



A FLICKERING DEBATE ON THE FEMALE GENITAL MUTILATION-AN UNTOLD DARK SECRET

By *Kanimozhi Thaninayagam*
From *The Tamil Nadu Dr. Ambedkar Law University*

INTRODUCTION:

Should the bodily integrity of women be brooked to be settled or Infringed? Sequences of torment and Female Genital Mutilation are envisaged as clips of twinge and notches into the human flesh. Female Genital Mutilation and the spiel of the same has been a subject of representation in sundry liberal discussions of law and violence as a chronicle of misfortune. The Chronicle of Female Genital Mutilation is, therefore, no anodyne story, where a human is being held down, a human is being deprived of rights, a human is being subjected to a laceration. The Female Genital Mutilation is a speculation that is inundated with the unsureness of law¹. It is nevertheless, inexorable that in a bailiwick being unfixed as far as the contemporary endeavors in decimating Female Genital Mutilation there are matters to which dispassionate and comprehensive acknowledgement has not been ladled out thereby making it ineluctable. Injuring or altering the genitalia of women/children through a procedure for non-medical reasons are called as Female Genital Mutilation(FGM/C- has the possibility of increasing the risk of HIV transmission,

Infertility etc)². The very first reaction on FGM/C is a bamboozlement to many, whereas to some it is an incredulity and trepidation. The hunt arising out of the responses to the procedure(FGM/C) has not been adequate as this brutal practice continues. This conventional praxis has allured the attentiveness and the curiosity of the global policy arena for the past two decades. A sundry of terms have been used in the local dialects by the Indigenous populations while describing this procedure(for example: bolokoli in Mali). Tracing the fundamental cause of occurrence of this practice, it divulges that the patriarchal society which we live in where many women still surmise that marriage can be the only means of reifying security. This FGM/C has always been viewed as a debate as it always promulgates a dichotomy which is the Individual rights versus the Collective rights. Female Genital Mutilation has now become a foreshadow of menace in today's world. Female Genital Mutilation is not just an issue to be addressed and to be given concern for a particular city/ state, but Female Genital Mutilation today is a "Global Concern". The World Health Organization has firmly urged that the health professionals are not supposed to carry out this procedure as it affects the health of a girl child with long-term impacts. Infections such as tetanus, heavy bleeding, severe infections, death etc can be examples of consequences that would result from FGM/C. The FGM/C is carried out mainly in girls who are young(occasionally in girls between infancy and

¹ Juliet Rogers, Laws cut on the Body Of Human Rights Female Circumcision, torture and Sacred flesh, 4(2013)

² What you need to know about Female Genital Mutilation, UNICEF for every child, https://www.unicef.org/protection/57929_endFGM.html



adolescence) which can be classified into four types. The crucial point to note here is that there is no relevance to any religious scripts prescribing this barbarous procedure, but the practitioners have a belief that FGM/C has a religious base. People belonging to certain groups believe that the formidable slur possible for a boy child is “Are you a son of an uncircumcised woman?”. What is seen to put young girls into a trauma is portrayed as a cultural practice in the Society? Steps have been taken by the World Health Organization for abnegating this practice, one such step would be the passing of a resolution WHA61.16 in the year 2008 for eliminating the same³. Viewing this practice from a human rights perspective, it is evident that it actually reflects deep-rooted inequality and discrimination on the basis of gender/sex. It is seen that this issue has been addressed by many monitoring bodies belonging to the United Nations human rights treaty. It is true that there are various International treaties (A convention adopted in the year 1951 in relation to the status of refugees, protocol in relation to the status of refugees, committee on rights of the child etc) regional treaties (African Charter on Human and Peoples’ rights, African charter which was adopted in the year 1990 on the Rights and welfare of the child etc) and consensus documents (such as Beijing Declaration and a platform for action of the fourth world conference on women, UNESCO Universal Declaration on Cultural Diversity etc) addressing this practice but it is pathetic to

see the practice still being continued due to various cultural and religious reasons in the world. As far as India is concerned, the practice is mostly performed among the Dawoodi Bohra Muslim Women and few sects of Muslims in Kerala. There are provisions in the existing laws in India such as IPC and POCSO Act, but what India lack today as far as the eradication of the practice is concerned is the enforcement. Effective Enforcement of the existing law is the key to the abnegation of any brutal practice.

