It gives a flavour of agitation of westerners towards FGC and mentioning it as 'Mutilation' and not circumcision. It then turns towards the counter arguments of the agitation of westerners by the ethnic groups of people who are engaged in such religious practise. It also covers the various reasons as to why the practise of FGC is criticized. Then it enters to the legal perspectives of FGC, how it violates different Human rights of the women and young ladies who are indulged in these practise, the legal stance of various African, American & European countries where FGC is banned by either introducing new legislation or by implementing the existing provisions of law. And finally it explains the situation in India regarding FGC and enters to the provisions of Constitution of India & Indian Penal Code regarding the Practise of FGC.

KeyWords: Female Genital Circumcision, Mutilation, Legality of FGC, Human Rights Violation

I. WHAT EXACTLY IS FEMALE GENITAL CIRCUMCISION (FGC)?

Female Genital Circumcision (FGC) is an ancient religious practise in many part of the world. This practise predates to abrahamic time. As the terminology suggests this ritual is performed on women's genital portion i.e. 'Vulva'. The Vulva is cut, stitch or even eradicated through surgery in some cases as a part of religious believes. (it is a common practice in Islamic male community to cut the genital skin, the Islamic terminology for the same is KHATNA, but it not so common in Islamic as well as any other religion's women community as clubbed together, the Islamic terminology for FGC is KHAFZ). The Westerners linking the FGC with Islam is totally unprecedented and it really does not make any sense because only 15% of world Muslim population is engaged in this religious practices, moreover there are no religious literature in Islam that can establish a prominent link between FGC and Muslims. Adding

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further more the aforementioned 15% Muslim population are only engaged in the type-I category of FGC². Non the less some sect. Of Jews and as well as some other community also practice this ritual. For instance, circumcision is standard for the Kono of Sierra Leone, however, for the Wolof of Senegal it isn't. For ladies inside these gatherings, one key factor their social affiliation trumps other indicators of conduct, for example, instructive level or socioeconomic status. Among the Kono, even ladies with an optional school or school instruction are circumcised, while Senegalese Wolof women including the ignorant and unschooled are not. February 6 has been denoted every year as the International Day of Zero Tolerance for Female Genital Mutilation. This ritual often attracts numerous controversies & International media attention, it is often discussed as a matter of grave concern inside the floor of congress in the U.S.A. The WHO also refer this as a matter of immediate concern and organizes many campaigns to educate the less privilege about the negative repurcautions of this very ritual on their body .The regions where this ritual is practised includes 30 countries of eastern, western & north-eastern part of Africa, the Middle East, Kurdistan Iraq, Asia,& within some immigrant communities of North America, Europe and Australia. 80% - 85% of this ritual density is observed in Africa, which means every 4 out of 5 African women accounts for the participation in this ritual. Every year approximately 3 Millions girls (who are between the age of 6 to 12 years) are subject to such religious practise. A few young ladies are unaware they will be cut. FGC is performed on these young ladies out of nowhere, without mental planning, festivity, or display. In this circumstance, young ladies can be sincerely damaged. For the most part, birthing assistants or prepared circumcisers go from town to town and play out the cutting with no sedation, anti-toxins, or sterile strategy. Their instruments are blades, razors, scissors, or hot articles that are reused. After the tissue has been extracted, stitches, string, and nearby mixtures, for example, oil, nectar, batter, or tree sap are utilized to ease bleeding. Post operatively, twisted consideration relies upon the degree of harm. In alter cases, medical attendants and doctors perform FGC in their workplaces under sedation all together "to ensure" young ladies from inconveniences. The worldwide clinical network firmly contradicts medicalizing FGC on moral grounds. Clinical inclusion is additionally observed as supporting and propagating a training that ought to rather be destroyed.

II. TYPES OF FGC BY WORLD HEALTH ORGANIZATION

Now we shall go further to the types of FGC recognized by WHO, Basically there are 4 types of FGC as recognized by WHO which is prevailant world wide. In 1997 WHO categorized

² Chapter Iv, Page-23, In Search Of A Life Without Pain

FGC into 4 different types, it further sub-divided the major 4 types as research and campaign were conducted since then, allowing WHO to retrospect the matter in precision.

The major 4 types of FGC and their sub-divides are:-

TYPE 1. Incomplete or absolute expulsion of the clitoral glans (the outside and obvious piece of the clitoris, which is a delicate piece of the female privates, with the capacity of giving sexual delight to the lady), as well as the prepuce/clitoral hood (the crease of skin encompassing the clitoral glans), when situation so demand to distinguish between the TYPE 1 category following sub-divides are used:-

TYPE 1 (A). Removal of the prepuce/clitoral hood only.

