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Female Genital Mutilation- A Trauma for Life

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ABSTRACT

As the world is moving towards gender neutrality, cases of grave violation of human rights could be traced back to rural parts of Africa, Europe and Asia. The practice of Female Genital Mutilation (FGM) is an internationally recognised violation of Human rights of women and children. United Nations have laid down various guidelines for the curbing of the practice and raise awareness among the communities. Though the framework on FGM forms the part of international law, the States have discrepancies when it comes for the ratification. Hence it becomes essential to have a municipal law to penalise the wrongdoer. The paper deals with the analysis of the scenario in India concerning the mutilation practice. The study highlights the drawbacks of the municipal provisions for curbing FGM. The practice has been judicially criticised in the case of Sunita Tiwari v. Union of India which pronounced that provisions of POCSO and IPC would address the practice as an offence. Nevertheless, it is a matter of concern that the term female genital mutilation is neither defined in municipal law nor realised to have a dedicated provision for the offence.

I. WHAT IS FEMALE GENITAL MUTILATION (FGM)?

Female Genital Mutilation is a harmful custom involving partial or total removal of the external female genital organs or any other injury inflicted to the female genital organs for cultural, religious or any other non-medical reason. On scrutinising the nature of the practice, it revealed that it leads to the devaluation of the freedom, dignity and fundamental rights of women and young girls around the world. The custom seems to be of much prevalence in the Central African Republic, Democratic Republic of Congo, Sudan, United Arab Emirates (UAE), Iraq, Iran, and even in India. A study on FGM in 2018 showed the practice was up to 75 per cent across the Bohra Muslim community in India.² Since it is widely practised in different countries, the reasoning of the custom differs from place to place. United Nations Fund for Population Activities (UNFPA), collectively categorised the reasonings into five parts.

- **Psycho-sexual reasons-** In this case, the clitoris is removed to control women's sexuality;

¹ Author is a Student at Lloyd Law College, India.

² Explained Desk, *Explained: What is Female Genital Mutilation, and why is it practiced?*, THE INDIAN EXPRESS (Feb. 07, 2020, 7:51 AM), <https://indianexpress.com/article/explained/explained-what-is-female-genital-mutilation-6254573/>.

- **Sociological reasons-** When FGM is an intrinsic part of a community's cultural heritage;
- **Hygiene and aesthetic reasons-** In such cases, communities consider the external female genital as ugly and dirty;
- **Religious reasons-** It was regarded that FGM is not endorsed by Christianity or Islam but "supposed" religious doctrines may be used as justification of the practice;
- **Socioeconomic factors-** In such cases, it was observed that FGM is a pre-requisite for marriage, and the women who are mutilated are considered to be virgin and pious. It could be seen in those communities where women are dependent on men economically.³

II. TYPES OF MUTILATION

There are various types of FGM, and the WHO (2017) classifies it as follows:

- **Type I:** Partial or total removal of the clitoris with or without the clitoral hood, also known as clitoridectomy. When it is essential to distinguish between the significant variations of Type I mutilation, the following subdivisions were proposed: Type I (a), removal of the clitoral hood only; Type I (b), removal of the clitoris with the hood.
- **Type II:** Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora.⁴ When it is essential to distinguish between the significant variations, the following subdivisions are proposed. Type II(a), removal of the labia minora only; Type II(b), partial or total removal of the clitoris and the labia minora; Type II(c), partial or total removal of the clitoris, the labia minora and the labia majora.⁵
- **Type III:** Narrowing of the vaginal cavity by the creation of a covering seal by cutting or collocating the labia minora and/or the labia majora, with or without excision of the clitoris also known as infibulations. When it is essential to distinguish between variations in infibulations, the following subdivisions are proposed. Type III(a), removal and apposition of the labia minora; Type III(b), removal and apposition of the labia majora.

³*Id. at 1.*

⁴ Dr R. Elise B. Johansen, *An update on WHO's work on female genital mutilation (FGM) Progress Report*, WORLD HEALTH ORGANISATION, (2011), https://apps.who.int/iris/bitstream/handle/10665/70638/WHO_RHR_11.18_eng.pdf.