FEMALE GENITAL MUTILATION AS AN UNTOLD DARK SECRET IN INDIA- DEARTH OF DESIRE, INNOCENCE AND FREEDOM:

The practice of Female Genital Mutilation (FGM/C) still stands as an unambiguous proof as to why India is seen as a country holding dark secrets in many dark corners without giving any voice over it. It is not only a precarious practice making women and children suffer at such an early age, but also it has a lot of effects to be faced spoiling their future thereby. It is seen that more than 200 million girls (approximately) in the world have already been cut and the number is absolutely rising. This perilous practice was seen to be practiced in Africa initially but now India cannot be named as an exception as this practice is being practiced very secretly in India. This cruel practice named Female Genital Mutilation (FGM/C) is seen to be banned in around 27 African countries⁴ according to a report, even

³ Female Genital Mutilation, World Health Organization, (January 31, 2018), <http://www.who.int/news-room/factsheets/detail/female-genital-mutilation>

⁴ Moushumi Das Gupta, Govt will end female genital mutilation if bohras don't: Maneka Gandhi, Hindustan Times, (May 29, 2017, 09:17 IST), <https://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should->



countries like United States Of America and the United Kingdom have outlawed this barbarous practice(FGM/C) with a unanimous resolution having been adopted by the UN general assembly in the year 2012 for eliminating the same. Generally, it is observed that it is the Dawoodi Bohra community who actually maintained it as a secret for a long period of time as far as India is concerned⁵. The Female Genital Mutilation/cutting is seen to be a very productive practice among the Muslim Dawoodi Bohra Community in India called as khafd or khatna. This cruel practice is seen to be practiced among few sects such as Dawoodi, Suleimani and Alvi Bohras capturing systematic public attention since 2012 in India. This practice is also observed to be reportedly practiced in different parts of states like Kerala among few sunni subsects of Muslims and the same is commonly referred to in the state as female Sunnath Kalynam⁶. According to several reports and complaints, it is the Bohra's girl mother or grandmother who takes her to a place where she could be controlled physically and this practice is performed in that place very secretly at the age of seven years generally.

During this practice, it is observed that generally a part of women's clitoris is being removed abruptly in the name of culture. And the most contradicting fact is that the women of Bohra community are seen to be historically more empowering and economically independent in general compared to all other women in the society itself, the Bohra community enjoys a special place in India as a model minority who pride themselves as the most law-abiding citizens of the country. The most striking factor which should be given primacy is that unsurprisingly the mother's age belonging to the Bohra community is not considered to be taken into regard as to whether or not the daughter would be prone to this abrupt practice khafd/khatna. . In the age where a child could only literally imagine of being given chocolates and Ice cream it is completely disheartening to see young children and women being prone to this crude practice where all they can do is scream and cry in tremendous pain. They go wholly helpless and the most unfavorable part is they call tradition as a reason for the same. As far as India is concerned there are four types of Female Genital Mutilation practiced by the bohra community which is classified by the World Health Organization. First type is where the clitoris is abruptly removed either partially or grossly, second type is where the clitoris is removed partially or grossly with or without the labia majora, third type is the removal of labia minora or majora and the stitching of the vaginal opening either with the ejection of clitoris or without the ejection of clitoris and the final type includes all other superfluous procedures such as pricking, cautery of the female genitalia etc. All these types of Female Genital Mutilation have several

be-banned-in-india-maneka-gandhi/story-kQhNA4rIYOLQTurkN5zAAM.html

⁵) Suchismita Biswas, India's Thousand-Year-Old Dark Secret: Female Genital Mutilation, NoiseBreak, (February 20, 2017), <http://noisebreak.com/indias-thousand-year-old-dark-secret-female-genital-mutilation/>