TYPE 1 (B). Expulsion of the clitoral glans with the prepuce/clitoral hood.

TYPE 2. Halfway or all- out evacuation of the clitoral glans and the labia minora (the inward overlap of the vulva), with or without expulsion of the labia majora (the external folds of skin of the vulva). At the point when it is imperative to recognize the significant varieties of Type 2 FGM, the accompanying regions are utilized:-

TYPE 2 (A). Removal of the labia minora exceptionally.

TYPE 2 (B). Fractional or all out expulsion of the clitoral glans and the labia minora (prepuce/clitoral hood might be influenced).

TYPE 2 (C). Halfway or absolute expulsion of the clitoral glans, the labia minora and the labia majora (prepuce/clitoral hood might be influenced).

TYPE 3. Regularly alluded to as infibulation, Narrowing of the vaginal opening with the making of a covering seal. The seal is shaped by cutting and repositioning the labia minora, or labia majora The covering of the vaginal opening is done with or without ejection of the clitoral prepuce/clitoral hood and glans (Type I FGM)..when it is so required to distinguish between this category of this type it is done as:-

TYPE 3 (A). Removal and repositioning of the labia minora.

TYPE 3 (B). Removal and repositioning of the labia majora.

TYPE 4. All other hurtful methodology to the female genitalia for non-clinical purposes, for instance pricking, puncturing, chiseling, scratching and burning³

³ <https://www.who.int/sexual-and-reproductive-health/types-of-female-genital-mutilation>

III. VIEWS & OPINION OF COMMUNITIES PRACTISING FGC⁴

It is indeed astonishing to discover the fact that opinion of the community & women involved in this religious practices are slanted far apart from the opinion of the Anti- FGC group. There is a prolonged opinion tustle between the 2 group. Especially the people and activist of Africa are in support of the religious practise, the activists argue that profoundly upsetting to all liberal freethinking individuals who esteem law based pluralism and the toleration of "contrasts" and who care about the exactness of social portrayals in our open strategy discusses. Transitioning functions and sex personality services including genital changes are grasped by, and profoundly slept with in the lives of, numerous African ladies, not just in Africa be that as it may, in Europe and the United States also. Evaluations of the number of contemporary African ladies who take part in these practices differ generally and uncontrollably between eighty million also, 200,000,000. When all is said in done, these ladies keep their insider facts mystery. They have not been slanted to uncover the most personal pieces of their bodies to open assessment and they have not been prone to present their defense on the opinion piece pages of American papers, in the lobbies of Congress, or at scholastic gatherings. Most Kono ladies (a tribe in the Sierre Leone area) maintain the act of female (and male) circumcision and emphatically assess its ramifications for their mental, social, otherworldly, and physical prosperity. Kono girls and women feel charismatic when the ceremony begins. The religious practices of FGC is so ill-portrayed by the Westerners that it seems to be so "politically right" to lament female circumcision that the disturbing cases and portrayals of hostile to "FGM" support gatherings (pictures of African guardians routinely and for hundreds of years deforming, harming, and killing their female children and denying them of their ability for a sexual reaction) have not been deliberately investigated as to dependable proof. Nor have they been interrogated by freethinking minds through a procedure of orderly counter. An incredible contrary; the realities on the ground and the right good mentality for "heroes" have been taken to be so plainly obvious that simply suggesting the expository conversation starter "what about FGC?" is endeavored to fill in as an obvious counterargument to social pluralism and to portray an away from to any feelings of opposition for elective ways of life. This is tragic, on the grounds that for this situation there is valid justification to accept that the case is far less uneven than assumed, that the "trouble makers" are not so much such awful, that the estimations of pluralism ought to be maintained, and that the "heroes" may have rushed to judgment and gotten an awful lot rather wrong. The claims & revert claims of the anti-"FGM" movement are highly ambiguous, exaggerated and may not match ground reality/factual scenario. Examined

