

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 5

2021

© 2021 International Journal of Legal Science and Innovation

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at submission@ijlsi.com.

Practice of Female Genital Mutation in India

SHAMBHAVI SINGH¹

ABSTRACT

Female genital cutting, often known as female genital mutilation (FGM), is a brutal practise that is not limited to Africa. In India, young girls as young as six and seven are routinely cut. Although the Indian government has repeatedly asserted that such practises do not exist in India, various studies and individual interviews have revealed that they do, particularly among the Dawoodi Bohra people group or the Bohra sects. This article discusses about the brutal practice in India and its legal aspects.

I. INTRODUCTION

The Female genital mutilation (FGM) is defined by the World Health Organization as any strategy that includes the partial or total removal of the outer female genitalia, or various wounds to the female genital organs for non-clinical reasons. the clitoris. Many female genital mutilation (FGM) specialists agree that the procedure is dictated by tradition and is necessary to ensure marriage because males would not marry unharmed women. It is sometimes stated that the purpose of female genital mutilation is to limit women's libido, and in some circumstances, pristine women are considered as shameful prostitutes. A Joint Statement of the WHO/UNICEF/UNFPA on Female Genital Mutilation² arranged FGM into four kinds in view of the seriousness and degree of cutting. – Type 1- the expulsion of the prepuce (clitoral

hood), with or without the evacuation of part or the entirety of Type 2- the expulsion of the clitoris with the halfway or absolute extraction of the labia minora. Type 3 -the evacuation of part or all of the labia minora or potentially labia majora and sewing and narrowing of the vaginal hole. This is otherwise called infibulation. Type 4 contains any remaining kinds of unsafe non-operations to the female genitalia, including pricking and puncturing of the clitoris, cauterization, extending of the clitoris/labia, scratching, and presentation of destructive substances into the vagina.

The Indian government has frequently claimed that such practises do not exist in India, yet several investigations and individual interviews have given insights into the widespread existence of this practise, notably among the Dawoodi Bohra people group or the Bohra sects. The

¹ Author is a student at Bennett University, India.

² 'Female Genital Mutilation: A Joint WHO/UNICEF/UNFPA Statement', 1997. Available at-<http://apps.who.int/iris/bitstream/10665/41903/1/9241561866.pdf>.

khatna, or female genital mutilation, is either accomplished by Mullanis, semireligious females, or by traditional cutters or physicians. As per a 2008 UNFPA report, named 'A Qualitative Study on FGM among the Dawoodi Bohra Community', it was seen those strict convictions concerning FGM were not changing locally however exceptionally minor changes in methodology with respect to the proper age of the young ladies (when they ought to be worked after), expanding reliance on private specialists and attendants rather than customary FGM entertainers were quietly crawling into the general public³.

It was revealed on June 6, 2016, at the hour of preserving the options of the Bohra Trusts in their areas to terminate the practises where it is unlawful, that circumcision was a firm commitment for all Bohras by Syedna Muffadal Saifuddin. According to his office, "male and female circumcision (named khatna and khafz, respectively) are religious ceremonies that Dawoodi Bohras have undertaken throughout their history... Over a thousand years ago, religious literature specified the criteria for both males and females as acts of sacred purity."⁴

The degree of societal and religious pressure on a girl's parents or relatives to subject her to this barbarous procedure may be witnessed. According to a study conducted by a London-

based organisation, while it is too simple to consider survey FGM as a brutal and cold-blooded practise, in reality, guardians or grandparents do so on a regular basis in a setting where not circumcising a young lady is practically incomprehensible for long-established social reasons.

FGM is usually associated with a ceremony indicating the transition and commencement to womanhood in many places⁵. A research conducted among ladies of the Dawoodi Bohra people group revealed that stringent requirements, convention, custom, and their desire to regulate the young lady's libido were the key reasons for the instruction.⁶ According to a recent UNFPA research titled "A Qualitative Report on FGM among Dawoodi Bohra People Group," in a centre gathering discussion with the local females, all were of the opinion that if FGM is "Sunnat" (regulating) for them, they should follow it. In an online survey of Dawoodi Bohra women, 56% stated they required FGM for religious reasons, while 45% claimed it was to reduce sexual desire. It is clear that the practise is intended to reduce sexual joys in the name of culture⁷.

