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Female Genital Mutilation a Growing Threat to Fundamental Rights of Women in India

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ABSTRACT

Female genital Mutilation (FGM), comprises procedures involving partial or total junking of the external female genitalia or other injury to the female genital organs for non-medical reasons. While it's substantially carried out on girls between the periods of 1 to 15 times, sometimes, adult and wedded women are also subordinated to this procedure. The practise of FGM is an act that targets women with the ideal of bridling girls' and women's sexual solicitations and leads to ill healtheffects. Hence, in FGM there aren't only violations of the right to life and quality but also a clear violation of the right to non- demarcation grounded on coitus. The object and purpose and impact on manly and female circumcision are different and affect in gross demarcation against women At present, This. Violates many fundamental rights such as article 14,15,21,23, and 25, India has no law banning the practice of FGM/C in the country.

***Keywords**: Female Genital Mutilation, Girls, victims, Bohra community and Social problem, constitutional lack.*

I. INTRODUCTION

Female Genital Mutilation (FGM) is a practice involving the alteration or harm to female genitalia for non-clinical or social reasons, widely condemned as a violation of human rights and the dignity of women. Recognized as a gender-specific violation, FGM has gained global attention as a threat and form of violence against women and girls, evolving into a human rights concern under international law.Practiced by diverse ethnic groups across Africa, the Middle East, and, to a lesser extent, in certain communities in India, Malaysia, and Indonesia, FGM is often considered a rite of passage for girls, preparing them for womanhood and marriage. Despite being performed without anesthesia and in unhygienic conditions, some view it as a cultural and religious duty.More than 200 million girls and women alive today have undergone female genital mutilation. In 2024, nearly 4.4 million girls will be at risk of it. This equates to

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more than 12 000 cases every day(WHO) The most severe form, infibulation, involves the removal of the clitoris and results in repeated injury after each childbirth. FGM is believed in some communities to diminish a woman's libido, promoting the idea that it helps resist "illicit" sexual acts. Social norms of modesty and purity contribute to the persistence of FGM, and its practitioners often see it as a fundamental aspect of their cultural identity.While there are no explicit religious scriptures endorsing the practice, interpretations vary among religious communities. Some endorse it, some consider it tangential to religion, and others actively work toward its eradication. The practice is deeply entrenched, upheld by structures of power, including traditional leaders, religious figures, circumcisers, and, regrettably, some medical professionals.The age at which FGM is performed varies across communities, from infancy to adolescence or even adulthood. The societal pressure to undergo FGM for societal acceptance, marriage, and family honor leaves many women and girls with limited choices.India, particularly its Bohra community, has not yet enacted laws against FGM. Approximately 75-80% of Bohra women are subjected to FGM, known as khafz, performed secretly and shielded from public view. Legislative measures are urgently required to explicitly condemn FGM, regulate its propagation, and provide legal definitions for terms related to the practice. In India, there's a concerning lack of data and awareness surrounding female genital mutilation cases. Despite global efforts to combat this harmful practice, limited reporting and cultural sensitivities hinder the full understanding of its prevalence and impact on women and girls in India. Addressing this issue requires not only improved data collection but also comprehensive education and advocacy to eradicate the deeply rooted cultural beliefs that perpetuate such harmful practices. Only through collective action and a commitment to gender equality can India effectively address and prevent female genital mutilation cases.Crafting legislation against FGM in India may face challenges, but it could be a crucial step in bringing this practice out of the shadows and putting an end to it. Such laws would open avenues for discussion, discourse, and activism, allowing individuals to weigh the necessity of the practice against its potential harm. While dialogue is invaluable, legal frameworks can catalyse change when other avenues have fallen short. Legislation has the power to protect the vulnerable, challenge entrenched norms, and safeguard the rights and well-being of women and girls in India.However, existing legal frameworks offer avenues for addressing such practices, encompassing statutes related to bodily harm, cruelty, and child protection but India lacks specific legislation directly addressing Female Genital Mutilation (FGM).

(A) Objectives:

- To analyse the factor abiding to female genital mutations.

- To do a similar examination with different nations.
- To look through the lack of intervention in this topic.
- To formulate a possible outreach for this undefined crime.

(B) Methodology:

The study deals with Doctrinal research methods. Research is conducted by observing and analysing already present information , It deals with secondary sources of data with various sources like books, articles, research papers and cases etc. being used as reference.