⁴ The MIT Press On FGM

research work & reports are accompanied with numerous flaws and lack of evidence."In 1931 a meeting on African youngsters was held in Geneva under the support of the Save the Children Fund. In this gathering a few European representatives encouraged that that was the ideal opportunity when this 'boorish custom' ought to be nullified, and that, similar to all other 'pagan' traditions, it ought to be abrogated without a moment's delay by law."⁵ Upon this, the community engaged in this practise vehemently argued that among the Gikuyu a genital change, "as Jewish circumcision," is a substantial sign that is respected "as the *conditio sine qua non* of the entire educating of inborn law, religion and profound quality," that no appropriate Gikuyu man or on the other hand lady would have intercourse with or wed somebody else circumcised, that the training is a fundamental advance into capable adulthood for some African young ladies and young men, and that "there is a solid network of instructed Gikuyu supposition in guard of this custom."⁶ Another ethnic group of Kenya , "The Okiek" does not talk about circumcision as far as the hosing of sexual delight or want, yet rather talk about it "as far as neatness, excellence what's more, adulthood." According to Kratz, Okiek ladies and men see "genital alteration and the valiance and poise shown during the activity as constitutive encounters of Okiek personhood."⁷ They firmly asseverate that circumcised women continues to be orgasmic,With regard to the global discourse that represents circumcision as a disfigurement or a "mutilation," A significant admonition, in any case, is that numerous individuals from social orders that training customary female genital medical procedures don't see the result as mutilation. Among these gatherings, truth be told, the subsequent appearance is viewed as an improvement over female genitalia in their characteristic state. To be sure, to call a lady uncircumcised, or to consider a man the child of an uncircumcised mother, is a horrendous affront furthermore, non circumcised grown-up female genitalia are frequently thought of appalling. In interviews we directed in provincial and urban Egypt what's more, in contemplates led by staff of the High Institute of Nursing, Zagazig University, Egypt, the greater part of circumcised ladies wanted to have the technique performed on their little girls.⁸ They feel like it is there way of promoting equality in the society , a way to stand together against the male dominated society model ,the circumcised women feels like they earn equal respect as a man does when he is circumcised .A somewhat unique kind of value contention has equality in nations, for example, Egypt, Ethiopia, Mali, Sierra

⁵Jomo Kenyatta, Facing Mount Kenya: The Tribal Life Of The Gikuyu ,American Journal Of Sociology, Vol. 116, No. 2 (September 2010), Pp. 722-728, [Http://Www.Jstor.Org/Stable/10.1086/658069](http://Www.Jstor.Org/Stable/10.1086/658069) .

⁶Ibid., 133, 132.

⁷Kratz, Affecting Performance, P- 346

⁸Sandra D. Lane And Robert A. Rubinstein, "Judging The Other: Responding To Traditional Female Genital Surgeries," Hastings Center Report 26 (1996): 35

Leone, portions of Malaysia, and Northern Sudan; where it is the predominant social view that guys and females ought to be dealt with the same by changing the privates of both; and where by far most of females (roughly 80–90% in seven African nations) would be profoundly upset by the rejection of females from the practice. 'What's useful for the goose is useful for the gander' sex value thinking has been around for quite a while in numerous African ethnic gatherings.⁹ These ethnographic reports are imperative since they propose that as opposed to accepting that our own impression of excellence and distortion are all inclusive and must be transcendental we should think about how conceivable it is that there is a genuine and bewildering social gap far and wide in moral, passionate, and tasteful responses to female genital medical procedures. There is, obviously, no uncertainty that our very own sentiments of sicken and nervousness about this subject are amazing and can be effortlessly stirred and logically controlled either with pictures (for instance, of Third World careful actualizes) or with words (for instance, naming the action "torment" or "mutilation"). Be that as it may, in the event that we need to comprehend the genuine character of this social gap in sensibilities it might bode well to section our own underlying (and programmed) passionate/instinctive responses what's more, to spare any ground-breaking decisive affections for the finish of the contention, instead of have them shading or short out all target investigation. Maybe, rather than basically despising the "savages," we may build up a superior comprehension of the subject by developing a brief record of within purpose of see, from the viewpoint of those numerous African ladies for whom such practices appear to be both ordinary and alluring.

IV. WHY FGC IS CRITICISED?

FGM hurts ladies' physical and enthusiastic wellbeing for the duration of their lives.¹⁰ It has no realized medical advantages. The present moment and late intricacies rely upon the kind of FGM, regardless of whether the professional has had clinical preparing, and whether they utilized anti-infection agents and cleaned or single-utilize careful instruments. On account of Type 3, different elements incorporate how little a gap was left for the entry of pee and menstrual blood, regardless of whether carefully string was used rather than agave or acacia thistles, and whether the technique was performed more than once (for instance, to close an opening viewed as excessively wide or re-open one excessively narrow). Customary short-term complications & health issues include swelling, excessive bleeding, pain, urine retention, and healing problems/wound infection. Other transient complexities incorporate lethal bleeding,

⁹Kenyatta, J. 1938. *Facing Mount Kenya: The Tribal Life Of The Gikuyu*. London: Secker And Warburg.

