

FEMALE GENITAL MUTILATION IN INDIA – PRACTICE AND CONCERNS

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ABSTRACT

Female Genital Mutilation (FGM) has been religious and socially accepted practice among some sects of Muslim and Christian Community which involves the brutal procedure of mutilating the genital of female in the most primitive way. This has posed psycho-physical consequences for the victim and there is an increasing resistance against such practices. Yet countries find it difficult to avoid the practice altogether owing to religious and cultural heritage attached to the same. Lack of legislation, lack of recognition of existence of this practice has worsened the situation and mostly women find themselves helpless. The paper examines various aspects of FGM in India and current developments relating to the same. Further the paper tries to put forward an argument against this practice.

Keywords : FGM, Child Rights, Violence against Women, Religious practice

INTRODUCTION

Female Genital Mutilation also known as FGM is a widely recognised human rights violation which is still practices by some Islamic Groups as part of their religious practice. The practice is condemned mainly for two reasons. Firstly, it involves violence against female, and secondly, it is considered to be violation of child rights as the procedure is performed on young girls mostly at the age of 7 years. Female genital mutilation (FGM) constitutes all procedures which involve the partial or total removal of the external female genitalia or other injury to the female genital organs, whether for cultural or any other non-therapeutic reasons (WHO, 1995).¹ The procedure is performed to control the sexual aspects of female in order to confirm to female's sexual choices, behaviors and respectability of a female in a concerned society. Among the various types to perform the procedure includes, Clitoridectomy,² Excision,³ Infibulation⁴ and other forms of practice.⁵ The biggest problem with this kind of practice is the religious sentiments attached to the same in which both men and women form accomplice and mostly the procedure

remains brutal as in very few cases it is done by the medical experts. Fortunately, in recent times parents are mostly resorting to medical experts for performing such practice due to awareness relating to health hazards attached to FGM. Talking about the effect of FGM, the procedure has severe health and social complications including infection, problem in child birth, urinary and menstrual issues, having no sexual or less sexual desire, pain in sexual intercourse etc., and not only the physical condition the victim suffers emotionally also as at a very young age she had witnessed a brutal practice for no fault of her. As far as the prevalence of this practice is concerned – it is mostly practiced in African Countries, middle east countries and to some extent in Asia. The most advanced countries like UK, Australia etc. have also witnessed this practice prevalent among their migrated population.

It is way too difficult to address and curb this practice due to social and religious sentiments attached to the same and even if the laws are enacted there is less likelihood of compliance of the same. A comprehensive and rights-based approach is needed to recognize the

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rights of the young child who have to undergo such brutality and in total the right of female to have over her body and choices relating to the same. Unfortunately, despite local, national and international campaigns in this regard run by various organisations the practice has been ongoing and any kind of interference with the same is directly seen in conflict with the religious practices of the community and freedom to practice religion.⁶

INTERNATIONAL CONVENTIONS / DECLARATIONS ON THE PRACTICE OF FGM

There are various conventions and declarations which deal with the issue of FGM although not directly but as part of being violative of human rights. In this regard UDHR (1948) clearly provides for all humans to have live in condition that enable them to enjoy good health and health care, the International Covenant on Civil and Political Rights, and the International Covenant on economic, Social and Cultural Rights (1966) clearly prides a mandate against discrimination on the basis of sex recognizes right to physical and mental health. CEDAW i.e. Convention on the Elimination of All Forms of Discrimination against Women (1979) imposes an obligation on the state to modify and abolish customs and practices which are discriminatory to women. The convention on the Rights of Child (1990) confers equality among children irrespective of their gender and also accords protection to health and against physical violence and maltreatment. Further Vienna Declaration and the Program of Action of the World Conference on Human Rights (1993) specifically works against gender-based violations such as FGM. The Declaration on Violence against Women (1993) recognizes violence against women in both physical and psychological capacity. On the similar lines The Program of Action of the International Conference on Population and Development (ICPD, 1994) and the Platform of Action of the Fourth World Conference on Women (1995) do recognise the need to develop policy to curb this practice.⁷ In this regard the General Assembly Resolutions and Secretary-General Reports on Traditional or Customary Practices Affecting the Health of Women and Girls; Report of the Secretary-General (Fifty-third Session, 10 September 1998) A/RES/53/354, paras. 17-18); United

