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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

FEMALE GENITAL MUTILATION: A HUMAN RIGHTS VIOLATION IN THE TWENTY-FIRST CENTURY.

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ABSTRACT

Female Genital Mutilation is a practice rooted in tradition, violates various human rights, including the right to health, freedom from torture, and gender equality. Yet, its eradication remains a challenge due to deep cultural entrenchment and the perceived conflict between protecting human rights and respecting cultural autonomy which exist in certain geographical terrains. This practice is a clear testament of existing patriarchal norms in our society. Female Genital Mutilation robs girls and women of their decision-making power, leaves an everlasting effect on them, transgresses their autonomy and controls their lives which is an after effect of the existing patriarchy in our society.

Female Genital Mutilation is carried out on infant children or adolescents, while in others, it is imposed when the female member of the family has matured. This horrifying ritual has severe long-term and short-term health consequences that the people have conveniently ignored for years. It includes pain, haemorrhage, bleeding, nervous shock, infections, urination problems, depression, and sometimes infant death. It is a problem of heightened magnitude because over forty-four million girls who are below fifteen years old are subjected to this inhumane treatment, and over two hundred million girls are annually cut across the globe from Africa, Asia, the Middle-East and other parts of the world, maximum being from among immigrant populations of USA, Europe, Australia, and UK. The preconceived notion that female genital mutilation is limited to Islam is a fallacy. Many other religions, like Christians and Jews, also swear by this procedure. Later, it was practiced in the tropical zones of Africa, in the Philippines, by certain tribes in the Upper Amazon, by women of the Arunta tribe in Australia, and by certain early Romans and Arabs. This paper delves into the to critically assess how national and international legal systems can reconcile the protection of human rights with respect for cultural traditions.

KEYWORDS: Female Genital Mutilation, Human Rights, Gender-Based Violence, Bodily Integrity, Women's Rights, Child Rights.

INTRODUCTION

"Three women were holding down my arms and legs, and another was sitting right on my chest, covering my mouth. They try to put pressure on you, so you don't cry for the next girl to hear..., and the emotions that they had — so empty, like they didn't see me as a human being."[2]

The label 'mutilation' tends to rule out communication and disregards and fails to respect the shocking experiences of girls as above.[3] Female genital mutilation (FGM), also known as female genital cutting (FGC), involves the partial or total removal of external female genitalia for reasons unrelated to medical necessity.[4] Female Genital Mutilation robs girls and women of their decision-making power, leaves an everlasting effect on them, transgresses their autonomy and controls their lives which is an after effect of the existing patriarchy in our society.[5] THE WORLD Health Organization has described the process of female genital mutilation (FGM) as the complete or partial removal of the female genital organs or any kind of injury to the female external genitalia for non-medical reasons.[6] Female genital mutilation (FGM) refers to all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons. It is most often carried out on young girls between infancy and age 15.[7]

In every form in which it is practiced, FGM is a violation of girls' and women's fundamental human rights, including their rights to health, security and dignity. This practice of mutilation is also referred to as Female Circumcision or Female Khatna and is widely practiced all over the globe. This evil custom and tradition in India will be passed on from generation to generation until a law tries to break this chain of repetition. The custom of Female Genital Mutilation, or FGM, is a quintessential of existential patriarchy.

Despite extensive advocacy and legislative changes over several decades, FGM continues to present a significant global challenge. It is estimated that over 230 million women and girls globally have undergone FGM, with particular concentrations in Africa, the Middle East, and certain regions of Asia.[8] While incidence rates have decreased among younger cohorts, the practice persists in numerous countries, with the highest prevalence observed in Somalia

(98%), Guinea (97%), Djibouti (93%), Sierra Leone (90%), and Mali (89%).[9] The United Nations Population Fund underscores the continued need for substantial global investment and synchronized interventions to expedite eradication efforts and safeguard at-risk girls.[10]

HISTORICAL BACKGROUND AND ORIGIN OF FEMALE GENITAL MUTILATION

Female genital mutilation is religiously practiced by an Islamic sect called Shia. Shia and Sunni are two denominations of Islam that came into existence after the death of Prophet Muhammad. It is also practiced as a custom in many spheres around the globe. Some of them are clueless as to why they are still practicing this barbaric act and also people mainly in remote areas are also unaware of their personal rights.

The practice is believed to have originated in Ancient Egypt. The earliest writings on female circumcision, by Herodotus in the 5th century BC, described this custom practiced by the Ethiopians, Phoenicians, and Hittites. From there, it might have spread to the Red Sea coastal tribes, to Sudan, Ancient Greece, and Ancient Rome.[11]As recently as the 1950s, clitoridectomies have been used in the United States and Western Europe to treat hysteria, masturbation, epilepsy, and other presumed mental disorders.[12]

It is a cultural practice not tied to any specific ethnicity, religion, or race, with the belief that it preserves virginity, improves hygiene, increases marriageability, and is a rite of passage.

