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Female Genital Mutilation: A Cry for Human Rights

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ABSTRACT

FGM is “the procedure that involves partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. The practice has no health benefits for girls and women and cause severe bleeding and problems urinating, and later cysts, infections, as well as complications in childbirth and increased risk of newborn deaths”.

Female Genital Mutilation (FGM) is a practice adopted in several parts of the world where little girls undergo a torture by the removal of the external part of their genitalia without any medical reasons. This is a traditional practice for various communities which is causing a potent concern not only because it is painful but also because of the fact that it is a gross violation of human rights. There are attempts made in the international level by the World Health Organization (WHO) to spread awareness and prohibit the practice of FGM by celebrating 6th February as the International Day of Zero Tolerance for FGM. However, the problem faced by most of the nations practicing such a tradition is its hush-hush affair. The author of this paper tries to analyze the religious practices of FGM and understand the provisions recognized globally to prohibit the same. Finally, the author would read the practice from the constitutional aspect and answer if there is a necessity to have legal provisions to ban this practice in India.

Keywords: *Female Genital Mutilation, Human Rights Violation, Constitutional Rights Violation, Essential Religious Practice.*

I. INTRODUCTION

A much undisputed fact and a popular opinion is that Indians are inherently religious, which is a beautiful feature penetrated deeply into the roots of our reactions and behaviour. Our response to the issues faced by the society at large not only erupts from scientific awareness or legal provisions but also from the ambit of respect to the communities, religious groups and ethnic cultural identities we carry. The best example can be taken right from the constitution which itself creates exceptions with respect to such classification. But as a progressive society and an emerging economic giant, we must understand the age old practices which must be stopped not

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only because it's against human rights but also because they are unjustified, illogical and absolute social evils. Such a practice that is still prevalent in the country is the female genital mutilation (FGM).

FGM is a practice prevalent in a lot of places around the world, especially in Africa, Middle East and Asia and according to the World Health Organization; more than 200 million girls who are alive today have gone through this process². In India, the practice is very popular among the Bohra community, a sub-sect of Shia Muslims.

It is in the Constitution that we find the golden principle of equality, enshrined under Art 14 but sadly, nature and religion has not been so favourable to women. Time and again, the Indian judiciary has taken measures to protect the rights of the daughters of the nation, but there is a case still pending in the Supreme Court³ to decide whether it is valid and necessary under Art 25 and 26 of the constitution to cut open a girl's genitals in the name of religion.

(A) What is Female Genital Mutilation

FGM (also called female circumcision or *Khatna*) is a process of partial or total removal of the female external genitalia for any non-medical purpose. To explain it further, there is no medical ground for such removal or cutting of the female genitalia, and is purely based on customary practices of several communities. There might be instances when due to medical emergencies and health, steps are taken for removal of such parts of the body, but when it is done without any such reason, it falls within the ambit of a gross violation of human rights, especially the woman's right to health, security and dignity. Generally, this is done to girls ranging between infancy to 15 years, which is quite an early age to even understand any ration behind it, leave alone consent to the process. Also, this age remains different in different regions⁴.

A very important question that is raised is why does female genital mutilation happen? The report published by the World Health Organization on FGM states that irrespective of several different communities, having different identities, rituals and practices, the reason for FGM is because of the attitude towards the sexual health of the woman. FGM in all these societies are seen as the identity and symbol of womanhood, due to which such a practice is accepted in these societies. Strangely, based on the same report as published by WHO, it can be understood that

² Ibid (1)

³ *Sunita Tiwari v Union of India*, [WP (C) 286/2017] available at <https://www.scobserver.in/cases/sunita-tiwari-union-of-india-ban-on-female-genital-mutilation-case-background/> (Accessed 12.06.2023)

⁴ In southern Nigeria, FGM is performed during the first few months of infancy while adult women in Uganda undergoes this practice- "*Female Genital Mutilation – An Overview*", World Health Organization, report available at https://apps.who.int/iris/bitstream/handle/10665/42042/9241561912_eng.pdf?sequence=1 pp 11 [Last accessed 05.07.2023]

FGM takes place in countries such as Egypt, Sudan and Somalia to reduce the number of extramarital relationships of the married woman, as such intimacies are completely unacceptable in these societies. Again, in places like Kenya, Uganda and West Africa, women need to give proof of their fertility by having the child out of wedlock, then undergo FGM and get married to the man⁵.

