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## **Female Genital Mutilation**

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### **INTRODUCTION**

Female Genital Mutilation (FGM), entails partial or complete removal of external female genitalia or other harm to the female genital organ for non medical reasons, causing acute bleeding and difficulty urinating, cysts, infections, severe complications in pregnancy and increased risk in newborn deaths. Recognized internationally, Female Genital Mutilation not only infringes human rights but also various fundamental rights guaranteed by Constitution of India and laws under POCSO and IPC. The praxis violates a female's right to health, bodily integrity, the right to be free from cruelty and torture, inhuman or degrading treatment and eventually right to life if the procedure results in demise of the person.

Over 200 million women in more than 30 countries in Africa, the Middle East and Asia have fallen prey to this inhuman practice. It is generally carried out in young girls between infancy and age of 15 years with no medical benefits of the procedure. It demonstrates profound gender inequality and is a severe discrimination against women. Performed by professional circumcisers typically; women who have a good reputation in their cultures. It is also carried out by traditional midwives and sometimes by Western medical healers, nurses or physicians. The surgery is generally carried out under terrible, filthy surroundings without anesthetics resulting in health problems.

### **Classification of FGM**

There are four categories as recognized by World Health Organization of Female Genital Mutilation:

1. **Type 1:** Type 1 includes partial or complete removal of the clitoral gland and/or prepuce.
2. **Type 2:** Type 2 entails partial or complete removal of clitoral glands and labia minora including or excluding labia majora.
3. **Type 3:** Type 3 incorporates a vaginal opening restriction method by creating the covering seal, formed by a labia minora or majora, occasionally stitched, with or without excision of the clitoral fore puce and glands, by cutting and repositioning it. This procedure is also known as infibulation.
4. **Type 4:** Type 4 covers any additional hazardous operations for non-medical purposes on female genitalia for example, piercing, pricking, incising etc.

### **FGM infringes Human Rights**

Human rights are inherent rights of all persons irrespective of gender, nationality, residence, sex, race, religion, color or other category. Human rights are therefore non-discriminatory, which means that everyone has the right and cannot be excluded from them. Naturally, while everyone has rights to human rights, not all people around the world have the same

experiences. Many governments and people neglect human rights and exploit other people. One such violation is the practice of female genital mutilation.

On the grounds of discrimination based upon gender and brutality against women, an interagency statement by UN in 2008 declared the practice of FGM in violation of Human Rights<sup>1</sup>. It not only infringes Human Rights under Universal Declaration of Human Rights, but also infringes several provisions under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child.

Every person irrespective of caste, gender, sex, age, place of birth has a right to life, liberty and security of person under Article 3 of Universal Declaration of Human Rights<sup>2</sup>. Tragically, women and girls are not entirely in control of their life, their freedom or their bodies in many nations. Discrimination against women has been defined under CEDAW, which also traces the policy to eradicate such discrimination internationally.<sup>3</sup> According to convention's ideology "discrimination against women contradicts ideals of equal rights and respect for human dignity".

The Convention on the Rights of the Child aims at increasing the decision making ability of children in situations which directly affect them. In FGM, however, the decision is the direct result of societal pressure and community expectations even if the girl child is evidently in agreement with the operation. Consequently, the decision of a girl to undergo FGM cannot be regarded as free, informed or not coerced.

### **FGM and Constitution of India: Is it protected under Article 25 & 26?**

Part III of the Constitution of India envisages on providing fundamental rights or basic rights to nation's citizens. One of these fundamental rights is freedom to practice religion. FGM is prevalent in the nation as a cultural and religious practice, mostly within Dawoodi Bohra Muslim community. Quran has no mention of genital mutilation, but some hadiths can be interpreted in a way to justify the practice as a custom. However, for the application of doctrine of essential religious practice, the custom should be a non-negotiable part of the religion. Being said that, there has been no proof to conclude FGM as an inherent part of Dawoodi Bohra community's religious practice. Article 25 safeguards the freedom to free conscience and free profession, practice and propagation of religion, which however is subject to "public order, morality and health of the person". As aforementioned, the practice of FGM causes severe health problems to women and girls, which may also result in loss of life. Thus, FGM cannot be protected under the scope of Article 25 & 26. FGM also threatens right to life and personal liberty as envisioned in Article 21 of the Constitution. In the case of *Justice K.S. Puttaswamy v. Union of India*<sup>4</sup>, the Apex Court held that "The right to privacy is

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<sup>1</sup> World Health Organization, *Eliminating female genital mutilation: An interagency statement—OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO* (Geneva: World Health Organization, 2008)

<sup>2</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 3

<sup>3</sup> P. Broussard, "The importation of female genital mutilation to the West: The cruelest cut of all," *University of San Francisco Law Review* 44 (2009), p. 787

<sup>4</sup> (2017) 10 SCC 1

an inherent part of the rights to life and personal freedom contained in Article 21 of the Indian Constitution.” The court further explained that right to privacy also includes right to sexual and reproductive freedom. If a girl is unable to grasp the long-term repercussions of FGM, her right to sexual and reproductive choices is eliminated, thus infringing Article 21.

The issue of FGM is entangled in misogyny, patriarchy and discrimination of women against men. It is one of the examples of how society treats women differently, disdaining their sexual and reproductive health. Article 14 of the Constitution guarantees equality to all and Article 15 prevents all the citizens from discrimination based upon religion, race, caste, sex or place of birth. Evidently, the process breaches the said articles.

### **Provisions under Indian Criminal Law**

Though there are no prevalent legislations putting a ban on the practice of female genital mutilation, various general provisions in the existing system of criminal law serves the purpose. Sections 319 to 326 of the Indian Penal Code (IPC) dictate provisions for inflicting hurt and grievous hurt to a person. The provisions lays down seven types of hurt which is inclusive of any injury that risks life or makes the victim suffer extreme bodily discomfort for the duration of 20 days, or makes it impossible to carry out his ordinary lifestyle. FGM may make the affected unable to carry out basic bodily actions like as urinating and sexual intercourse. FGM can therefore be seen as being hurt or grievously hurt; henceforth the practice of FGM can be included under the provisions of section 319 to 326 of IPC and the prescribed punishment is up to seven years in jail, with or without penalty.

Apart from provisions in IPC, Section 4 in Protection of Child from Sexual Offences Act (POCSO) entails criminalization of the act of penetrative sexual assault caused on children below the age of 18 years. Penetration, according to Section 3 of the said Act, is defined as insertion of any object into the vaginal opening to any extent. Therefore, insertion of a sharp object in order to perform FGM could be interpreted as sexual assault under Section 4 of POCSO Act, 2012.

### **Conclusion**

The article’s objective is to highlight the inhuman, derogatory and discriminatory practice of FGM. It is often practiced in secrecy; therefore there haven’t been any reported cases. The practice of FGM cannot be hidden behind the mask of religious and customary practice under Article 25 & 26 of the Constitution. As there is no specific legislation banning the practice, it is being continued without the fear of law.

It is high time that the ball rolls in the favor of young girls and women and this misogynistic, patriarchal and oppressive practice of FGM ceases. There is a necessity of awareness and specific legislation, so the lives of hundreds of women could be saved and they can have equal freedoms as the opposite gender.