¹⁰ Reisel & Creighton 2015, P-49. DOI: 10.1016/J.Maturitas.2014.10.009

iron deficiency, urinary contamination, septicaemia, lockjaw, gangrene, necrotizing fasciitis (tissue eating malady), and endometritis.¹¹ It isn't known what number of young ladies and ladies kick the bucket because of the training, since intricacies may not be perceived or revealed. The experts' utilization of shared instruments is thought to help the transmission of hepatitis B, hepatitis C and HIV, albeit no epidemiological investigations have demonstrated this.¹²

Late inconveniences change contingent upon the sort of FGM. They incorporate the development of scars and keloids that lead to injuries and deterrent, epidermoid blisters that may get contaminated, and neuroma arrangement (development of nerve tissue) including nerves that provided the clitoris. An infibulated young lady might be left with an opening as little as 2–3 mm, which can cause delayed, drop-by-drop pee, torment while peeing, and a sentiment of expecting to pee constantly. Pee may gather underneath the scar, departing the region under the skin continually wet, which can prompt disease and the development of little stones. The opening is bigger in ladies who are explicitly dynamic or have conceived an offspring by vaginal conveyance, however the urethra opening may at present be discouraged by scar tissue. Vesico vaginal or recto vaginal fistulae can create (openings that permit pee or excrement to saturate the vagina). This and other harm to the urethra and bladder can prompt diseases and incontinence, torment during sex and infertility.¹³ Painful periods are normal on account of the check to the menstrual stream, and blood can deteriorate in the vagina and uterus. Complete impediment of the vagina can bring about hematocolpos and hematometra (where the vagina and uterus load up with menstrual blood). The expanding of the midriff and absence of monthly cycle can take after pregnancy¹⁴.

FGM may put ladies at higher danger of issues during pregnancy and labor, which are progressively basic with the more broad FGM procedures. Infibulated ladies may attempt to make labor simpler by eating less during pregnancy to diminish the infant's size.¹⁵ In ladies with vesico vaginal or recto vaginal fistulae, it is hard to acquire clear urine sample for tests as a component of pre-birth care, making the conclusion of conditions, for example, pre-eclampsia harder. Cervical assessment during labour might be blocked and labour may be delayed or hindered. Third-degree laceration (tears), anal- sphincter harm and crisis cesarean area are increasingly normal in infibulated women.¹⁶

¹¹Berg & Underland 2014, Vol-2.DOI: 10.1136/Bmjopen-2014-006316

¹² Reisel & Creighton 2015, P-50.DOI: 10.1016/J.Maturitas.2014.10.009

¹³ Kelly & Hillard 2005, 491–492

¹⁴ Rushwan 2013, 132

¹⁵ Rashid & Rashid 2007, P. 97

¹⁶ Banks Et Al. 2006

V. LEGAL STATUS OF FGC, ROUND THE WORLD

FGM is a Human Rights Violation

FGM abuses various human privileges of ladies and young ladies. Since FGM includes the removal of sound sexual organs without clinical need and is typically performed on young people and young ladies, regularly with hurtful physical and mental results, it disregards the rights to non-discrimination, health, and bodily integrity. In spite of the fact that FGM isn't embraced with the goal of incurring hurt, its harming physical, sexual, and mental impacts make it a demonstration of savagery against ladies and youngsters. At long last, FGM now and again compromises the lives of young ladies and ladies, in this manner abusing their human rights to life, freedom, and security of the individual. Female genital mutilation (FGM), in any form, is considered worldwide as a flagrant violation of human rights of girls and women. Female genital mutilation is a clear demonstration of gender-based human rights violation, which intends to control women's sexuality and freedom¹⁷. Now let's look up to all the Human rights violation due to FGC in detail

Right to Health

The International Human Rights law including the Universal Statement of Human Rights (1948) broadcasts the appropriate for all human creatures to live in conditions that empower them to appreciate great health and human services. He issues related with the technique of FGM have ruthless ramifications for a lady's physical and emotional wellness. A wide range of FGC have health intricacies identified with the system being performed outside medicinal services offices by non-professionals utilizing unsterile cutting instruments. FGM brings about genuine medical issues, for example, diseases, abscesses, little considerate tumors, hemorrhages, and clitoral cysts. Young ladies and ladies are casualties of various sicknesses in light of the apparatuses used to play out the methods which transmit germs and infections from one to other people counting HIV AIDS. Herefore, exposing individual to dangers that can cost their health, without clinical need is an infringement of that individual's privilege as utilizing any medicine during the method isn't regular which infringement of rights to health is.