No matter what cause and reason is accentuated to this act, the fact that it remains brutal not just physically but also in the psychology of these young girls can't be disregarded.

(B)Types of FGM

Understanding FGM and its types have been an activity undertaken since a long time, with several classifications being listed according to their modes and methods used⁶. However, WHO classifies FGM into 4 types, which are explained as under-

- a. "Partial or total removal of the clitoris (called clitoridectomy)
- b. Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision)
- c. Narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulations)
- d. All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, pulling, piercing, incising, scraping and cauterization (which also includes piercing the genitalia)"⁷

The reason why there is a demand from international groups to curtail FGM as a practice is because there are no benefits but definite harms for such a procedure. An analysis by WHO confirms that the immediate consequences of this procedure may be "severe pain, excessive bleeding (haemorrhage), genital tissue swelling, fever, infections e.g., tetanus, urinary problems wound healing problems, injury to surrounding genital tissue, shock and death"⁸. Along with this, the long term effect of the process are as follows-

⁵ Ibid

⁶ Ibid at pp 3-4

⁷ "WHO Guidelines on the Management of Health Complications from Female Genital Mutilation" by WHO, pp 1-4, available at https://apps.who.int/iris/bitstream/handle/10665/206437/9789241549646_eng.pdf [last accessed 05.07.2023]

⁸ Health Risks of Female Genital Mutilation by WHO, 5th Feb 2024 available at [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/female-genital-mutilation/health-risks-of-female-genital-mutilation](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/female-genital-mutilation/health-risks-of-female-genital-mutilation) (last accessed 30.03.2024)

- “urinary problems (painful urination, urinary tract infections);
- vaginal problems (discharge, itching, bacterial vaginosis and other infections);
- menstrual problems (painful menstruations, difficulty in passing menstrual blood, etc.);
- scar tissue and keloid;
- sexual problems (pain during intercourse, decreased satisfaction, etc.);
- increased risk of childbirth complications (difficult delivery, excessive bleeding, caesarean section, need to resuscitate the baby, etc.) and newborn deaths;
- need for later surgeries: for example, the sealing or narrowing of the vaginal opening (type 3) may lead to the practice of cutting open the sealed vagina later to allow for sexual intercourse and childbirth. Sometimes genital tissue is stitched again several times, including after childbirth, hence the woman goes through repeated opening and closing procedures, further increasing both immediate and long-term risks; and
- psychological problems (depression, anxiety, post-traumatic stress disorder, low self-esteem, etc.).”⁹

As evident from the list of disasters the process can cause, it should be safe to state that FGM is a prevalent practice to endanger woman’s health and safety and strip them off from the constitutional and human rights guaranteed to them. The more concerning issue, according to the author, is the age factor that plays a monstrous role. Majority of these women go through the process within the age of 6-14, making them completely incapable to understand the process, know their rights, make any choice and consent to the procedure, whether in the name of religion or other societal obligations.

II. THE ROLE THAT RELIGION PLAYS BEHIND FGM IN INDIA

Though the stories about FGM remain mostly behind the curtains, in some shady rooms people stay away from, but United Nations have a completely different narrative about this. Producing statistics, UN states that Ethiopia, Somalia, Uganda, Tanzania and Kenya are the countries where a majority of the population practice FGM and more importantly, 25% of the girls go through this experience by the age of 0-1, 50% undergo this process by the age of 2 and 75% of the girls over all undergo FGM by the age of 8. Also, according to the survey conducted, if

⁹ Female Genital Mutilation by WHO, 5th Feb 2024, available at <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (last accessed 30.03.2024)
Health Risks of Female Genital Mutilation by WHO, 5th Feb 2024 available at [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/female-genital-mutilation/health-risks-of-female-genital-mutilation](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/female-genital-mutilation/health-risks-of-female-genital-mutilation) (last accessed 30.03.2024)

voices are not heard against FGM, 94,10,000 girls would be at the risk of this practice in all these countries¹⁰.