II. DISCUSSION

Presently, comprehensive representative data on Female Genital Cutting (FGC) within Dawoodi Bohra communities worldwide, and specifically in India, is unavailable. Nevertheless, the practice has been the focus of nuanced research and documentation within the Dawoodi Bohra community for over two decades. A notable case study from April 1991 by Sandhya Srinivasan illustrated a situation where familial pressures led a young mother to subject her seven-year-old daughter to FGC by a traditional cutter. Another significant study, 'All for Izzat' by Rehana Ghadially (1991[3]), conducted interviews with a number Dawoodi Bohra women and two traditional cutters in Mumbai. A more recent study by MSW student and Sahiyo co-founder, Mariya Taher (2010[4]), based on ethnographic interviews with six women who underwent FGC in the United States, adds a contemporary perspective. These case studies, although limited in scope, align with Sahiyo's 2015-16 study, offering an evidence-based comprehension of the global persistence of FGC within the Dawoodi Bohra community.Shell-Duncan, Reshma, Feldman-Jacobs (2016), who conducted a comprehensive synthesis on FGC, analysing nationally representative data across 29 countries, including Yemen, Iraq, and 27 African nations. Lastly, the analysis incorporates insights from Islamic Relief Canada's (2016[5]) qualitative study on FGC in Indonesia, contributing to the understanding of similarities in FGC practices across diverse Asian countries.

(A) Physical Health Consequences of FGC:

Ghadially's interviews reported minimal serious health or reproductive repercussions, yet a Dawoodi Bohra doctor highlighted cases of infection, swelling, severe bleeding, shock, and tetanus. Sahiyo's survey, however, identified that 23% of respondents faced immediate

[3]https://www.semanticscholar.org/paper/All-for-%27Izzat%27-The-Practice-of-Female-Circumcision-Ghadially/d7f7b5b5529f15b99a4ce970349c1f5e998c2737
[4]https://drive.google.com/file/d/1_5STe2FCXe6TTdTlCe_HGOtHWU0PYSgc/view?usp=drivesdk
[5] https://reliefweb.int/report/indonesia/female-genital-cutting-indonesia-field-study

physical health issues post-FGC, including pain, bleeding, and burning during urination. Notably, 98% expressed experiencing pain in the subjective component of the question, though only 23% reported it in the objective section.

Islamic Relief Canada's study in Indonesia found no evidence of major physical complications due to FGC but did document incidents of pain, fever, and bleeding among interviewees.

a. Sunita Tiwari v Union of India[6]

Ms. Tiwari highlights the World Health Organisation's (WHO) stance on Female Genital Mutilation (FGM). Designated by the WHO as a gross violation of the human rights of girls and women, FGM contradicts the fundamental guarantees outlined in the Universal Declaration of Human Rights. Beyond its human rights implications, FGM poses a significant health risk, contributing to infections, childbirth complications, and severe physical impairments. The United Nations General Assembly, in December 2012, adopted a unanimous resolution urging the eradication of FGM. While numerous countries, including the United States, the United Kingdom, Australia, and various African nations, have enacted laws prohibiting FGM, India currently lacks specific legislation addressing this practice.

(B) The Right to Privacy and Bodily Autonomy

To begin with one needs to make sure whether the practice of khatna violates the right to privacy and bodily autonomy of the girls on whom the procedure is performed.In Kharak Singh v. State of Uttar Pradesh (1962[7])the Court established that the right to life under Article 21 extends beyond mere survival, paving the way for a broader interpretation of the right to privacy.the Court established that the right to life under Article 21 extends beyond mere survival, paving the way for a broader interpretation of the right to privacy. K. S. Puttaswamy v. Union of India (2017) further solidified this right, emphasising individual autonomy in decision-making decisions."[8] Justice Chandrachud, in the this , highlighted the importance of decisional autonomy within the various dimensions of privacy, particularly concerning an individual's choices in sexual, reproductive, and intimate matters.Suchita Srivastava v Chandigarh Administration (2009[9]),is another significant case affirming bodily and reproductive autonomy. The Court, recognizing a woman's right to make reproductive choices as an aspect of "personal liberty" under Article 21, stressed the need to respect a woman's privacy, dignity, and bodily integrity. The judgement emphasised the obligation of the State to

[6] https://indiankanoon.org/doc/181206322/(last accessed 25 feb 4pm)
[7] https://indiankanoon.org/doc/619152/(last accessed 25 feb 4pm)
[8] K. S. Puttaswamy v. Union of India (2017) 10 scc 1, para 106
[9] https://indiankanoon.org/doc/1500783/(last accessed 25 feb 4pm)

uphold the personal bodily autonomy of a woman."[10](¶11)

In essence, if the right to privacy acknowledges an individual's sovereignty over their body, decisional autonomy involves exercising this right against arbitrary legislative or popular morality, as recognized in Navtej Singh Johar v. Union of India. The practice of khatna, being essentially non-consensual, robs a woman of decisional autonomy regarding a consequential procedure. Notably, the surgery's potential physical complications, coupled with the psychological trauma and loss of trust, underscore the importance of respecting an individual's right to make decisions about their own body.

a. 'The Clitoral Hood – A Contested Site'

In a report '[11],conducted by WeSpeakOut & Nari Samata Manch, highlights a concerning drift: approximately 75% of members unveiled that their girls had been subjected to Female Genital Mutilation (FGM), or 'khafz'. Shockingly, around 33% of ladies who experienced "khafz" detailed antagonistic impacts on their sexual well-being. Post-FGM, numerous people battled with fear, uneasiness, sadness, and decreased self-confidence.