II. LEGAL ASPECTS

FGM is a violation of the human rights of both women and young girls because to its barbaric

³ Dr. Farida Shah, 'A Qualitative study on FGM/FGC among Dawoodi Bohra Community', at p. 19

⁴ 'Bohra leader upholds female circumcision in countries where it is not banned', scroll.in, June 7, 2016. Available at: <https://scroll.in/article/809463/bohra-leader-upholds-female-genital-mutilation-in-countries-where-it-is-not-banned>.

⁵ UNFPA, 'Implementation of the International and

Regional Human Rights Framework for the Elimination of Female Genital Mutilation', November 2014, at p. 16.

⁶ R. Ghadially, 'All for 'Izzat': The Practice of Female Circumcision among Bohra Muslims', Manushi, No.66, September - October 1991.

⁷ See <https://sahiyo.com/2016/01/>, dated April 13, 2016.

character.⁸ FGM also violates the girls' right to health.⁹ The practise also violates the right to live free from pain and cruelty.¹⁰ Because the cruel ceremony is typically performed on underage girls, it violates children's rights.¹¹ It is also a gender-based practise that violates the right to equality and the right to be free of all forms of gender discrimination.¹²

FGM causes physical and mental harm to its victims and maintains the primary biased conviction of the society's subservient segment of women and young women. While male circumcision still has some health benefits, female circumcision solely worsens girls' health. Gender discrimination is prohibited by the *Universal Declaration of Human Rights (UDHR)*, the *International Covenant on Civil and Political Rights (ICCPR)*, and the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)*. The practice also harms the mental health of the girl who is a victim of this and also infringes the *right to the highest attainable standard of physical and*

mental health which is mentioned in *Article 25 of the UDHR*¹³. Also, the *Article 12 of the ICECSR*¹⁴ states that every human has the right to achieve the best physical as well as mental health.

Article 2 of the CEDAW requires all State Parties to pursue, by all appropriate means, an approach to eliminating female victimisation and, to that end, to attempt all appropriate measures, including enactment, to change or repeal existing laws, guidelines, customs, and practises that comprise female victimisation. **Article 5(a) of the CEDAW** requires States Parties to take “*all appropriate measures*” to “*modify the social and cultural patterns of conduct of men and women*” in an effort to eradicate rituals that “*are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women*”.

Currently, more than 20 African countries and 13 other countries have legislation against FGM. The degree and method of legal provisions that

⁸ **Article 3, UDHR**: “Everyone has the right to life, liberty and security of person.” Full text of UDHR, <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>.

Also, **Article 6(1), ICCPR**: “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Full text of ICCPR available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

⁹ **Article 12, ICESCR**: “1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental

and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

¹⁰ **Article 5, UDHR**: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

¹¹ United Nations Convention on the Rights of the Child, 1989, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

¹² Constitution of India, Art.14.

¹³ *Supra*, note 7. Article 25, UDHR: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.”

¹⁴ *Supra*, note 8. Article 12, ICECSR: “The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

apply to FGM vary. It has been expressly incorporated in provisions of the penal code or under explicit Acts in nations such as Ghana, Egypt, Austria, Belgium, Cyprus, Denmark, Italy, Norway, Portugal, Spain, and Sweden (Kenya Children's Act, 2001). Existing penal code procedures have been applied to FGM in the United States, France, Germany, Mali, the Netherlands, and Switzerland.

III. BANNING FGM IN INDIA

While there are certain provisions in Indian law for criminal action against any sort of harm, there is no particular mention of FGM in our legislation, and the practise is usually overlooked. Internationally, it has also been demonstrated that it is vital to have a special legislation dealing with the problem that includes not only prosecution but also prevention, education, awareness building, alleviation, and rehabilitation. As a result, the debate here concludes that a separate rule on FGM is required for identical reasons, namely, to highlight the problem and confront it as a damaging criminal behaviour rather than an acceptable religious practise. India must do research and investigate the prevalence of FGM in the country before enacting severe anti-FGM legislation. In India, where the underlying law of the nation is embodied in the Indian Constitution, it is past time for the Bohra community to recognise that FGM is contrary to the fundamental ideals of gender equity and hence unlawful. Many girls and women from the Bohra community who have been subjected to FGM are coming out and demanding an end to the practise.