⁶ Shweta Sengar, With No Laws Extensive Female Genital Mutilation Among Muslim Bohra Community In India is Scarring women for life, India Times, (February 8, 2018, 11:13 A.M), <https://www.indiatimes.com/news/india/with-no-laws-extensive-female-genital-mutilation-among-muslim-bohra-community-in-india-is-scarring-women-for-life-339205.html>



other impacts such as physical effects (burning sensation during urination), Immediate physical effects (excruciating, pain, bleeding, difficulty while walking etc), Long-term physical effects(wearing sanitary napkins were always seen to be problem, burning sensation every time while urinating), sexual impacts and sexual problems (lack of sensitivity in the clitoral area, feelings of inadequacy, disturbing thoughts during sexual intercourse, low sex drive, disinterest in initiating sex, delayed arousal, dryness, lack of lubrication, pain during the sexual intercourse and difficulty masturbating etc) and several other psychological impacts too⁷. Sex education is the key, lack of sex education is reported as one of the reasons as to why a lot of women still suffer in silence. Given how abhorning this field is, there are no tried-and-true estimates yet with regard to the extent and the frequency rates of FGM/C as far as India is concerned.

EXISTING LEGAL SKELETON IN INDIA- THE INTERNATIONAL AND REGIONAL INSTRUMENTS WITH REGARD TO FGM/C:

As far as India is concerned there are already laws prohibiting this practice such as the Indian Penal Code and the POCSO act, apart from which we have various other International and regional Instruments which is applicable globally. According to an estimation given by the UNICEF, the cruel practice named FGM/C has been practiced

on 200 million girl children throughout the world causing severe psychological as well as long-term physical impacts. As far as India is concerned, there are necessary safeguards already prohibiting this barbarous practice but all we need is an effective enforcement of the same. It is a practice generally performed to bring women's sexuality to control. How do women become victims as soon as this cruel practice is performed on them? When a girl child is prone to this practice she automatically becomes a victim of discrimination based on gender, where her fundamental rights and liberties are curbed thereby. The very prohibition of discrimination based on gender/sex is supported by various International and regional Instruments. Since this barbarous practice is seen to be practiced among girls below the age of 18 years it infringes the guarantee of non-discrimination. Also, it is a whole violation of rights that are given in the UNCRC(The United Nations Convention on the Rights Of the Child,1989). Since 1948, this barbarous practice has been an issue of the United Nations, as it has brutal consequences on women and children⁸. To start from the UDHR(Universal Declaration Of Human Rights, 1948) article 3, provides that every individual has a right to life. And no Individual shall be prone to or subjected to any kind of torture(Article 5 of Universal Declaration Of Human Rights). Article 7 of the International Covenant On Civil and

⁷ Lakshmi Anantnarayan, Shabana Diler, Natasha Menon, Khafd or Female Genital Mutilation/Cutting(FGM/C) in India, The Clitoral Hood A Contested Site, http://www.wespeakout.org/site/assets/files/1439/fgm_c_study_results_jan_2018.pdf

⁸ Fisaha KG, Female Genital Mutilation: A violation of Human Rights, Journal Of Political Sciences & Public Affairs, (April 17, 2016), <https://www.omicsonline.org/open-access/female-genital-mutilation-a-violation-of-human-rights-2332-0761-1000198.php?aid=74616>



