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FGM as a Cause of Women Harassment

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ABSTRACT

A custom should give pleasure to the people, but female genital mutilation is not such a custom. It provides pain and trauma to satisfy society. Patriarchal society is not an excuse for cruelty to women in society, and the law should safeguard women. Bohra community people have been practicing FGM (Female Genital Mutilation) for thousands of years, performed on children below the age of 15. FGM leads to adverse health conditions. The laws have failed to address the problem faced by the women of these community and mitigate the further propagation of such illegal cultural practice. It is practiced discreetly such that only the mothers and grandmothers of the community are at its core to ensure that the practice is performed year after year, generation after generation, on girls, from infancy to adolescence. FGM causes severe pain, infections, excessive bleeding, and difficulties with wound healing, fever, urinary infections, shock, mental trauma, vaginal problems, menstrual problems, scar tissue formation, sexual problems, and sometimes even death.

I. INTRODUCTION

In the constitutional society, the customs followed should be abided by the fundamental rights provided by the constitutional law. If the customs have any possibility to disrupt the constitutional rights, then the citizens of India have the rights to challenge the validity of the custom. Whenever there is harm towards the human rights and the body the law always comes to act to uphold the act's validity and can punish those who profess the act. Every human right are protected by the laws, irrespective of the practice being within a community or even within a specific area. Every human right are protected, in international law framework also the laws provide the protection towards child abuse by providing various conventions such as convention on the rights of the children, UNHCR and other conventions to provide protection to the children health and protection from sexual abuse. But there is a prevailing of one such practice which is purely on the belief of the community. The custom named FEMALE GENITAL MUTILATION is a nightmare to young children of the community, at an age where they could barely understand anything this practice is performed by their own family members that leaves them and memory of immense pain and irreversible effects on their

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health. This is prevalent among the Dawoodi Bohra community, a community who are a sub-sect of Shia Muslims who are wide spread in Mumbai². The community believes that the performance of such a practice is essential and there is a study that shows that the majority of the Dawoodi Bohra women have been undergone this painful practice without their consent, without a proper medical measure to perform the surgery. The women who had undergone this cruelty have also performed the same to their daughters even though they have felt the immense pain and suffering in their childhood. This paper examines the trauma and the post effects and the pain suffered by the women, this paper also considers the historical consideration where the women were abused and the laws that can help in overcoming this tragedy.

II. FEMALE GENITAL MUTILATION

Female Genital Mutilation, also known as khatna or Khafd in cultural languages, is a religious practice in the Dawoodi Bohra community people, found in Saudi Arabia, South Africa, and Asia. FGM leads to the extreme pain, infections, excessive bleeding, wound healing problems, fever, urinary infections, mental trauma, shock, vaginal problems, menstrual problems, scar tissue formation, sexual issues, and even death in some cases³. There are four types of FGM practices which differ according to the procedure they are done; the first type is Partial or total removal of the clitoris, the second type is Partial or complete removal of the clitoris along with labia minora, the third type is narrowing down the vaginal opening by covering it through a seal by positioning the labia minora or labia majora, which is performed with or without the removal of the clitoris, the fourth type, includes all other harmful procedures like cutting⁴. FGM practiced to ensure pre-marital virginity and marital fidelity. Women from the Bohra community have travelled overseas and been educated; they raise these issues before the law as they are aware of their rights and tend to stop this cruelty from being practiced by the next generation. This custom is not an essential practice, and it never gives pleasure. Instead, it causes pain and trauma. They also add that FGM was performed when they were minors, and their mothers supported and took them to the place where the FGM was performed.

² Understanding Female Genital Cutting in the Dawoodi Bohra Community: An Exploratory Survey, Mariya Taher, Sahiyo, February 2017, https://www.28toomany.org/static/media/uploads/Continent%20Research%20and%20Resources/Asia/sahiyo-study_final_12.28.18.pdf

³ Muskan Rathore & Sagar Rana, FEMALE GENITAL MUTILATION & LAW OF INDIA, National University of Study and Research in Law, Ranchi <http://vidhiparivartan.co.in/wp-content/uploads/2021/06/Paper-12.pdf>