⁵*Female Genital Mutilation: Factsheet*, WORLD HEALTH ORGANISATION, <https://www.afro.who.int/health-topics/female-genital-mutilation>.

- **Type IV:** It is inclusive of other forms of unclassified FGM non-medical purposes like pricking, piercing, incising, scraping and cauterisation.

III. HEALTH EFFECTS

FGM has no health benefits, and only harms the women subjected to it. Removing and damaging healthy female genital tissue interferes with the natural functioning of the girls' body may result in various complications ranging from Immediate to Chronic.

IMMEDIATE COMPLICATIONS CAN INCLUDE:

- severe pain;
- excessive bleeding (haemorrhage);
- genital tissue swelling;
- fever;
- infections, e.g., tetanus;
- urinary problems;
- wound healing problems;
- injury to surrounding genital tissue;
- shock;
- death.

PROLONGED COMPLICATIONS INCLUDES:

- Urinary problems including urinary tract infections which would lead to painful urination;
- Abnormal vaginal discharge, itching, bacterial vaginosis;
- Painful menstruations including the coagulation of blood clots which leads to difficulty in passing menstrual blood, especially seen in Type III mutilation;
- Sexual problems like pain during intercourse;
- Childbirth complications including difficult delivery, excessive bleeding during labour, life-threatening deliveries;
- Psychological problems like depression, anxiety, post-traumatic stress disorder;

It was reported in a case that due to vulvar tumour, which was increasing in size, the patient felt embarrassed to do sexual intercourse because of a which increases in size gradually.

Adding to it, she had hypoactive sexual desire.⁶

IV. MATTER OF HUMAN RIGHTS CONCERN

FGM has been recognised as a violation of the human rights of girls and women. It is established as discrimination based on sex because it interferes in women's full and equal enjoyment of their human rights. In contrast to female genital mutilation, male circumcision is proved to have significant health benefits as it lowers risk for HIV acquisition by about 60%.

It is in the majority of cases carried out on minors and is a violation of the rights of children. The practice also violates a series of person's rights which include health, security, physical integrity, freedom from torture, cruelty, inhuman or degrading treatment, and even the right to life when the procedure results in death⁷ or leaving physical and psychological consequences on the life of such women.

V. RIGHTS RECOGNIZED BY THE UNITED NATIONS:-

The following rights were recognised in the International Conference on Population and Development.

A. REPRODUCTIVE HEALTH:-

Reproductive Health comprises of complete physical, mental and social well-being, not merely the absence of disease or infirmity of the reproductive system. It has a broader implication covering a satisfying and safe sex life and having the capacity to reproduce and the freedom to decide any matters related to it. Men and women have the right to safe, effective, affordable and acceptable methods of family planning. Women have the right to have a safe pregnancy and childbirth with the best chance of having a healthy infant.

B. REPRODUCTIVE RIGHTS:-

Reproductive Rights is a part of human rights that are already recognised in national laws, international laws and international human rights documents. These rights empower the couples and individuals to decide the number, spacing and timing of their children, freely and responsibly without any discrimination, coercion or violence.⁸

C. RIGHT OF BODILY INTEGRITY:-

⁶ Ferjaoui Mohamed Aimen, *A rare cause of infertility: A late complication of female genital mutilation*, ASIAN PACIFIC JOURNAL OF REPRODUCTION, (Apr. 05, 2016), <https://dx.doi.org/10.1016/j.apjr.2016.03.001>.

⁷ WHO STANDS UP FOR THE RIGHT TO HEALTH, WORLD HEALTH ORGANISATION, <https://www.who.int/reproductivehealth/human-rights-day/en/>.

⁸ *Programme of Action*, UNITED NATIONS POPULATION FUND, (2014) https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf.

Equality in relationships between men and women includes full respect for the bodily integrity of the person, which requires mutual respect, consent and shared responsibility for sexual behaviour and its consequences.⁹ Moreover, the women have the right to maintain their bodily integrity, but the minor girl who is unaware of her right, the parents; have the duty to protect her bodily integrity.