In India, khatna, or khafz, or female circumcision is most prominently practised by the Dawoodi Bohra community which is a sect within the Shia sect of Islam. This technique is the ritual removal of either a portion or the entire clitoral hood. While no record of this exists with the Ministry of Women and Child Development, many women in the community have spoken out against the practice.

FEMALE GENITAL MUTILATION: CONCEPTUAL FOUNDATION

Types of female genital mutilation

There are four major kinds of female genital mutilation. The first is the prominent one, wherein the clitoral glans and the clitoral hood are removed totally or partially.[13] In the second type, the procedure involves cutting the clitoral glans and labia minora are partially or totally

removed. The third type is called infibulations. The vaginal opening is completely narrowed by making a covering seal. The last process is the unequivocal proof of human rights violations because it includes incising, pricking, piercing, etc., the female genitalia.[14] The age at which this procedure is performed varies from region to region. In some cases, Female Genital Mutilation is carried out on infant childs or adolescents, while in others, it is imposed when the female member of the family has matured. This horrifying ritual has severe long-term and short-term health consequences that the people have conveniently ignored for years. It includes pain, hemorrhage, bleeding, nervous shock, infections, urination problems, depression, and sometimes infant death.[15] It is a problem of heightened magnitude because over forty four million girls who are below fifteen years old are subjected to this inhumane treatment, and over two hundred million girls are annually cut across the globe from Africa, Asia, the Middle-East and other parts of the world, maximum being from among immigrant populations of USA, Europe, Australia, and UK.[16]

Medicalization of Female Genital Mutilation (FGM)

The medicalization of Female Genital Mutilation (FGM) refers to the performance of FGM procedures by healthcare professionals in medical settings or elsewhere. Despite the adoption of the United Nations General Assembly Resolution in 2012 calling for the global elimination of FGM, the practice continues to be increasingly medicalized in several countries.[17] The World Health Organization estimates that nearly one in four FGM survivors worldwide, amounting to approximately 52 million women and girls, underwent the procedure at the hands of health personnel.[18]

Historically, FGM was carried out by traditional practitioners using rudimentary instruments, often resulting in severe complications. The involvement of medical professionals emerged as an attempt to reduce immediate risks such as infection, excessive bleeding, and the use of unsterilized equipment.[19]However, medicalization does not eliminate the inherent harms associated with FGM and raises serious ethical concerns, particularly regarding the medical principle of non-maleficence (“do no harm”).

The growing prevalence of medicalized FGM in countries such as Egypt, Kenya, and Yemen has generated significant controversy.[20] Reports of deaths during medically performed procedures demonstrate that the risks cannot be entirely eradicated.[21]Moreover, medicalization may inadvertently legitimize FGM, undermine eradication efforts, and encourage its continuation by creating a false perception of safety. Consequently, abandoning the practice

altogether remains the most effective means of protecting the rights, dignity, and bodily integrity of women and girls.

THE PRACTICE OF FEMALE GENITAL MUTILATION/ CUTTING IN INDIA

Female Genital Mutilation is practiced prevalently among the Dawoodi Bohra community in India. Dawoodi Bohras trace their heritage to the Fatimi Imams, the Prophet Mohammed's direct descendants in Egypt.8 They are a peace-loving community with an unwavering commitment to faith, love for their country, belief in society's value, education, women's empowerment, engagement with other faiths, physical health and well-being, and care for the environment.[22]The Dawoodi Bohra faith is based on peace, love, and humanity.[23]

While members of the community can be found around the globe, a large majority of the population lives in India. They have their own language called Lisan al-Da'wa, derived from Arabic, Persian, Urdu, and Gujarati. Dawoodi Bohras follow the Fatimi Ismaili Tayyibi school of thought.[24]

The D'ai al-mutlaq ["Dai" or "Syedna"]is the religious and spiritual leader of the Dawoodi Bohra sect. He is considered to be the representative of the Imam. His role consists of leading the community, guiding their followers to a good life, and administering the community's religious and secular affairs.

While no record exists with the Ministry of Women and Child Development about the practice of Female Genital Mutilation in India, certain members of the Bohra community have come forward, sharing their experiences, and creating awareness about the persistence of FGM [Known as "Khatna" "Khafd"] in India, despite the lack of data presented by UN-based research endeavours.

FEMALE GENITAL MUTILATION AS A HUMAN RIGHTS VIOLATION

Female genital mutilation of any type has been recognized as utmost harmful practice and a sheer violation of the human rights of girls and women. Human rights—civil, cultural,

economic, political and social—are codified in several international and regional treaties. The legal regime is complemented by a series of political consensus documents, such as those resulting from the United Nations world conferences and summits, which reaffirm human rights and call upon governments to strive for their full respect, protection and fulfilment.