III. OVERSHADOWING OF FUNDAMENTAL RIGHTS AND VALUES

In considering these inquiries, a compelling argument emerges, suggesting that the khatna procedure infringes upon the right to privacy and bodily integrity guaranteed under Article 21 of the Constitution.

The pivotal question of the Right to Privacy for Children took centre stage in this case, initiating a critical examination into whether children enjoy the same individual privacy and bodily autonomy rights as adults. This scrutiny extended to situations where parents make decisions on their behalf, akin to practices such as mundan in Hindu households. Importantly, it should be emphasised that the Indian Constitution doesn't impose additional restrictions on Fundamental Rights based on age. In contrast to mundan, female genital mutilation constitutes an irreversible intervention with enduring physical and psychological consequences, encroaching on the girl's decisional autonomy—a fundamental aspect of the rights safeguarded under Article 21.

In the Indian Young Lawyers Association v. State of Kerala case[12],, the emphasis was on the alignment of the "morality" limiting Articles 25 and 26 with "constitutional morality." This

[10]https://reproductiverights.org/wp-content/uploads/2020/12/SecuringReproductiveJusticeIndia-Chpt05.pdf
[11]https://narisamatamanch.org/wp-content/uploads/2023/06/Khafd-or-Female-Genital-MutilationCutting-FGMC-in-India_A-Report.pdf
[12] https://indiankanoon.org/doc/163639357/last accessed 25 feb 4pm)

underscores that evaluations of "existing structures of social discrimination" must occur within the confines of constitutional values. Chief Justice Chandrachud, in his concurring opinion during the Sabarimala judgement, stressed the crucial need for a nuanced examination of religious practices, acknowledging the dynamic interplay between religious freedom and constitutional imperatives.

That's what he communicated "Protected profound quality priority, a worth of changelessness which isn't dependent upon the transitory likes of without fail and progress in years... When these proposes [of human freedom, fairness, organization, and justice] are acknowledged, the vital result is that opportunity of religion and, in like manner, the opportunity to deal with the undertakings of a strict category is dependent upon and should respect these crucial ideas of protected profound quality"

(A) Hypocrisy

India has actively advocated for the eradication of harmful practices on the global stage, offering recommendations to nations such as Guinea, Mali, and Gambia. In 2020, India encouraged Guinea to persevere in its undertakings to dispense with unfavorable practices like constrained marriage and female genital mutilation.Two years earlier, in 2018, India advised Mali to enact legislation outlawing all forms of gender-based violence, explicitly addressing the traditional practice of female genital mutilation.[13] Going back to 2014, India recommended Gambia to contemplate the enactment of a comprehensive law specifically prohibiting the practice of female genital mutilation. These recommendations reflect India's commitment to promoting human rights and combatting practices that adversely impact the well-being of individuals, particularly women and girls.

IV. SUGGESTION

It is noteworthy that while Female Genital Mutilation (FGM) persists in India without comprehensive legislation, the country has advised others like Guinea, Mali, and Gambia to enact laws prohibiting the practice. Although FGM could potentially be penalized under existing legal provisions like Sections 324 and 326 of the Indian Penal Code, as well as Section 3 of the Protection of Children from Sexual Offences Act, a more robust and targeted strategy is essential.Several African and European nations have effectively combated FGM by incorporating it into existing laws or creating specific legislation. India should acknowledge its social, moral, and international obligations by formulating comprehensive legislation to end

[13]https://drive.google.com/file/d/1shq4nJPzEgJxsUMnEUOdfqdoToPayf5j/view?usp=drivesdk

the practice. Drawing inspiration from successful models, such as the collaboration in the Netherlands and community-based protection initiatives in Burkina Faso[14], India can implement decentralised efforts involving medical practitioners, educators, police, and community organisations.A crucial step is the development of legislation that aligns with the World Health Organization's definition of FGM. This legislation should penalise medical practitioners conducting female circumcision and mandate medical, educational, and psycho-social support for victims. The recommendation includes a nationwide ban on FGM, supplemented by state-level policies tailored to local diversities, considering the concentration of the Bohra community in specific states.Given the cultural ties associated with the practice, building trust through dialogue with community leaders and members is vital. Educating current and future mothers about the harms of FGM, involving teachers, civil society organizations, and community health workers, can serve as effective agents of change. Emulating successful models like the 'African Well Woman Clinics' in the United Kingdom[15], India could establish similar healthcare services in Primary and Community Health Centers to address the needs of those who have undergone FGM while contributing to advocacy against the practice.