The reason behind FGM being practiced among communities is definitely related to culture and religion, considering it important to make their girls marriage-able and prevent them from being mocked by both men and women in the community¹¹. The same statistics show that in majority of these countries, the practice is way more popular among Islam, though other Abrahamic religions also have it in common.

FGM is rooted within the culture and religious practices, and mostly debated in its favour from that angle. To explain, out of 31 countries where such practice is prevalent, almost 28 of them have a Muslim majority population¹².

To analyse the situation in India, FGM is most prevalent amongst the Dawoodi Bohra, Alvi Bohra and the Suleimani community, all sub-sects of Shia Muslims. Because of absolute lack of survey by state actors on such a matter, no data is available regarding the number of girls who actually go through this practice. Therefore, reliance is placed on the report published by WeSpeakOut, an NGO giving voice to the women of these communities¹³. According to this report, over 75% of the women in these communities go through the practice of FGM, ranging between the age of 7-18. Interestingly, the first reason cited for acceptance of the practice is because it is considered as 'sunnat'. Ironically, no text in the Quran or *Hadith* could be cited to refer to a mandatory practice of FGM. However, in the *Hadith* of Aisha, there was a part that mentioned that when two *al-khitaani* (circumcised) meet, then it is obligatory to take *ghusi* (ritual bath). This apparently gave an idea that even females have to go through the process of circumcision¹⁴ or *Khafd*. It is necessary to be pointed out here that there is a strict line of difference between *sunnat*, which is an optional act, determining the way of life and *Farizat*, which is compulsory practice to be followed.

The support for FGM by the religious leaders has been quite discreet in the past but not anymore. The irony is that the requirement of FGM is explained more so by the male leaders and

¹⁰ Beyond the Crossings- Female Genital Mutilation across Borders, Nov 2019, UNFPA

¹¹ Ibid pp 25

¹² Female Genital Mutilation by UNICEF available at <https://data.unicef.org/topic/child-protection/female-genital-mutilation/> (last accessed 27.07.2023)

¹³ A Project and others, 'The Clitoral Hood A Contested Site'. Staff Reporter, 'FGM a Human Rights Issue: Tharoor' *The Hindu* (5 February 2018) <<https://www.thehindu.com/news/cities/mumbai/fgm-a-human-rights-issue-tharoor/article22662691.ece>> accessed 23 April 2024.

¹⁴ It is important to mention here that by using the term 'circumcision', the author is not trying to dilute the difference that arises between it and mutilation. Rather, this is the only place where the term has been used interchangeably as reference to the report was made. To clarify, there is a difference between these terms, as a circumscion shall mean khatna, which has medical reasons behind it but a mutilation or khafd does not but is accompanied only with harm.

philosophers. For example, on the 6th of June, 2016 Syedna Mufaddal Saifuddin¹⁵, the leader of the Bohra Community, released a press statement whereby he mentioned the purity and importance of circumcision and stated that circumcision must be done and for women, it must be done discreetly. As the news broke out in public, major call for justice started. Very recently, UK saw a protest with respect to offering Visa to the Syedna for the visit, claiming that this could pose their muslim daughters in danger.

A correct analysis required here is to see if Islam really plays a role in supporting FGM. Under Islamic law, FGM can't be a mandatory practice, precisely for two reasons- i. That Allah, the Almighty, has created people in their best moulds¹⁶, which means that there is no alteration or modification that needs to be done on His humans and ii. It is not mentioned in the Quran.