The Right of the Child

As it has been talked about before the survivors of this hurtful conventional practice are babies, young ladies and ladies extends between the ages of 7 and 8 after birth and 10-14 years of age. US Branch of State, likewise contended that FGM damages the privileges of youngster since it is typically performed on young ladies when they are as youthful as barely any months after

¹⁷ United States Department Of State, Ethiopia (2001): Report On Female Genital Mutilation.

birth to 17 years, the best interests of the child shall be a primary consideration which is a central notion of the Convention on Rights of Child . FGM poses a severe psychological and physiological health & wellness danger to children on whom it is performed.

The Right to Sexual & Physical integrity

Female genital mutilation damages the privileges of ladies and young ladies to sexual and physical respectability. Stated that Violations of the privilege to physical respectability are most evident when young ladies and ladies are forcibly restrained during the procedure. FGM is performed without ladies' and young lady's full consent. An unapproved attack of an individual's body speaks to a dismissal for that key right. one of the impetuses behind the practice of FGM is that society is of the opinion that, female sexuality is very dangerous and has to be controlled. Moreover, distinguished that one of the drawn out intricacy came about because of FGC is a torment during sex. Ladies who have been infibulated may encounter difficult intercourse through their life and even in situations where there is no torment there is no sexual satisfaction, these are away from of ladies' rights to sexuality.

Right to be Free from Discrimination

The practise of FGM is likewise a sexual orientation based discrimination of ladies since it has been taken as a pre-essential for marriage, to increase financial and social security. For instance in Gikuyu society(the society/ethnicity we talked about earlier in this document) there is a tradition that prohibits men to marry uncircumcised women. From this, we can contend that putting FGM, as a precondition just for ladies to wed is unequivocally oppression ladies based of sex.¹⁸

Rights against Cruelty & Torture

The UN Special Rapporteur on Violence against ladies has unmistakably expressed that FGM adds up to torment. The report "sees social rehearses that include torment and suffering resulting in infringement of physical honesty" as adding up to torment under standard worldwide law, connecting to such practices severe punitive authorizations and greatest global scrutiny.

VI. LEGAL MEASURES TO ELIMINATE FGM

Numerous administrations in Africa and somewhere else have found a way to take out the act of FGM in their nations. These means incorporate laws condemning FGM, training and effort programs, and the utilization of common cures and managerial guidelines to forestall the

¹⁸ Kalev HD (2004) Cultural Rights Or Human Rights: The Case Of Female Genital Mutilation. 51: 339-348.

training. Eighteen countries Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Ghana, Guinea, Kenya, Mauritania, Niger, Senegal, South Africa, Tanzania, and Togo have authorized laws/legislation condemning the practise of FGM. The punishments run from at least three months to a limit of life in jail. A few nations likewise force money penalty or fines. There have been reports of arraignments or captures in cases including FGM in a few African nations, including Burkina Faso, Egypt, Ghana, Senegal, and Sierra Leone.

Twelve fully developed nations that permits immigrants from countries where FGM is practiced - Australia, Belgium, Canada, Cyprus, Denmark, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom, and United States have passed laws criminalizing the practice. In Australia, six out of eight states have passed laws/legislation against the practise of FGM. In the United States, the federal government and 17 states have criminalized the practice.¹⁹ France has relied on Pre-prevailing criminal legislation/laws to prosecute and hold guilty both practitioners of FGM and parents procuring the service for their daughters.

VII. WHAT ABOUT INDIA

In India, FGC/FGM is practise by the women of Dawoodi Bohra Community (one out of the four Sub-Sect. Of Shia Islam). The Supreme Court of India has not given its express assent to criminalize FGC, though a PIL (Public Interest Litigation) was filed in the year 2017-18 by a Lawyer cum activist Sunita Tiwari to make the practise of FGC a criminal offense. But non the less the views & opinion of Dawoodi Bohra women are quiet similar to the views of the African communities who are indulged in the practise of FGC/FGM. The Dawoodi Bohra Women for Religious Freedom is a Maharashtra open trust that attempts to advance sexual orientation correspondence. DBWRF was built up in May 2017 by six Bohra ladies to help their "convictions, customs, culture and strict rights." It professes to speak to the perspectives on almost 75,000 ladies who are devotees of Mufaddal Saifuddin. The DBWRF states that female circumcision is an innocuous methodology and not mutilation.²⁰ DBWRF's crucial to "represent the privileges of Dawoodi Bohra ladies in India" to guarantee they have a similar opportunity as other citizens²¹, especially by protecting ladies who are exploited for their strict convictions, practices, customs and culture.²² Even with controversy, DBWRF has started to

¹⁹ [Http://Reproductiverights.Org/Document/Female-Genital-Mutilation-Fgm-Legal-Prohibitions-Worldwide](http://Reproductiverights.Org/Document/Female-Genital-Mutilation-Fgm-Legal-Prohibitions-Worldwide)

²⁰ Julios, Christina (2018). *Female Genital Mutilation And Social Media*. Routledge. Pp. 66–67. ISBN 9781351717618.