V. CONCLUSION

It's crucial to understand the widespread impact of Female Genital Cutting (FGC) globally so that policymakers, donors, health professionals, and others can effectively work to end this form of gender violence. Challenges in addressing FGC, as pointed out by Muteshi (2016[16]), stem from not adapting interventions to local contexts.Shell-Duncan et al.[17](2016) stress that FGC is deeply tied to cultural norms. Despite various justifications, FGC is deeply ingrained in Dawoodi Bohra culture. This understanding is crucial for those advocating against FGC. For example, knowing the typical age for FGC in this community helps child protection professionals identify potential risks. The study also shows a need for better sexual health education in schools, given the limited understanding of female anatomy among many Dawoodi Bohra participants. Anti-FGC advocates should recognize this as an opportunity to

[14]https://www.unicef-irc.org/files/documents/d-4313-1122_Female%20Genital%20Mutilation%20Evidence%20Profile-%20Burkina%20Faso%201.pdf

[15]https://www.whittington.nhs.uk/document.ashx?id=13048#:~:text=African%20Well%20Woman%20clinic%20is,Interpreters%20are%20provided%20if%20required.

[16] Muteshi, J. (2016). Root causes and persistent challenges in accelerating the abandonment of FGM/C [PowerPoint slides]. Retrieved from http://www.popcouncil.org/uploads/pdfs/2016RH_AcceleratingAbandonment-FGMC.pdf (last accessed 25 feb 4pm)

[17] Duncan, B. (2008). From health to human Rights: Female genital cutting and the politics of intervention. American Anthropologist, 110 (2), 225-236

tailor strategies that effectively encourage communities to abandon the practice. This insight is essential for targeted interventions to bring about meaningful change within the Dawoodi Bohra community and similar populations practising FGC.The surveys , however, may carries inherent biases. The confidential nature of the subject might have led women supportive of continuing Female Genital Cutting (FGC) to abstain from participating, potentially skewing the results toward those who have chosen to discontinue the practice. Future research endeavours should explore systematic methods of collecting quantitative data, employing random selection from a comprehensive sampling frame to address these biases.Moreover, the findings underscore the necessity for future studies to broaden their scope by surveying diverse stakeholder groups associated with FGC, including social service providers, religious leaders, and men within the community. Healthcare professionals, including paediatricians, gynaecologists, and nurses, should also be included in interviews as they often encounter FGC survivors professionally, contributing valuable insights into the physical effects of globally practised, less severe forms of FGC.Upon reviewing existing literature, it becomes apparent that there is a considerable knowledge gap concerning the physical, psychological, and sexual consequences of Types of FGC within the Dawoodi Bohra community. Both Sahiyo's study and the Islamic Relief Canada [18](2013-2016) study highlight a lack of awareness about female anatomy among survivors, posing challenges for them to articulate any physical difficulties related to their FGC. Addressing this gap is crucial for a comprehensive understanding of the impact of FGC and improving support for survivors.

In conclusion, the practice of female circumcision within the Bohra community infringes upon the decisional autonomy of girls and women, a fundamental aspect of their right to privacy under Article 21, discriminate against women and girls as articulated in the Puttaswamy case. , and violate Articles 14 and 15 of the Constitution.Moreover, by imposing disproportionate physiological burdens based on gender stereotypes, it violates the equality clause of Part III of our Constitution. Categorically falling within the World Health Organization's definition of Female Genital Mutilation (FGM), widely accepted by international organizations, it fails to qualify as an Essential Religious Practice (ERP) under Article 25 and lacks constitutional legitimacy. Therefore, it is imperative for the Court to declare it unconstitutional.Recognizing that legal actions alone might not suffice, the Indian government should proactively establish a comprehensive legislation and strategy to eliminate this practice. Engaging with practicing communities and other stakeholders, and drawing insights from successful global approaches

[18] Islamic Relief Canada. (2013-2016). Female genital cutting in Indonesia: A field study. Islamic Relief Canada . Burlington, ON: Patel, R., & Roy, K.

to combat FGM, the strategy should encompass prevention, protection, prosecution, service provision, and partnership initiatives.It is crucial to emphasize the need for sustained efforts to safeguard girls currently at risk while ensuring that future generations are liberated from the hazards of FGM. This comprehensive approach is vital for effecting lasting change and upholding the rights and well-being of women and girls in India.

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