Nations, General Assembly Resolution on Traditional or Customary Practices Affecting the Health of Women and Girls; Report of the Third Committee (30 January 2002) A/RES/56/128; United Nations, General Assembly Resolution on Traditional or Customary Practices Affecting the Health of Women and Girls, Report of the Third Committee (7 February 2000) A/RES/54/133) can also be referred which have constantly called on nations to be sensitive about the issue and come out with strong legislations to address and stop this practice. UN has constantly discouraged such religious, traditional and customary practices. In 2010, the Commission on the Status of Women adopted a resolution titled 'Ending Female Genital Mutilation'. In 2012 the UN General Assembly passed a Resolution (UN Document A/RES/67/146) condemning FGM and urging all countries practicing the same to enforce legislation against it. On the similar line the Council of Europe Resolution 1247 on Female Genital Mutilation (2001) had called on the states to enact 'specific Legislation prohibiting genital mutilation and declaring genital mutilation to be violation of human rights and bodily integrity'.

Thus, internationally lot of efforts have been made in this regard yet implementation in the municipal laws of country and strong enforcement of the same is need of the hour and this can not be done unless until social change and religious perspectives are examined and addressed accordingly.⁸

PRACTICE OF FGM IN INDIA

The fact that by 2050, nearly 1 in 3 births worldwide will occur in the 30 countries in Africa and the Middle East where FGM/C is concentrated, and nearly 500 million more girls and women will be living in these countries than there are today;⁹ is quite alarming as it would generate wide spread human right violations against women and young girls. Although there is steep decrease in such practices but the need is to eradicate the same completely.

Coming to practice in India, in India it is prevalent in very few communities who are quite less in number. Mostly Bohra community in India practices this ritual at large wherein it is known as Khafd (pronounced as

Khafz). For the victims all across the globe including India, more than physical pain it is mental trauma to be touched at their private part by strangers and to have violent procedure being performed in the presence of not so known people. In India, the issue invited public attention subsequent to cases in Australia and the US by Bohra Community (mostly Dawoodi Bohra) where this practice has been prevalent. 2012 onwards researchers have taken interest in studying various aspects of FGM. Prior to 2012 India was in a state of denial as to existence of such practice and still there is not much recognition to the practice and effects of such a violence in India considering the fact that Bohra Community is a minority community and almost invisible in the population graph. Surprisingly, even some of the women who have undergone such procedure in India do support the same in the name of pleasing almighty as it is a mandate of religion and it confers some sort of legitimacy to the religious faith of such person. These women and the young girls who have witnesses such practice or a part of the community where this practice goes on are highly empowered, educated and economically independent as compared women in other religions and in among Muslim community also Bohra Muslims are more forward thinking and enjoy much better social, economic status than other Muslims. Despite such social and economic status almost 100% from Bohra Community have undergone this procedure which is indication of the fact as to how deep rooted the urge for social acceptance is. While social, economic and education status has not been completely effective against FGM studies have provided that highly educated Bohra women are less likely to subject their daughter to such procedure. Yet the role of elder female members of the family cannot be ignored in this regard. In most of the cases it was the female member of the family who had been instrumental in subjecting young women and children to FGM procedure. In a study carried on in India¹⁰ the respondents clearly stated that 'No, men don't have a role to play'. Thus, the acceptance is not merely because of patriarchal structure rather the acceptance of FGM in India is mainly spearheaded by the women in the community and hence the role of awareness and education becomes of

paramount importance.

Coming to medicalization of FGM practice in India the historical practice of doing it by non-medical people is changing and similar is the pattern globally. Due to health hazards involved in the practice in India also the practice has shifted from the closed doors of house to the medical experts. Also, in India it is not the most brutal manner of FGM and there is no total removal of clitoris unlike some African countries where the procedure is extremely painful. Despite the involvement of medical practitioners in this practice no one opens about it to guard the secrecy.