D. RIGHT OF SEXUAL HEALTH:-

Sexual Health is a positive condition of physical, mental and emotional social well-being of concerned sexuality but not merely the absence of disease, dysfunction or infirmity.¹⁰ It refers to the integration of the emotional, intellectual and social aspects of sexual well-being in ways that are positively enriching for the couple, enhancing personality, communication and love.¹¹

VI. PROVISIONS TO COUNTER FGM IN INDIA

In the landmark judgement of *Sunita Tiwari v. Union of India*, Supreme Court of India, relied on the principles of UN Convention on the Rights of the Child and the Universal Declaration of Human Rights and decided that the practice of Female Genital Mutilation (FGM) or Khatna or Female Circumcision (FC) or Khafd is inhumane and is violative of Art. 21 of the Constitution of India. The Apex Court ruled to ban the practice and regarded it as an offence under the Indian Penal Code.¹²

VII. PROVISIONS AGAINST FGM- GLOBAL PERSPECTIVE

Andorra, a small country of Europe have recognised the brutality of FGM and formulated Article 192 of the Penal Code prohibiting any act of mutilation, castration or any such act involving female genitalia, leading to total and lasting physiological disablement and would be punishable by a maximum of 15 years imprisonment.”¹³

Belgium has criminalised FGM under Article 409(1) of Belgium Penal Code and who practice, facilitate or promote any form of mutilation of the genital organs of a female, with or without consent would be punishable. It also covers where the mutilation is practised by a minor or to make a profit under sub-section (2).¹⁴

⁹*Id.* at 7.

¹⁰*Defining sexual health*, WORLD HEALTH ORGANISATION, (2010)

https://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/.

¹¹ Jorge Scott, *What Is The Definition Of Sexual Health*, WORDPRESS (Feb. 21, 2018)

<https://jorgescottblog.wordpress.com/2018/02/21/what-is-the-definition-of-sexual-health/>.

¹² *Sunita Tiwari v Union of India*, (2018) WP(C)No.286/17 (India).

¹³ *Legislation and other foreign provision*, INTER-PARLIAMENTARY UNION, <http://archive.ipu.org/wmn-e/fgm.htm>.

¹⁴*Id.* at 12.

In Benin, West Africa, the Penal Code apart from necessary provision prohibiting FGM, the Code also penalises any person who has helped, assisted, or given instructions or the means to perform genital mutilation. They would be considered as an accomplice and liable to the same sentence as the principal offender.¹⁵ Moreover, the Code also cast a duty on both public and private health services to receive victims of female genital mutilations and provide them with the appropriate medical attention.

Eritrea in East Africa has a strict penal provision under Art. 4 of the Code, for the person who is a member of the medical profession performing female circumcision. The penalty such cases are aggravated, and the court may suspend such an offender from practising his/her profession for a period.¹⁶

United Kingdom has enacted U.K. Female Genital Mutilation Act 2003, banning the practice of FGM and have wider ambit including the offence of assisting a girl in mutilating her genitalia. Further, the person is punishable for the offence if he is found to be assisting a non-UK person to mutilate a girl's genitalia overseas under Section 3 of the Act. Nevertheless, the Act also provides for a particular exemption for medical necessities during delivery of a baby.¹⁷

VIII. RECOMMENDATIONS

A. RIGHT TO HAVE INTACT REPRODUCTORY SYSTEM:-

Through the principles of Human Right, it could be expressly derived that a woman has the right to reject the custom, which includes mutilation of reproductive parts. It is medically acclaimed that clitoris is an essential part of woman's genitalia as the stimulus of it, releases hormones which are followed by lubrication of vagina neutralising it from being acidic. Further, the shaving up of clitoris is of no medical benefit; hence the act cannot be justified by any reasons except certain bonafide circumstances. In some instances, the circumcised clitoris develops cyst evolving into a tumour in later phases of woman's life, especially pregnancy due to active hormonal release.

B. RIGHT OF A HEALTHY MENSTRUAL CYCLE:-

Menstruation in India is considered as taboo though it is entirely a biological working of female humans and animals. It is an essential part of the reproductive process. The daughters of India bear not only physical pain blood discharge but also socially isolated. In rural areas, they have to move out of the house and have to live in a nasty place like stables of animals. In some

¹⁵*Id.* at 12.

¹⁶*Id.* at 12.

