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FGM A THREAT TO WOMEN DIGNITY AND HUMAN RIGHT: A STUDY

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Abstract

Female Genital Mutilation is an abhorrent and cruel practice, an act of violence that violates the basic human rights of women. Female Genital Mutilation/Cutting (FGM) comprises all procedures which involve partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reason. This practice is carried out in girls up to age of 15 mostly and sometimes at older age also. In spite of the global and national efforts to promote abandonment of this practice, it remains widespread in different parts of the world there is an imperative need to regulate and protect these rights. To root out the practice, investigations are necessary to dig out the history and also to inquire into socio-legal reasons for the practice of Female Genital Mutilation. The justifications for continuation of the practice are in the name of religious dicta, as tool to control female sexuality, in many places, the practice is often linked to a ritual marking the coming of age and initiation to womanhood. The practice has ill effects on psychological and physical health of girl/women. The abuse leaves women physically, psychologically and sexually damaged and disabled. The Practice is recognised as sheer violation of human rights of women, also her right to life, physical integrity, it is also blow on her right to freedom from torture, cruel and violence

against women under the global as well national legal framework. The researcher here desires to investigate the causes and consequences on the victim and reflect on the legal provisions to curb this practice.

Introduction

The children and the women are exploited all over the world in one way or another, many of the ways are openly practiced against them while some are deeply covered behind the curtains, this exploitation many times continued in the name of religion, culture and their subjection to human rights violation is seen globally and locally with serious concern. The stories of their victimisation goes unchallenged due to their vulnerability.

Female Genital Mutilation (FGM) is one such barbarous and gruesome method of exploitation of young girls mostly under 18. The practice refers to the forceful cutting or manipulation of the genital organ of young girls in name of cultural and religious beliefs. This derogatory practice along with the harmful effects which it has on the life and dignity of the individuals has not reasonable justifications for its prevalence. But still it is carried on in India is practiced mainly in the Dawoodi Bohra community. Muslims in our country are divided in to two sects that is Sunnis and Shias. The Bohra

community belong to Shais. In India they are settled in Maharashtra, Rajsthan and Madhya Pradesh, Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Middle East and Asia. Immigration resulted in the practice to spread to Australia, New Zealand, Europe, North America and Scandinavia.

Concept of FGM and Historical Background

According to World Health Organization, Female genital mutilation (FGM) comprises of all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. It is also known as "female circumcision" or "cutting", and by other terms such as sunna, gudniin, halalays, tahir, megrez and khatna, among others¹

A Joint Statement of the WHO/UNICEF/ UNFPA on Female Genital Mutilation has classified the horrific act of FGM into four types based on the severity and extent of cutting.

- It is the removal of the prepuce (clitoral hood), with or without the removal of part or all of the clitoris.
- Its the removal of the clitoris with the partial or total excision of the labia minora.
- It is the removal of part or all of the labia minora and/or labia majora and stitching and narrowing of the vaginal orifice. This is also known as infibulation.
- It contains all other types of harmful non-medical procedures to the female genitalia, including pricking and piercing of the clitoris, cauterisation, stretching of the clitoris/labia,

scraping and introduction of corrosive substances into the vagina²

The historical background of the FGM can be traced from ancient history when Mackie has suggested that infibulation one type of Female Genital Mutilation may have originated in the Meroite Civilization prior to the rise of Islam with the purpose to increase confidence in paternity.³

Socio-cultural context of this horrifying practice in our country

The deep rooted male dominance and women subjugation, victimisation is the irony of our social system. The atrocities against women start with discrimination and due to her vulnerability in all life stages violence is continued in different forms. In a study conducted amongst women of the Dawoodi Bohra community,⁴ it was found that religious requirements, traditions and customs and the wish to curb the girl's sexuality were the main reasons for the flourishing practice. Few researches also observed that the practice is perceived as a way to cleanse the girl from impure thoughts and desires. Because due to arousing sexual desires results in need for protection of girl and also leads to family protection also to save it from being disrepute.⁵ In many places, the belief that the clitoral head is 'unwanted skin' or that it is a 'source of sin', and due to which it may hamper her ability to maintained committed relationship with the spouse. Some women also referred to the clitoral hood as 'haraam ki boti' or immoral lump of flesh.⁶ While tracing the reasons for existence of this barbarous practice, it is observed that it lies in various misconceptions, the social pressure to adhere to norms of peer groups and the fear of social rejection serve as a strong motivation to continue this practice. It's wrong assumptions that if you want your daughter to play role of 'good