Islam sees "Circumcision, shaving pubic hair, trimming the moustache, clipping the nails, and removal of armpits" as five signs of 'fitrah' or good human nature¹⁷ and this is where the conflict arise to apply the rule of circumcision to both the genders. But it is to be understood that male and female circumcision differs from each other on the ground of health values, i.e to say, male circumcision is a method to protect against several diseases including AIDS¹⁸ but female circumcision has a reverse affect on the health of the woman. The interesting fact here is that Islam sees female circumcision as a method to create sexual pleasures for the women and the men and in a Hadith, there are mentions of female genital mutilation or female circumcision but most of these are not strong Hadiths and therefore, not considered relevant in Islam¹⁹.

A very important question evolves here- whether the right to practice FGM is a fundamental right protected under Art 25 and 26 of the Constitution of India, and if so, can it be determined as an essential religious practice. For this we shall determine what is essential religious practice, which has been discussed as under.

(A) What are essential religious practices?

1. As protected by the constitutional ambits under Art 25²⁰, freedom of free conscience,

¹⁵ Also, the Chancellor of Aligarh Muslim University. See <https://www.amu.ac.in/sub-page/chancellor> last accessed 27.07.2023

¹⁶ Surat Al Tin, Verse 4 available at <https://quran.com/at-tin> (Accessed 17.06.2023)

¹⁷ Female Circumcision Between the Incorrect Use of Science and the Misunderstood Doctrine, Prof Dr. Gamal Serour and Prof. Dr. Ahmed Ragaa Abd El-Hameed Ragab, Executive Summary, UNICEF, Ed-II, 2013

¹⁸ Voluntary Medical Male Circumcision for HIV Prevention, Global HIV Program, World Health Organization available at <https://www.who.int/teams/global-hiv-hepatitis-and-stis-programmes/hiv/prevention/voluntary-medical-male-circumcision> (Accessed 17.06.2023)

¹⁹ Umm Attiyah's Hadith which reported the Prophet addressing her to circumcise a minute part for pleasure of the wife and satisfaction of the husband which is considered to be a weak Hadith, [ibid 2, pp 11]

²⁰ **25. Freedom of conscience and free profession, practice and propagation of religion.—**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

the freedom to profess, the freedom to practice and the freedom to propagate the beliefs of that religion are fundamental rights of any citizen. In this article, to restrict ourselves with the current issue in hand, we shall understand the part that deals with practice of the religion. FGM is a practice widely accepted among the Bohra Community of the Shia Muslims, living in India and therefore, the reason of this issue is traced from its religious roots. Though any practice that is prevalent in a particular religion shall not be abrogated and if so done, might lead to a violation of Art 25; the validity of such practices must be checked.

2. *Practice* of any religion shall imply the overt performance of the traditions and ceremonies of that religion and participation in the religious professions and assemblies and signifies the practical practice of the religion²¹. To be a religious practice, it is not important that it is performed by everyone in that religious group and shall be accepted as a religious practice even if it is performed only by a denomination. This point was clarified in the landmark case of “*The Commissioner, Hindu Religious Endowments, Madras V Sri Lakshmindra Thirtha Swamiar Of Sri Shirur Mutt*”²². So the fact that such a practice is not prevalent in the entirety of Islam and therefore, not a religious practice can’t be taken into consideration. This is because the fact that a line of thought in a sect of a particular religion has this practice as a religious practice. Therefore, on the surface level it might look like denying such a right to the people of such community shall be a violation of FR guaranteed under Art 25. So, how do we understand this as not a religious practice, to enable the state to pose reasonable restrictions and propose a law to punish these activities? Also, can the state interfere into the religious activities and beliefs of a person? An answer to the latter question is very simple, and provided in *Raynolds v U.S*²³ where the court stated that “laws are made for the government for action, while they can’t interfere with mere religious beliefs and opinions, they may with

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
a. regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

b. Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

²¹ Durga Das Basu, “Commentary on Constitution of India”, Vol 3 8th Ed 2008, LexisNexis Butterworths Wadhwa Nagpur, N Delhi pp 3462

²² AIR 1954 SC 282

²³ (1978) 98 U.S 145: 25 Led 244

practices”.