²¹ [Www.Dbwrf.Org](http://www.Dbwrf.Org). Retrieved 18 November 2019.

²² "WHO's Stance And The Criminalization Of Female Circumcision: The Protection Of Or Violation Of Human Rights?".

lead the pack in guaranteeing that Dawoodi Bohra ladies' strict opportunity to practise female circumcision is protected.

Constitutional Provision in India regarding FGC

The PIL(Writ Petition via **Article 32**) filed by Sunita Tiwari in the Supreme Court of India to criminalize the practise of FGC claims that such practise violates the provision of Constitution, violates the right of the child under provision of **Article 14** (Right to equality) & **Article 21** (Right to Life) of Constitution of India.²³ Now lets try and find out the ambit of both the aforementioned Articles and up to which extent the scope of this Articles will cover the stance of criminalizing the practise of FGC. (I am not trying to draw out any conclusion as the PIL is not yet decided by the Supreme Court of India)

Article 14 of Constitution of India, read as - **Equality before law.**—The State will not deny to any individual fairness under the watchful eye of the law or the equivalent assurance of the laws inside the territory of India.

Right to equality given under article 14 of Indian constitution. it is one of the major right. It guarantee the assurances to each individual the right to equality before law and equivalent protection of the laws .it isn't just right of Indian residents yet in addition right of non-residents .article 14 says "The state shall of India." article 14 characterize nobody is exempt from the rules that everyone else follows. All are equal in eye of law, The phrase “ equality to the law “ find a place in all written constitutions that guarantees fundamental rights. “All citizens irrespective of birth, religion, sex, or race are equal before law ; that is to say, there Shall not be any arbitrary discrimination between one citizen or class of citizens and another.” *Pantanjali Sastri, c.j.*, has opined that the subsequent articulation is end product of the first and it is hard to imaging a circumstance in which the infringement of laws won't be the infringement of equality before laws along these lines, in substance the two articulation mean one and same thing. In *Stephen's college v. university of Delhi*²⁴ under The court held that the expression “Equal protection of the laws is now being read as a positive Obligation on the state to ensure equivalent assurance of laws by getting vital social and financial changes with the goal that everybody may appreciate equivalent insurance of the laws and no one is denied such security.In the case of *Indra Sawhney v Union of India* ²⁵the right to equality is likewise perceived as one of fundamental features of Indian constitution. Article 14 applies to all individual and isn't constrained to residents. An enterprise, which is a juristic individual, is

²³ PIL Of Sunita Tiwari Vs Union Of India ,WP(C)No.286/17

²⁴ AIR 1992 SC 1630

²⁵ AIR 1993 SC 477

likewise involved to the advantage of this article. This idea suggested equality for equivalents and targets striking down antagonistic separation or persecution of inequality. In the case of *Ramesh Prasad v. State of Bihar*,²⁶ It is to be noted that aim of both the concept, 'Equality before law' and 'Equal protection of the law' is the equal Justice. The Principle of equality isn't the consistency of treatment to with everything taken into account regards. it just implies that all people comparably circumstanced will be dealt with the same both in the benefits gave and liabilities forced by the laws. Equivalent law ought to be applied to all in a similar circumstance, and there ought to be no separation between one individual and another.

Article 21 of the Constitution of India reads as - **Protection of life and personal liberty**. -"No individual will be denied of his life or individual freedom aside from as per method built up by law".