The physical and psychological effect of FGM is long lasting as in all the cases it is the family members who support and facilitate the practice and the child feels helpless. In one such incident an 8-year-old child had to be taken to a proper surgeon for stitching her up when her FGM went wrong and she could not stop bleeding for at least two days.¹¹

THE CODE OF SECRECY IN FGM IN INDIA AND LEGISLATION

Unlike African and middle east countries the practice of FGM in India has almost been done in underground manner. The people who support and facilitate this practice the medical experts who perform the procedure they are marginalized, judged and targeted. Thus, every attempt is made to keep the practice within the community and not to invite unnecessary public glare for the same. But this isolation has in way proved a deterrent for such practice. Talking about response of law, in India there is no dedicated law to address the practice of FGM. At the most this practice can be covered under physical and mental harm to women and can be categorised as violence against women in various penal laws but the fact that utmost secrecy is maintained has practically closed the doors of protection. There has been an argument from some time that just like sex determination and laws against it including PCPNDT Act (Pre-Conception and Pre-Natal Diagnostic Techniques Act) should be utilised to address FGM in India.

EFFORTS OF THE NGO 'WESPEAKOUT' AND THE SUPREME COURT ON FGM

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The intervenor in the present case narrated the community treatment to her and to her family for protesting against the practice of FGM. Her father was excommunicated from the Dawoodi Bohra community for being a reformist and after his death he was not even allowed to be buried in the community burial ground.

The petition elaborated on the physical and psychological effect of the FGM procedure. And further a parity was drawn on the FGM and khatna (a practice done on young boys). Quoting from the 15 Resolution passed by the Anjuman-e-Burhani Sydney dated 9th February 2016, wherein Khafd (also known as Khatna and female circumcision) was interpreted by the Supreme Court of NSW to be within the meaning of Female Genital Mutilation as defined in Section 45 of the Crimes Act of NSW.¹³ Consequently, it was held illegal, whether it is carried out within any of the States of Australia or Overseas. This resolution was much publicised in India also. It was argued that positive the fact of existence of FGM in India as established by the report of Lawyers Collective and further discussed various provisions of POCSO and IPC relating to violence against children and women. After examining various authorities and precedents it was argued that,

'That Inhuman practice of FGM/Khafz is violative of fundamental rights including Article 14, 15 and 21 of the Indian Constitution. That FGM/C/Khafz is widely perceived as a way of controlling a female's sexuality and sexual desires and women are viewed as someone who needs protection. It is perceived family's duty to cut their daughters to provide them the protection. This is deepened in the patriarchal roots of society where women are viewed as objects, which is an infringement of their right to dignity and equality.' (Refer para 43 of the petition)

The Petition also argued that FGM is not a religious practice and hence it cannot be protected under Art 25 and 26 of the Constitution. As on 24th September 2018 the matter was referred to the larger bench for consideration and thus the judgment is yet pending. Still the petition itself raised core questions relating to freedom of religion and human right to dignity and making a choice.

CONCLUSION & SUGGESTIONS

Thus, going by the aforementioned discussion FGM is a practice which is to be condemned owing to its barbarous nature and the long-lasting impact it leaves on a human body and mind. The people who practice it in India do so in secrecy as they themselves are convinced of its not so human nature and they fear the social response to the same. In fact, in modern India which is constantly working towards empowering female child such practices put a dent on the image of the whole country and hence the same should be treated with law in strict manner like any other crime relating to female body. Taking about some of the ameliorative measures which can be taken in this regard Collaboration between public private and non-governmental stakeholders, Education and awareness, legal intervention, Intervention of medical bodies, Grass root level outreach programs and multi-disciplinary research study to look into psycho-sexual and physical health component of the same could be some of the measures which may prove helpful. As a concluding note it can be said that such practice needs social reform that has to come from and originate within the community itself.

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