3. As pointed above, the right to practice is subject to the following limitations-
 - a. Limitation imposed by the state on the ground of public order, morality and health
 - b. Limitation imposed by the state upon secular practices, even if they are associated with religion

Essential religious practice (ERP) can be understood as the fundamentals of a religion, based on which the superstructure of the religion is based. These are practices so essential in nature that any changes made to it will have the effect of alteration of the basic principles or fundamentals of that religion. Practices which have sprung from superstition are not essential

To determine whether a practice is essential or not, the court must base its decision upon relevant evidences, doctrines of that particular religion and if such a practice is regarded as an essential part of religion by the members of that community. The test by which such questions can be determined is to find out whether the nature of religion would change without that part or practice. If the answer is no, then the practice might not be considered as an ERP.

If any practice has evolved out of superstitious beliefs, such a practice can't hold a position under ERP, even if they are religious in nature. This is because they are extraneous and unnecessary accretion to the religion itself and therefore, they are not “matters of the religion”.

Therefore, a question shall be posed to the members of the community practicing FGM- that if such a practice is stopped, does it hamper the essential and fundamental elements of Islam and change and challenge the core beliefs?

An analogy will lead us to a conclusion here that based on the tests laid down for essential religious practice, the core principles are not affected if the practice is not followed. Interestingly, the freedom to religion comes with another restriction whereby the any of such practices are subject to public order, morality and **health**. As seen previously, the observations of WHO suggests that the medical risks of FGM are plenty and therefore, on this ground such an act shall be criminalised as it violates the fundamental right to life and liberty which also includes dignity of every individual²⁴.

(B) What are the steps taken by international organisations to understand and curtail FGM

The first thing to understand here is the fact that right to health is a basic fundamental freedom

²⁴ Art 21 of Constitution of India.

of all individual, also as recognized by the UDHR²⁵. This right comes so basic and necessary that the same shall not be denied in any circumstance what so ever and to any individual. Rather, this is such an integral right of all the Human Rights recognized and incorporated that the denial of the same means the denial of several other HRs associated with it. Therefore, adoption and ratification of the covenants formed there under becomes binding on all the member countries that ratified the Universal Declaration of Human Rights. Hence, as a matter of fact, the very act of cutting little girls at a very tender age, without any consent, medical supervision or a valid reason is a clear violation of the basic human right to health. Also, WHO establishes the severe harm that can be caused to the lives of the girls who undergo such procedure.

The Universal Declaration of Human Rights, adopted on 10th December 1948, protects several aspects of life and liberty and security of a person. It establishes the principle of equality²⁶, ensuring that everyone is treated on the same footing without any discrimination²⁷. Also, UDHR very clearly mentions that, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁸ However, the patriarchal discourse of FGM does not allow women to enjoy these freedoms²⁹ and the reason that is cited is very simple- that the practice of FGM has a religious and cultural identity and involvement of international politics, which is mostly western in nature, is an attempt to intervene with cultural and religious discourse.

The Convention on Elimination of All Forms of Discrimination against Women (CEDAW), New York, 18th Dec 1979 is another commendable step taken to provide and recognize the basic human rights of women. Ratified and acting as a state party by India on July 1993, this convention was actually adopted by the UNGA in 1979, and entered into force as an international treaty on 3rd September, 1981. This is one of the most important conventions with respect to securing the fundamental freedoms to women, of all class and race. The Convention makes a remarkable point that everybody should be treated on equal footing, without any discrimination on the ground of sex.