woman' when she grows up it is necessary to follow practice. To ensure virginity of woman it is required to practice FGM also for both maintenances of chastity and prevention of infidelity on the institution of marriage.

The consequences faced by victim due to cruel practice

The stories depicted by women victim of FGM, who have come forward to fight against the ill-practice, narrated the agonies⁷ how the psychological wellbeing is affected by this. The physical injury caused during the practice is beyond imagination and its health risk is also threat to her life itself as the procedure is without anaesthesia and may be with sharp instruments which may not be sterilised properly. The health risks may include in health risks are excessive bleeding, swelling and inflammation in the genital area, infection, urinary problems and in some extreme cases, even death.⁸ The psychological trauma may cause heavily at all the stages of her life, and she may develop a complex in her mind. She may develop a tendency to avoid social contacts. Dr. Meghana Reddy J, a gynecologist, reported in 2018 that *khatna* can lead to complications in later life, including difficult deliveries and urinary infections, many of them find discomfort while walking, urinating etc.

Measures and initiatives against the Practice of FGM

> The international perspective-The global perspective on FGM holds it as a major human right violation of women and children. It infringes the right to life and physical integrity⁹, right to health¹⁰ also a right to freedom from torture, cruel and inhuman treatment and violence¹¹ this practice is

imposed on the children mostly below fifteen hence it is violation of rights of children enshrined in the United Nations Convention on the Rights of the girl-Child, 1989 (UNCRC) and violates the guarantee of non-discrimination. The forceful document on protection of women's right hold the right to be free from gender discrimination is guaranteed in numerous international human rights instruments. Article 1 of the Convention on the Elimination of all forms of Discrimination against Women, 1979 (CEDAW). The Declaration on Elimination of Violence against Women defines 'violence against women' under Article 2.¹² Also this includes the right to make independent decisions in matters affecting one's own body. Girls are deprived of these rights when they are subjected to FGM either against their will or before they have reached an age at which they can give meaningful consent. Deprivations of liberty and security are most obvious when girls are forcibly restrained during the procedure. Along with this e, more than 20 countries across Africa and 13 countries elsewhere have laws criminalising FGM. There are nearly 10 human rights treaty bodies like Committee on the Elimination of Racial Discrimination (CERD) Human Rights Committee, Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women, Committee against Torture, Subcommittee on Prevention of Torture, Committee on the Rights of the Child Committee on Migrant Workers, Committee on Enforced Disappearances (CED), Committee on the Rights of Persons with Disabilities. Which are monitoring against

women's human rights protection. Also there is , Human Rights Council ¹³ an inter-governmental body within the United Nations system that is responsible for strengthening the promotion and protection of human rights and for addressing human rights violations and making recommendations on them. It has a complaint procedure that allows individuals and organizations to bring human rights violations to the council's attention.

- Social perspective of this practice in Bohras in India under the threat of out-casting- -In this community the Dai (missionary) has complete control over the lives of the Bohras, including in secular matters. If a layman in community raises voice against the practice, or step out of these practices met with ostracism from his nearest, not allowed to participate their community gatherings, even the marriage of their children are prevented. The community burial ground is denied to the relative, this kind of social out casting is hard-core sanction for continuance of the practice of FGM. The legislative protection was provided against this threat by legislating then prevalent Bombay Prevention of Excommunication Act, 1949.¹⁴ The legal battle was initiated against the interference in matter of religion under Art 26 in Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay¹⁵ The judgement of Supreme court in favour of Bohras in under review.
- The Maharashtra legislature passed the Maharashtra Prohibition of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016 ¹⁶ the present law aims at prohibiting the social boycott of any

individuals or their families by the so called caste panchayats/ caste councils or community leaders. It defines punishment with imprisonment, which may be up to seven years, or with a fine that may be as much as five lakh rupees or both. This law was addressing all such social evils by any community.