The genuine trial of a majority rule government is the means by which its laws remain as to the life and freedom of its kin. The resurrection of Art.21 which *Maneka Gandhi v Union of India*²⁷ case brought has been applying a profound effect on contemporary established statute. Maneka Gandhi case totally supersedes the *A.K Gopalan v. The State Of Madras*²⁸ view which had held the field for almost three decades. Since Maneka Gandhi case, the Supreme Court has again underlined the subject that Arts. 14, 19 and 21 are not totally unrelated, yet they continue, reinforce and feed one another. It has brought the Fundamental right of life and individual freedom into unmistakable quality which is currently viewed as the heart Fundamental Rights.. *Bandhua Mukti Morcha v. Union of India*²⁹ the Supreme Court extended the skyline of Art. 21 and held that privilege to life incorporates option to live with human nobility, liberated from misuse and to have equivalent chance. What's more, to maintain this right, the Supreme Court in the *State of Maharashtra v. Madukar Narayan Mandikar*³⁰ expressed that each lady is qualified for security and nobody can attack her privacy as a when one prefers. The Act which hinder the modesty of a women, is certainly an infringement of her essential rights particularly infringement of her entitlement to existence with freedom as gave under Article 21 of the Indian Constitution. In *Naz Foundation v. Government of NCT and others* Court observed that, "the Constitutional protection of human dignity requires us to acknowledge the value and worth of all individuals as members of our society". All citizens of India will live and enjoy peaceful, dignified life without any disturbances.³¹

²⁶ AIR 1978 SC 327

²⁷ 1978 SCR (2) 621

²⁸ AIR 1950 SC 27

²⁹ AIR 1984 SC 802

³⁰ AIR 1991 SC 207

³¹ W.P. (C)7455, 2001

Is Criminalizing FGC violate Article 25 & 26 of Constitution of India?

As argued by the counsel of the DBWRF stated that criminalizing the practise of FGC will infringe the rights guaranteed under *Article 25 & 26* by Constitution of India of the Dawoodi Bohra Community. *Article 25 & 26* of the Constitution of India read as- (Provisions of Article 25 & 26 to be read together)

Article 25- Freedom of conscience and free profession, practice and propagation of religion.— Subject to open request, ethical quality and well being and to different arrangements of this Part, all people are similarly qualified for opportunity of still, small voice and the privilege unreservedly to proclaim, rehearse and spread religion.³²

Article 26- Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall be qualified under Article 26—

(a) to establish , construct and maintain institutions/organizations for religious and charitable cause;

(b) to control its own day to day affairs & issues in matters of religion;

(c) to invest and acquire movable and stable/immovable property; and

(d) to control such property in accordance & within the ambit of law.

Now lets try to analyse how Article 25 & 26 can save FGC from being criminalized. We shall, look into the opinio juris & the stance of Supreme Court of India regarding both the aforementioned articles.

The term 'religion' has not been characterized in the Constitution and it is barely powerless of any inflexible definition. The Supreme Court has characterized it in number of cases. A religion is completely a matter of certainty and isn't generally enchanted. Religion has its reason in "a course of action of feelings or shows which are regarded by the people who guarantee that religion as accommodating for their powerful success" , however it would not be right to state that religion is nothing else except for a principle or conviction.³³ In *Commissioner of H.R.E. v. Lakshmindra*,³⁴ Supreme Court opined that ,A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies what's more, methods of affections & attachment which are viewed as basic piece of religion and these structures and observances may degree even to issues of food and dress. In another

³² Durga Das Basu, Constitutional Law (24th Edition)

³³ Ratilal V. State Of Bombay, A.I.R. 1954 S.C. 388

³⁴ AIR 1954 SC 282

case *Seshammal v. State of TamilNadu*³⁵ Subject to specific impediments, Article 25 gives an essential directly on each individual not just to engage such strict convictions as might be affirmed by his judgment or inner voice yet in addition display his convictions and thoughts by such plain acts and practices which are authorized by his religion. Presently what practices are secured under the Article is to be chosen by the courts regarding the precept of a specific religion and incorporate practices viewed by the network as some portion of its religion.³⁵ The *Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Tirtha Swamiar of Shri Shirur Matt*³⁶ case emerged out of the Madras Hindu Religious and Magnanimous Endowments Act 1951³⁷ passed by the Madras lawmaking body in 1951. The object of the Act, as expressed in its preamble, was to change and unite the law identifying with the organization and administration of Hindu strict and magnanimous organizations and institutions in the State of Madras. On sacred grounds, the legitimacy of the Act was tested by Shri Lakshmindra Tirtha Swamiar, the mathadhipati of Sirur math who expected likewise the office of mathadhipati of Udupi math when it was under budgetary emergency. The Hindu Religious Endowment Board stepped in now to help the Udupi math in escaping its budgetary issues. Obviously the Mathadhipati, Shri Lakshmindra Tirtha Swamiar, agreed to the intercession as he gave up intensity of lawyer to the supervisor named by the Board. However, it appeared that the chief needed his own path in all undertakings of the math. This caused the mathadhipati to withdraw his capacity of lawyer and to overlook the endeavors of the Board, which recorded a body of evidence against the mathadhipati. The mathadhipati appealed to the Supreme Court on the ground that the Board, whose forces were affirmed to be illegal, had abused his protected rights under articles 25 and 26 of the Constitution. The Supreme Court decided the case for the math. While giving the judgment, it appears that the Court has adopted an attentive strategy to the importance of "religion." Besides the Supreme Court appeared to have given an indigenous importance what exactly incorporates into the classification of "mainstream exercises" related with religion. This administering of the Supreme Court has been considered as one of the most significant choices in Indian law concerning the meaning of religion.³⁸ In an American case vide *Davis v. Benson*, it has been said "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cult us of form or worship