A 2008 UN interagency statement defines FGM as a violation of human rights, a form of discrimination on the basis of gender, and a form of violence against girls.[25] One of the most fundamental principles of international human rights law is the inherent dignity and equality of all human beings. This principle is enshrined in several authoritative human rights instruments, including the Universal Declaration of Human Rights (UDHR)[26], the International Covenant on Civil and Political Rights (ICCPR),[27] and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[28] Collectively, these instruments form the International Bill of Human Rights and establish the foundation for the protection of human rights, including the right of women and girls to live free from harmful traditional practices such as Female Genital Mutilation (FGM).

In February 2016, UNICEF estimated that some 200 million women and girls had suffered female circumcision in 30 countries[29], with up to a quarter of them being under the age of 15. According to the most recent figures, there were 53,000 circumcised adult women living in France as at 2004.[30]The foundation of international human rights law is the principle that every State has an obligation to respect the human rights of its citizens.[31] Additionally, the international community has a right and responsibility to protest if there is a violation of this obligation.[32]Even though the concept of human rights is considered as ‘universal’, most of the rights enumerated as "universal" are based on Western values, and can be traced directly to the experiences of France, England, and the United States rather than Islamic, Eastern, and African cultures.[33] Many international law scholars acknowledge “the meaning of human rights depends upon the specific cultural context”.[34] Another tenet of international law is the concept of State sovereignty.[35] The concept of sovereignty means a State is “subject to no higher power.”[36]Sovereignty not only refers to a State's physical border, but also affects certain factors such as the choice of political, social, economic, and cultural systems.[37]

Connected with the doctrine of sovereignty is the concept of non-intervention. Non-intervention means that one State should not interfere with the internal relations of another

State out of respect for its sovereignty.[38]

Therefore, according to basic international law principles, States should respect the politics, religions, social structures, and cultures of other States and refrain from interfering with such sovereign rights.

Most contemporary human rights are based on international treaties signed by governments in the post-World War II era. In general, these treaties sought to establish universal standards by recognizing fundamental rights and requiring governments to take action to ensure that such rights are respected. The standards set by governments around the world in their own countries are key to the development of human rights norms.[39] Since national level laws and policies may also incorporate human rights principles and develop these norms, domestic laws are important tools for interpreting international legal standards. Despite the expansion of the human rights field to address social concerns, the means by which to enforce human rights remain limited. National courts are the first step in enforcing human rights principles. To create accountability at the international level, the United Nations human rights system has set in place procedures for reporting on current human rights conditions in nations around the world. This system sets human rights standards, monitors compliance, and makes recommendations to governments for future action to ensure human rights. Despite the expansion of the human rights field to address social concerns, the means by which to enforce human rights remain limited. National courts are the first step in enforcing human rights principles. To create accountability at the international level, the United Nations human rights system has set in place procedures for reporting on current human rights conditions in nations around the world.This system sets human rights standards, monitors compliance, and makes recommendations to governments for further future action to ensure social justice and human rights.

INTERNATIONAL FRAMEWORK AGAINST FEMALE GENITAL MUTILATION.

Universal Declaration of Human Rights and the Prohibition of FGM

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a foundational human rights document that sets forth fundamental rights and freedoms applicable to all individuals.[40] It establishes a broad framework for protecting human dignity and promoting equality, which serves as a basis for addressing harmful

traditional practices such as Female Genital Mutilation (FGM). [41] The UDHR recognizes that every human being is entitled to live free from discrimination, violence, and degrading treatment, principles that directly conflict with the continued practice of Female Genital Mutilation.[42]

International Covenant on Civil and Political Rights and the Prohibition of FGM

The ICCPR (International Covenant on Civil and Political Rights) provides a solid legal foundation for protecting individuals from harmful traditional practices like female genital mutilation (FGM). However, the real challenge lies in ensuring its principles are effectively integrated into national laws and policies. Many countries have ratified the ICCPR but struggle with enforcement due to deeply obsolete cultural beliefs and societal pressures that continue to sustain the practice. The International Covenant on Civil and Political Rights (ICCPR) is one of the most important international treaties that protect human rights.[43] It was adopted by the United Nations General Assembly in 1966 and came into force in 1976.[44] The ICCPR sets out legal obligations for countries that have signed and ratified it, ensuring that they respect and protect civil and political rights for all individuals.[45] One of the key protections under the ICCPR is the prohibition of torture, cruel, inhuman, or degrading treatment (Article 7). This provision directly applies to Female Genital Mutilation (FGM) because the practice causes severe pain, long-term health complications, and psychological trauma. Since FGM is mostly performed on young girls without their consent, it violates their fundamental human rights and bodily integrity. The person who owns his body and is the sole authority of his body and does have all rights against any pain inflicted by another person.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on BAN of FGM