⁴ <http://doi.org/10.1732/IJLMH.25974>

III. DISCRIMINATION OF WOMEN⁵:

Women in ancient India and modern India are subjected to many social evils because they are treated as the weaker sex, and the rights of women and children are infringed in the name of custom and tradition. Some social evils faced by women in ancient India were Sati, female infanticide, child marriage, and sanction to widow remarriage. The Vedas and olden scripts of India also question the purity of a woman, even if she is a goddess. She must make it clear that she is pure. This prevails in the modern era also, though we have made various laws and regulations to maintain human conduct, some customs still prevail. Female genital mutilation has been practiced for many years, and no law restricts female genital mutilation from practice. Women are subjected to rapes and domestic violence, in this case rape is considered as morally wrong but the marital rape is not considered that it is a wrong. This is the discrimination that is faced by women in India.

IV. HISTORICAL BACKGROUND OF FGM

FGM is practiced by Muslim community people these people are not originated in INDIA. FGM is practiced by Dawoodi Bohra community people, Shia Muslims. In the 12th century, they migrated from Yemen and lived in India and other nations like Pakistan, Sri Lanka, etc. FGM was a practice that existed before Islam and Christianity. Consequently, it is falsely associated with religion. Cultural practice in a general sense means how people usually behave in a culture⁶. A religious practice will never be in a way that could cause psychological or physical harm, distinguishing it from cultural traditions. So, the practice is purely practiced by the community people and not by the mandate holy book (Quran). Though the holy book had not provided this inhuman treatment towards women this practice is still used by the community people as they prefer this practice to ensure the virginity of the woman, and they think this practice as something that could gain them respect, but the post effects could lead to a serious issue. The post effects have led to harmful effects in the women of the community, which have led negative impacts on their sex life post the marriage.

Post-surgery trauma of the women who underwent FGM

This practice has no morality and every human should have some morality in their conduct, but by practicing FGM, only trauma and pain are left to a child. FGM is portrayed as a very essential practice of the culture. FGM is practiced to ensure the virginity and it is believed by

⁵ Stency Mariya Mark, FEMALE GENITAL MUTILATION: A FACET OF PATRIARCHAL SOCIETY, https://ili.ac.in/pdf/win21_1.pdf

⁶ Stency Mariya Mark, FEMALE GENITAL MUTILATION: A FACET OF PATRIARCHAL SOCIETY, https://ili.ac.in/pdf/win21_1.pdf

this community people to provide assurance of no premarital sex and extramarital sex by lowering a woman's sexual behavior. It is linked to cultural ideals of ensuring the modesty, such as marital fidelity and ⁷virginity, before marriage. The practice of mutilation is carried out on both men and women at a young age, it is sometimes considered gender-neutral. However, it does not benefit women as much as it benefits men, it is discriminatory towards women and it leaves an immense pain and trauma when performed by non-medical practitioners in both the cases of men and women. For women, this custom increases their chances to illness. It also violates the fundamental rights of women and that cannot be acceptable and merely left to be continued. It also affects the child's mental health and is regarded as exceedingly making them scared and excessively bleeding between the ages of 4 and 12. Witnessing such abuse to them, by their own mother and grandmothers will let a scar in their memory and will have an adverse influence in their psychological and physical health. As the practice is done very discreetly by the family members in their personal residence these person having zero knowledge of the medical issues and complication they don't even give any anesthetic to relieve the pain in ancient times and some cases do prevail in the modern time also. The post trauma after the FGM is very crucial, the surgery is not performed by any trained medical practitioner but it is done by the old women of the community, the pain is immense that, no one could ever dream of. The post trauma sustained by the children are extreme pain, infections, excessive bleeding, wound healing problems, fever, urinary infections, mental trauma, shock, vaginal problems, menstrual problems, scar tissue formation, sexual issues, and even death in some cases. In certain cases the women who had undergone FGM have stated that it has an adverse effect on their sex life. There is a long term mental effect; it also caused immense pain for what the family has assured. The family believes this tradition to ensure the marital virginity, but post the cruelty this stands as a matter of question as they could not stand a chance against the wellbeing of the women. There is also a practice of removal of skin from the penile of male children, it is widely accepted and is only safe when being performed by a surgeon⁸. There are cases where the penile mutilation has also gone wrong and have given an immense pain and suffering to the child who have undergone this ritual. As the girl children who undergo this practice are been operated by their own mother and grandmother it is a huge threat to their health and also the mental health of the child is completely shattered. Even though the mothers have undergone such a cruelty they