³⁵ (1972) 2 SCC 11

³⁶ AIR 1954 SC 282

³⁷ Madras Hindu Religious And Charitable Endowment Act, 1951 (Madras Act 19 Of 1951)

³⁸ Richard W. Lariviere, "The Indian Supreme Court And The Freedom Of Religion", In Journal Of Constitutional And Parliamentary Studies, Vol. IX, No.2 (1975), P. 176

of a particular sect, but is distinguishable from the latter.”³⁹

FGC & Indian Penal Code

Indian Penal Code 1860 & FGC

As argued by Mr. K.K. Venugopal (Attorney General of India) the practise of FGC is already a Criminal offense under the provisions of IPC 1860. He in his argument touched to the different sections of IPC, that are :-

Section 320 Of IPC (Grievous Hurt)- If we try and consider and think deep down we can know that FGC might fall under the 8th clause of Grievous, the exact words of the clause - “Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits”.⁴⁰ Any other hurt which amounts to death and does not comes under the ambit of rest of the 7 clauses of grievous hurt shall constitute under this aforementioned clause. It is evident from the very fact that FGM already has claimed several lives round the globe and in India as well, so most certainly it will fall under the category of grievous hurt.

Section 324 Of IPC (Voluntarily causing grievous hurt by dangerous weapon or means)-

This section read as - Whoever, aside from for the situation accommodated by section 334 IPC, wilfully causes hurt by methods for any instrument for shooting, wounding or cutting, or any instrument which, utilized as a weapon of offense, is probably going to cause demise, or by methods for discharge or any warmed substance, or by methods for any toxic substance or any destructive substance, or by methods for any touchy substance or by methods for any substance which it is injurious to the human body to breathe in, to swallow, or to get into the blood, or by methods for any creature, will be rebuffed with detainment of either depiction for a term which may reach out to three years, or with fine, or with both. As we have discussed earlier FGC is done using blades, sharp objects, hot metals etc. All this instruments used to perform FGC falls under the ambit of section 324 Of IPC. And the methodology by which FGC is performed satisfies each and every bit of need to invoke section 324 of IPC.

Section 336 of IPC (Act endangering life or personal safety of others) this section follow

as- Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be booked with imprisonment of either description for a term which may extend to three months or with penalty which may go up to the extent of two hundred and fifty rupees, or with both.

³⁹ 133 U.S. 333 At 342

⁴⁰ Indian Penal Code, 1860

It must be clear from the from the words of this sections that FGC will fall under the category of this section as FGC is performed in such dangerous methodology, using of blades and other sharp object on the genital which is often said to be the weakest part of human body, which is sensitive and prone to many deadly diseases itself, certainly amounts to negligence.

Section 338 of IPC (Causing grievous hurt by act endangering life or personal safety of others.) the section read as follow- Whoever makes egregious hurt any individual by doing any demonstration so imprudently or carelessly as to imperil human life, or the individual security of others, will be rebuffed with detainment of either depiction for a term which may reach out to two years, or with fine which may stretch out to one thousand rupees, or with both.

FGC is a rash act and as we saw earlier a negligent act as well, and as the survey report of many renowned organization suggests it claims many innocent human lives too, so without any iota of doubt FGC comes under the ambit and scope of section 338 as well.

(Note- The Supreme Court of India has not given its express consent yet about FGC falling under any sections of IPC 1860 or POCSO Act of 2012) all the aforementioned sections and other sections of IPC & POCSO as well, does not explicitly prohibits the practise of FGC/FGM.

The Supreme Court of India have a huge challenge in its way to ensure justice in this fragile matter, this religious practise is followed by sentimental values but at the same time violative of Human Rights as well, and if someone will try to find out which is to be preferred over the other, Human rights or Sentimental values than it will be quiet a difficult task in itself, and will have no end to the discussion. So, it is left over to the brilliant judicious mind of India to decide & we as citizen of India, expressly expect a balanced landmark verdict on this very matter.