The cultural practice of female genital mutilation a clear depiction of male dominance over women. Women are historically oppressed and humongous discriminated in the societal setup.There exists the relevance of the CEDAW, to uplift the representation of women in our society and also to abolish the ruthless act of Female genital mutilation. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, serves as a pivotal instrument in this endeavor. Often referred to as an international bill of rights for women, CEDAW obligates state parties to eliminate discrimination against women in all its forms. Although FGM is not explicitly mentioned in the Convention, the CEDAW

Committee has addressed it through various General Recommendations, emphasizing the obligation of states to eradicate this harmful practice. CEDAW's Core Obligations or the heart of CEDAW lies the commitment of state parties to pursue policies aimed at eliminating discrimination against women.

CONSTITUTIONAL AND LEGAL FRAMEWORK IN INDIA REGARDING THE ACT OF FEMALE GENITAL MUTILATION

India does not have any specific legislation regarding the act of female genital mutilation. India is a federal parliamentary republic comprising 28 states and 8 union territories. Its population is the largest in the world. It has a common-law judicial system based on the English model and separate personal-law codes for Muslims, Christians and Hindus that cover family, marriage and inheritance.[46]

The practice of female genital mutilation/cutting (FGM) is generally referred to as 'khafd' or 'khafz' by Dawoodi Bohra women. The term 'mutilation' is regarded by some 'Bohras' as inappropriate and associated with the more severe forms of FGM.

'Circumcision' is generally used to refer to male circumcision. 'Female genital cutting' is more acceptable, so in this Law Report the terms 'FGM' and 'khafd' are used interchangeably. There are no official statistical data to indicate the prevalence of FGC in India, as no health or other surveys have included questions about the practice. The Dawoodi Bohra is the only group in India known to carry out FGM regularly, and surveys by non-governmental organizations (NGOs) indicate a prevalence in the community of between 75%[47] and 85%.[48] The Dawoodi Bohra community comprises over a million people across 40 countries, although the majority live in India, mainly in the states of Gujarat, Maharashtra, Madhya Pradesh and Rajasthan.[49]

Gross Violation of Right to Health

The process of female genital cutting is not medically beneficial for women but instead serves as a prominent threat hanging above their head. Even if the procedure gave rise to absolutely no complications, she would be traumatized for life. The women who went through this physical change have to bear this burden.

The practice of female genital mutilation is an inhumane and cruel culture that impairs a woman's dignity and right to health. It was held in Consumer Education & Research Centre

v. Union of India that the right to health is a fundamental right under article 21. The right to life includes the protection of one's health as well.[50]

CONCLUSION

Female Genital Mutilation (FGM) remains one of the most pervasive forms of gender-based violence and a grave violation of the fundamental human rights of women and girls in the twenty-first century. Despite significant advancements in international human rights law, public health awareness, and global advocacy, millions of girls continue to be subjected to this harmful practice every year. Rooted in deeply entrenched cultural, social, and patriarchal norms, FGM persists not because of any medical necessity or religious obligation, but because of societal pressures that seek to control female sexuality and reinforce gender inequality.

The practice violates a wide range of internationally recognized rights, including the rights to life, health, bodily integrity, dignity, equality, and freedom from torture and cruel, inhuman, or degrading treatment. The consequences of FGM extend far beyond the immediate physical harm, often resulting in lifelong medical complications, psychological trauma, reproductive health issues, and social disadvantages. The continued prevalence of FGM highlights the gap between legal commitments and practical implementation, particularly in communities where cultural traditions outweigh legal prohibitions.

International organizations, governments, civil society groups, and healthcare professionals have played a crucial role in raising awareness and promoting the eradication of FGM. Nevertheless, challenges such as underreporting, weak enforcement mechanisms, cross-border practices, and the growing trend of medicalization continue to hinder progress. While medicalization may reduce certain immediate health risks, it cannot eliminate the fundamental violation of human rights inherent in the practice and may inadvertently legitimize its continuation.

Therefore, the eradication of FGM requires a comprehensive and multi-dimensional approach that combines robust legal frameworks with education, community engagement, gender-sensitive policies, and the empowerment of women and girls. Sustainable change can only be achieved by transforming societal attitudes and challenging the norms that perpetuate discrimination and violence against women. Governments must strengthen enforcement

mechanisms, support survivors, and collaborate with local communities to foster lasting behavioral change.

In conclusion, the fight against Female Genital Mutilation is not merely a public health concern but a broader struggle for human dignity, gender justice, and the protection of fundamental human rights. A world free from FGM is essential for achieving genuine equality and ensuring that every girl can live with dignity, autonomy, and freedom from harm.

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