⁷ Female genital mutilation, World Health Organization (WHO), January 21, 2022, <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>

⁸ Dar L, Baarimah A, Alshehrani S, Alasiri A, Allassiri M, Al-Ghamdi S. Male Genital Mutilation in the Name of Ritual Circumcision: A Case Report and Literature Review. *Case Rep Urol.* 2023 Oct 7;2023:9935247. doi: 10.1155/2023/9935247. PMID: 37841831; PMCID: PMC10576645.

do perform the same to their children, they have indulged so much in such an illegal practice that they even forget the pain and they pull their children into this cruelty.

V. LAW AND FGM

If the validity of FGM is checked it violates many laws both in India and International laws. In the Indian context the practice of FGM is violative of the Article 14 and 15 of Constitution⁹. The constitution helps in the development of laws that can be made for women and children, but still no such law criminalizes or restricts FGM. The practice is also violative of the article 21 of the constitution, which provides protection of life and personal liberty and states, that no person shall be deprived of his life or personal liberty except according to procedure established by law. In according to POSCO Act of 2012, anyone who touches the female genitalia of a minor girl for any cause other than medical necessity can be sentenced to imprisonment. The article 25, 26 of Indian constitution questions whether FGM is a religious practice or it is a cultural practice, the FGM is a cultural practice as FGM was a customary practice before Islam was acknowledged as a religion but however, the Quran makes no mention and it is not even valid before the law thus FGM though it predates Islam itself it is not a necessary practice. Even the customs like Sati, child marriage, and Dowry practices are prohibited, so it stands as an right to the women to constitutional morality of this practice. In the case of *Sunita Tiwari v. UOI*, it was argued that it is an essential religious practice and is therefore protected under Articles 25 and 26 of the Constitution but Honorable Supreme Court issued demanded that it should be challenged in a larger bench and let the matter to be pending. If the validity is seen in international law, the conventions like the Elimination of All Forms of Discrimination against Women (CEDAW) which is formulated by the UNGA in order to protect and enhance the rights of women with an international applicability. Article 1 of CEDAW talks about the discrimination to women, it provides a duty to the state to provide protection to any sort of discrimination faced by the women and the FGM is one such custom that disrupts the physical and mental health and in the Article 2 of the convention it is provided that there should be necessary measures to be taken to abolish any act that is discriminatory towards women and ensure the equality of women in the society.

Sunita Tiwari v. union of India¹⁰: This is a case filed under the article 32 challenging the

⁹ Muskan Rathore & Sagar Rana, FEMALE GENITAL MUTILATION & LAW OF INDIA ,National University of Study and Research in Law, Ranchi <http://vidhiparivartan.co.in/wp-content/uploads/2021/06/Paper-12.pdf>

¹⁰ Sunita Tiwari v. Union of India, (2019) 18 SCC 719

validity of this act. This case was filed before the Honorable supreme court of India; this was filed in malafide intention to ban the practice of FGM. It was argued in the case that this practice is a child abuse and is violative of Article 21 of the Constitution. The counsel for the respondent argued that the custom is prevailed for more than 1400 years in the Muslim community and therefore they seek protection of that practice under the article 26 of the constitution. This case was not decided further the case was adjourned to be decided before a larger bench. The case is yet to be decided and is pending before the court.

VI. CONCLUSION:

Female Genital Mutilation (FGM) is an unlawful practice and cultural phenomenon that cruelly violates women basic Human Rights. The need to spread awareness about the practice of normalizing going through such pain for no apparent reason. Dawoodi Bohra has lived in countries where FGM is outlawed, like the UK, Australia, and some places in India. FGM is a harrowing incident for the women and children who endure this cruel practice. Subjecting women to this traumatizing experience in the name of custom, religious or cultural tradition, social pressure, or merely societal reasons is a disgrace for the value of girls and women in society. Where such a issue arises, the Courts must approach it with sensitivity and pronounce judgment without further delay. It is not that the law cannot terminate this practice, but it needs the law to notice this practice and, criminalize it and make new laws to give sanctions to those who practice this cruel practice; However, the law is widespread, the incentive taken to abolish this practice is so lesser this is a criticism that law has been silent.

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