Political Rights(ICCPR) also provides that no individual without his/her consent/permission shall be subject to any medical examination. This practice actually discriminates women and children on the basis of gender firstly, which is actually an explicit violation of article 1 of CEDAW(Convention on the elimination of all forms of discrimination against women, 1979)which provides a definition as to what constitutes the term discrimination(discrimination can be defined as any exclusion or a kind of restriction made on the basis of sex, which in turn has the impact or effect of nullifying any enjoyment by women provided that their marital status is immaterial). Next comes the rights such as the right to life and physical integrity that gets violated by this brutal practice. The basic human right as protected by International Instruments such as UDHR(Article 3), ICCPR(Article 6(1), and UNCRC(Article 6) is right to life. According to various complaints, this cruel practice named FGM/C may even lead to death that can be either maternal or neonatal in very extreme cases. Right to liberty, dignity, security and the right to privacy are all seen to be violated by FGM/C which is guaranteed by a wide number of human rights principles. Threatening the lives of women and children by subjecting them to FGM/C violates the physical integrity of them at large. There are a lot of other rights being violated in addition to what is provided above, one such right would be "The right of every individual to the highest attainable standard of physical health as well as mental health as provided in the UDHR(Article 25), and ICESCR(Article 12). Female Genital Mutilation(FGM/C) is generally practiced among the

children(girls) in the age ranging from 1 to 15 years, hence the practice by itself can be said as a violation of the child's rights. In the year 1990, the Convention On The Elimination Of All Forms Of Discrimination Against Women,1979(CEDAW) committee in the year 1990 has adopted a general recommendation(No.14) on female circumcision itself, there are other provisions provided by the International and regional Instruments, declarations and resolutions⁹ globally to put an end to this brutal practice.

TIME TO ALTER THE NARRATIVE--ROAD TOWARDS ENDING A PERVERSE PRACTICE

It is mandatory that, for any act or practice to be performed, it has to stand the scrutiny of the Indian Constitution. If not it cannot be continued, in this case, this practice cannot stand the test and hence discriminatory. A biggest universal programme has been jointly led by the UNICEF and the UNFPA in accelerating the abnegation or abandonment of the Female Genital Mutilation. They play a significant role in accelerating a change today. The only living document which can play a significant role in shaping the values and morality in India would be our very own constitution, with Supreme Court having its power in interpreting the same taking into consideration the fundamental values and changes in the society which could be witnessed day by day, it would be exhilarating to see the Supreme Court comes

⁹ Sources of International Human Rights law on Female Genital Mutilation, UN WOMEN, <http://www.endvawnow.org/en/articles/645-sources-of-international-human-rights-law-on-female-genital-mutilation.html>



with a decision completely banning this cruel practice which is actually being performed without any medical reason as that would be a huge step towards eradicating the practice itself. Looking into the Indian constitution Article 14 clearly provides that equality cannot be denied to any person by the state, whereas Article 21 deals with the protection of life and personal liberty¹⁰. Despite having explicit protection under the Indian Constitution itself, it is wholly forlorn to see this practice being tolerated in India among the Dawoodi Muslim Bohra community at large. Article 25 of the Indian Constitution deals with the freedom of conscience, free profession, practice and propagation of religion¹¹. A Public Interest Litigation(PIL) was filed by Sunita Tiwari in the Supreme court of India by February 2017 who is a Delhi-based lawyer against the practice of khafd(Sunita Tiwari vs. Union Of India). She stated in her PIL that this practice of Female Genital Mutilation(FGM/C) has been carried out in India without any medical reason or without having any reference to the religion, hence the same should be declared as a non-bailable offence, she also said that the women belonging to the Dawoodi Bohra Community are being forced to undergo this practice a result of which they are being put in a physical and mental trauma. On the other side unsurprisingly the Dawoodi Bohra Women's Association cited 13 religious texts in explaining its point. They

¹⁰ Vinodh Reddy, Fundamental Rights(Articles 14-18, 19-22, 23-24, 25-28, 29-30, 32), Edu General, <https://edugeneral.org/blog/polity/fundamental-rights-articles-14-18-19-22-23-24-25-28-29-30-32/>
¹¹ Vinodh Reddy, Fundamental Rights(Articles 14-18, 19-22, 23-24, 25-28, 29-30, 32), Edu General, <https://edugeneral.org/blog/polity/fundamental-rights-articles-14-18-19-22-23-24-25-28-29-30-32/>

claimed that this was actually a matter of religious freedom, which was guaranteed by our constitution under article 25 and 26¹². But the question is whether female genital mutilation is a religious practice that could be conferred protection under article 25 of the Indian Constitution. Religious freedom in India is dealt with under article 25 and 26 of the Indian constitution. As female genital mutilation has got irreparable effects to girls and women at large, Article 25 of the Indian Constitution was referred by the top law officer who referred the same and said that if a religious practice is against any public order, morality and health, then it can be