¹⁷*Id.* at 12.

instances, they even do not have access to sanitary napkins and have to use cloth. Adding to all these sufferings, FGM of type III (b) and (c), where the vaginal cavity is sealed to a greater extent, seldom lead to non-passage of a blood clot which leads to vaginal infection or dysmenorrhea. The issue like these can be solved by doing awareness camps for a transition period moving further to the criminalisation of such act of outdoor isolation.

C. “FEMALE GENITAL MUTILATION” IS NOT EXPRESSIVE IN THE STATUES:-

In *Sunita Tiwari* case of India, it was decided that FGM is a violation of the constitutional right and is considered as an offence under the Indian Penal Code (IPC). Though the word Female Genital Mutilation is not defined in the Penal Code as well as the POCSO Act, it becomes easy for an offender to play with loopholes. Having expressed definition of FGM will allow both literal as well as harmonious interpretation of the law. The fragments of the term Mutilation can be observed in both IPC and POCSO.

In IPC, the bits of mutilation could be traced from the provisions of hurt and grievous hurt. In this case, the practice of FGM should be considered as grievous hurt since it involves an immediate threat to life. Sec. 320 includes any hurt to be grievous which endangers life or which causes severe body pain, or unable to follow his daily routine for a minimum span of twenty days¹⁸. Moreover, Sec. 322 of IPC deals with any act with the intention or knowledge of causing grievous hurt to any person. Since in this present case of FGM, the principal offender consists of immediate family members and the victims are generally minor, the imposition of a fine would not be fruitful. Moreover, on punishing the parents, the minor would be the ultimate sufferer.

Under Sec. 3 (c) of POCSO, a person is said to commit "penetrative sexual assault" if he manipulates any part of the body of the child to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child do so with him or any other person.¹⁹ In this case, the penetration is an essential ingredient. The provision fails to recognise such situation where FGM is performed as a customary practice. The only adequate provision of the POCSO Act is Sec. 19, which deals with reporting of offence. The provision puts an obligation on any person who has apprehension that an offence under POCSO is likely to be committed or possess knowledge of such offence been committed, to report to the designated authorities. Since the custom of FGM is practised socially, it could be acceptable that fellow members of the society, teachers, nurses have knowledge or apprehension regarding the performance.

¹⁸Indian Penal Code, 1860, No. 45, Acts of Parliament, 2012(India).

¹⁹ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

D. NEED FOR SEPARATE LEGISLATION FOR INDIA:-

The cracks in the legislation of IPC and POCSO regarding FGM will fail in successful implementation. The point recommended over here is that FGM as an offence should have broader scope covering:-

- The Definition of FGM including its types,
- Person carrying out the practice along with their profession, as a person involved in the health and medical sector should be severely penalised.
- The provisions for abetment or accomplice,
- Exceptions for bonafide cases
- Penal provision depending on the types of FGM.

E. RESPONSIBILITY OF GOVERNMENT:-

To curb the situation of FGM in India, concerted action by community groups and non-governmental organisations, including the medical profession and human rights groups should be taken at governmental and international level. Programmes that are led by communities in schools and colleges should be participatory and provide an opportunity to examine the problems related to FGM and give solution for it. The focus should be on encouraging a collective choice to discard the custom of FGM.

In the medical profession, it should be incorporated that the practice of female genital mutilation upon children or women should violate professional standards as well as a patient's human rights. Medical practitioners who engage in the practice of FGM should be subjected to disciplinary proceedings and withdrawal of medical licenses.

Child survival programmes, sexual health counselling, psycho-social counselling, prevention and treatment of reproductive tract infections should be provided across every hospital at a minimal charge. Further, training must be conducted for identifying problems resulting from FGM and ways to treat them, which would be benefitted by health and medical service workers. The medical procedure should include treatment for immediate as well as long-term complications of the genital mutilation.

IX. CONCLUSION

FGM is simply a merciless custom that makes its victims suffer from agony, pain and a lifetime psychological trauma. This customary practice could be more prevalent in societies where women are driven by will and whims of uneducated men. The communities practicing FGM

must recognise the right of women over their body and this understanding should be inculcated in women since childhood. Though FGM is to be banned, it could be seen that the custom is practiced much privately to deter the penalisation. It is the time or India to frame proper initiatives and legal provisions to implement complete ban of this brutal practice.