The Convention lays strict emphasises upon the culmination of such practices that result into

²⁵ Universal Declaration of Human Rights 1948 art 25

²⁶ Art 1- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Universal Declaration of Human Rights, 1948, Art 1.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination, Universal Declaration of Human Rights, 1948, Art 7

²⁷ Art 2 states that everyone should be able to enjoy the rights mentioned under UDHR without any discrimination

²⁸ Universal Declaration of Human Rights 1948 art 5

²⁹ Hope Lewis, "Between Irua and Female Genital Mutilation: Feminist Human Rights Discourse and the Cultural Divide" (1995) 8 Harvard Human Rights Journal 1.

any form of harm to women. Also, it mandates that in case of any already existing prejudices and cultural and social patterns, the state must take enough steps to modify the same³⁰. Also, where Art 12 guarantees a right to health to the women, the same is utterly disturbed by the practice of FGM by depriving them proper health care and medicinal facility and also, disturbing their entire biological condition that leads to over bleeding, sexual problems and even HIV.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) remains silent on the issue of FGM. However, CEDAW's adoption of the General Recommendation No. 14 in 1990³¹ addresses the issue by using the term "female circumcision". The Recommendation allows state agencies, NGOs, Women's Organization as well as important international bodies such as World Health Organization, United Nations Children's Fund as well as Human Rights Commission to recognize this traditional practice, posing serious health hazards on the lives of women and children. It recommends the state parties to take the following measures-

- a. Collection of data about such traditional practices
- b. Support of women's organization on national as well as local levels to eradicate such practices.
- c. Spread awareness about the problems encountered due to FGM

Another interesting step taken in the international front is Declaration on the Elimination of Violence against Women (DEVAW)³². The DEVAW was passed in the General Assembly, as a measure to eliminate violence of all forms against women. It was a step taken to understand the necessity to combat such actions, irrespective of several other conventions already in place. The idea behind the step is that any form of violence against women is a restriction posed upon her from enjoying her basic rights such as the right to equality, freedom, liberty, security and dignity of the individual.

³⁰ **Article 5**

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases

³¹ CEDAW General Recommendation No. 14: Female Circumcision' (*Refworld*) <<https://www.refworld.org/legal/general/cedaw/1990/en/27729>> accessed 23 April 2024.

³² UN General Assembly, Declaration on the Elimination of Violence against Women, GA Res 48/104, UN GAOR, 48th sess, Supp No 49, UN Doc A/48/49 (1993).

Interestingly, DEVAW is one of the few resolutions passed which recognizes FGM as violence against women³³. It proceeds to mention that any woman shall be protected from such atrocities and every woman enjoys certain political, social, civil, economical and cultural rights, which she should be entitled to enjoy³⁴. One of these rights include “the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment”. Also, another right assures security and right to be subjected to the highest form of physical and mental health. FGM in practice is such an act which subjects so many women to traumatizing treatment, which leaves a lasting impression upon the minds of the women.

India has reiterated to the commitment towards DEVAW³⁵ and hence, it must be the responsibility of the State to ensure that such principles be introduced to eliminate all forms of violence against women, including FGM.

Convention on Rights of Child, 1989³⁶(CRC), deals with ascertaining the rights of every child. India is a state party to the convention. The convention ensures protection, security, life and liberty of every child without any discrimination³⁷. It requires state parties to take immediate action in case of any torture or exploitation of a child³⁸. It mandates proper health care facility³⁹, the right to free and compulsory education⁴⁰, protecting them from economic exploitation and

³³ *ibid* Art 2- Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation...

³⁴ Art 3- Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia :

(a) The right to life;
 (b) The right to equality;
 (c) The right to liberty and security of person;
 (d) The right to equal protection under the law;
 (e) The right to be free from all forms of discrimination;
 (f) The right to the highest standard attainable of physical and mental health;
 (g) The right to just and favourable conditions of work;
 (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

³⁵ “India reiterates commitment to UN Declaration on violence against women”, Deccan Chronicles, 20.12.2019, available at <https://www.deccanchronicle.com/lifestyle/culture-and-society/201219/india-reiterates-commitment-to-un-declaration-on-violence-against-wome.html>

³⁶ Adopted on 20 November, 1989 by General Assembly Resolution 44/25

³⁷ Convention on Rights of Child, 1989 Art 2

³⁸ Convention on Rights of Child, 1989 Art 19- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

³⁹ *Ibid*, Art 24

⁴⁰ *Ibid* Art 28

child labour⁴¹, securing the liberty and dignity⁴² of a child and also imposes an obligation to ensure that the child is brought up in loving and nurturing environment.