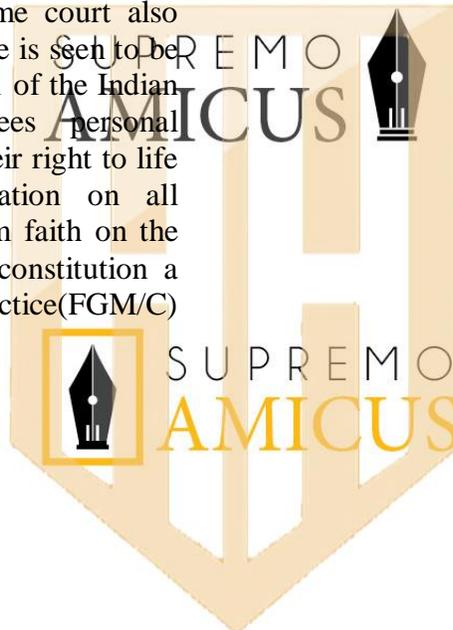
CONCLUSION:

Female Genital mutilation cannot be called as essentially a religious practice when it has been held illegal and criminal by the law itself. With Female Genital Mutilation being constituted as an offense both under the Indian Penal Code(IPC) and the Protection Of Children From Sexual Offenses Act(POCSO Act), the practice cannot be called as the essential practice of religion. Any touching of the genitals with the exceptions being given by medical reason is

¹² Sunil Baghel, In Female Genital Mutilation PIL in Supreme Court, its Dawoodi Bohra women vs Dawoodi Bohra women, Mumbai Mirror, (July 10, 2018, 15:23 IST), <https://mumbaimirror.indiatimes.com/mumbai/cover-story/circumcision-not-mutilation-and-thats-for-religious-purity/articleshow/64890906.cms>
¹³ Supreme Court refers PIL against Female Genital Mutilation to five-judge constitution bench, The New Indian Express, (September 24, 2018, 12:06 P.M), <http://www.newindianexpress.com/nation/2018/sep/24/supreme-court-refers-pil-against-female-genital-mutilation-to-five-judge-constitution-bench-1876450.html>



an offense¹⁴. Despite having provisions in IPC, the question that pops up in every citizen's mind is "why are the provisions of IPC not being enforced strictly?" and perhaps that can also be said as one of the reasons as to why blindly women and children still seen to be brooking this 14th-century-old custom. Despite the Supreme Court of India taking its yet another stand on this vicious practice of female genital mutilation holding that women have numerous obligations to do even beyond their marriage, not surprisingly India still seems to be a hub of maintaining the same as a dark secret. The Supreme court also held that this merciless practice is seen to be violating the articles 15 and 21 of the Indian constitution which guarantees personal liberty and without a doubt their right to life thereby scrapping discrimination on all grounds¹⁵. In order to reaffirm faith on the judiciary and on our Indian constitution a complete ban on this cruel practice(FGM/C) is a must.



¹⁴ Female Genital Mutilation Violates Constitutional Rights: Supreme Court, NDTV, (July 31, 2018, 07:26 IST), <https://www.ndtv.com/india-news/female-genital-mutilation-violative-of-constitutional-rights-supreme-court-1892433>

¹⁵ Rinchen Norbu Wangchuk, Female Genital Mutilation Violates Fundamental Rights, says Supreme Court, The Better India, (July 31, 2018, 1:12 pm), <https://www.thebetterindia.com/153833/female-genital-mutilation-fundamental-rights-supreme-court/>