- Other legislative framework against the practice are- Sections 324 and 326, IPC provide penalties of imprisonment and fines for 'voluntarily causing hurt' and 'voluntarily causing grievous hurt'.¹⁷ Also Protection of Children from Sexual Offences Act, 2012 (POCSO Act) that addresses penetrative sexual assault by any person on any child, inter alia defines it as insertion of any object into the vagina of the girl.⁴² It is established precedence that penetration in sexual offences need not be complete penetration. In fact, Explanation 1 of Section 375, IPC categorically states that the term vagina includes labia majora. FGM, which requires insertion of a sharp object into the vagina of a child¹⁸ The National policy of children, 2013 mandates the state to be committed to take affirmative measures to promote and safeguard the right of children to live and grow with equality, dignity, security and freedom, especially those marginalised, or disadvantaged to ensure that all children have equal opportunities; and that no custom, tradition, cultural or religious practice is allowed to violate or restrict or prevent children from enjoying their rights. It recognises a safe, secure and protective environment is a precondition for the realisation of all other rights of children.

Conclusions

The practice of FGM is against the constitutional values of gender justice and thus unconstitutional. To root out the practice requires concerted action plan for various law enforcing agencies, NGOs, and also requires widespread awareness and sensitisation on the issue. The awareness-raising through information campaigns, formal and informal education, and outreach programs, prohibition, through legislative measures backed by sanctions, of all forms of FGM, also it is needful to support for victims of FGM in the form of health care, legal counsel, psychological care and support, and education and training.

(Footnotes)

¹ Female Genital Mutilation : (A Socio- Legal Perspective In Indian Context) by Mihir Garg & Rashi Jain International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212:Volume 4 Issue 3 pg 279

² Female Genital Mutilation Guide to Eliminating The Fgm Practice In India Published by Lawyers Collective

³ An American political scientist Mackie specializes in the study of harmful social practices, including female genital mutilation. He worked as co-director of UNICEF's Learning Program on Changing Social Conventions and Social Norms, and of UCSD's Center on Global Justice.

⁴ R. Ghadially, 'All for 'Izzat': The Practice of Female Circumcision among Bohra Muslims', Manushi, No.66, September- October 1991

⁵ Norman K, Joanne H, Hussein E, Oyortey, 'FGM is Always With Us: Experiences,

Perceptions and Beliefs of Women Affected by FGM in London', Centre for Development Studies (Swansea)

⁶ Harinder Baweja, India's Dark Secret, Hindustan Times. <http://www.hindustantimes.com/static/fgmindias-dark-secret> Accessed on Nov 24, 2021

⁷ Supra note 6

⁸ WHO, Health risks of (FGM). http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/ accessed on 25th November 2021

⁹ Article 3, UDHR: "Everyone has the right to life, liberty and security of person"

¹⁰ 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.

¹¹ Article 5, UDHR: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

¹² "Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence -dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non -spousal violence and violence related to exploitation;

¹³ OHCHR website: [www.ohchr.org/EN/ HR Bodies/HRC/Pages/AboutCouncil.aspx](http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx) accessed on 29, November 2021

¹⁴ The Act prohibited the expulsion of any person from his or her religious creed, caste

or subcaste and held any such excommunication to be invalid.

description for a term which may extend to ten years, and shall also be liable to fine."

¹⁵ AIR 1962 SC 853

¹⁸ Sec 3 of POCSO 2012

¹⁶ 14th April 2016

□□□

¹⁷ Section 324 of IPC: "Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both." Section 326 of IPC: "Voluntarily causing grievous hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either

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(பன்னாட்டுப் பன்முகத் தமிழ் ஆய்வு)

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