Though the convention does not explicitly mention about FGM, it however ensures that the state parties must take effective measures to to abolish traditional practices prejudicial to the health of children. This article creates enough space for us to understand that such old and barbaric practices which have only resulted in the downfall of women and girl children shall be abolished and strict measures shall be taken to enforce punishment to those who follow/perform such practices, as it directly takes away the basic human rights guaranteed not just by the constitution but also by international instruments.

Another powerful message to curtail FGM has been spread by the UN by celebrating International Day of Zero Tolerance for FGM, observed on 6th February⁴³. It takes effective measure to raise voice against such inhuman practices and build a stronger and aware class of women.

III. SUGGESTIONS AND CONCLUSION

Because of lack of official data, it is difficult to ascertain the number of women who go through this painful tradition and though the Government is silent upon the presence of any such case, reports show that the Bohra community in India still practices FGM upon its daughters and there is a 75% incidence of the tradition⁴⁴. The rise in this practice is coming out in the open as UN sees India as a new fight against FGM globally. Though India is not in the list of the 31 countries published by UNICEF which are at high risk of FGM, it is believed that the practice is rising so much that the country should not have missed the list⁴⁵.

The problem that is faced by India is very simple- there is no law put in place which significantly challenges FGM on its face. Though it is argued by many that such offences can easily fall under grievous hurt under the IPC or sexual assault of a child under POCSO, the notion of understanding a traditional practice as a crime is significantly less in the country. Therefore, the first step that must be taken by the state is to pass a law making this tradition an offence. But

⁴¹ *Ibid* Art 32

⁴² *Ibid* Art 37

⁴³ 'International Day of Zero Tolerance for Female Genital Mutilation 2024 | UNICEF' <<https://www.unicef.org/documents/international-day-zero-tolerance-female-genital-mutilation-2024>> accessed 23 April 2024.

⁴⁴ Angel L Martínez Cantera, "'I Was Crying with Unbearable Pain": Study Reveals Extent of FGM in India' *The Guardian* (6 March 2018) <<https://www.theguardian.com/global-development/2018/mar/06/study-reveals-fgm-india-female-genital-mutilation>> accessed 29 April 2024.

⁴⁵ Masood Farivar, 'Activists See India as New Front in Fight Against Female Genital Mutilation' (*Voice of America*, 8 March 2024) <<https://www.voanews.com/a/activists-see-india-as-new-front-in-fight-against-female-genital-mutilation/7519614.html>> accessed 29 April 2024.

before taking that step, another important task to do is to introduce this as a violation of human rights.

As the religious rift in the nation is seeing a violent turn of events, the role of the judiciary becomes immensely important. Therefore, the Supreme Court shall hear the pending petition of *Sunita Tiwari v Union of India*⁴⁶ and pass its judgment effectively with respect to understanding this practice as a violation of constitutional rights.

Awareness on sexual health and reproductive rights along with Female Genital Mutilation shall be introduced in the education system to spread awareness against such systems covered by the veil of religion.

Lastly, survey must be conducted by the state, adding members coming from several social groups, NGOs and Women's Organization to provide official data upon which action can be taken.

It is important for us to draw a line between traditions that can be continued and traditions that need to be stopped immediately because such violates certain basic rights of individuals by inflicting harm upon them. Any practice which has no logic or rationale behind it depriving a certain community its fundamental rights shall be called out and stood against. Though India has been a land of religion and traditions, it is also a land of logic and reasoning. If not, various customs like child marriage, bigamy, sati pratha would not have been abolished from the face of it. Therefore, dialogue delivery is an essential feature that shall be undertaken to discontinue FGM and truly make India a land of 'Zero Tolerance'.

⁴⁶ WP (C) 286/2017