

Female Genital Mutilation: Evils Of Bygone Era

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Abstract

Women have been subject to discrimination in Indian patriarchal society from time immemorial and the scars of such harsh practices are prevalent even now. Circumstances and superstitions have time and again placed the Indian women at the receiving end of undue duress and at times, inhumane hardships. The government has also taken steps from time to time to achieve its goal of equality among its people. But there are still many horrendous practices prevalent in India which needs to be eradicated from the society by all means and requires expedient attention from the Government of India. One among such draconic practices is that of Female Genital Mutilation, which involves full or partial removal of external genitalia or causing injury to female genital organs. This barbarian practice is seen most commonly among the Bohra community in India. Although, there are no apparent benefits from this procedure, the women become victim to both short- and long-term health repercussions. This practice is not illegal per se because there currently exists no law in India barring it. As a result, the criminal justice system would not be able to press accountability against the people who are involved in these horrendous practices. The researcher, through this paper, intends to highlight the magnitude of this problem in India, and how the victims are largely left unheard. The paper also seeks to suggest certain counter measures against this issue while keeping in mind the violation of human rights suffered by the women who have undergone such procedures.

Keywords: FGM, Bohra Community, Health, Constitutional rights.

I. Introduction

Women from times immemorial have been subjected to oppression and torture, creating an impression in the minds of most people around the globe that females are somewhat inferior to their male counterparts and thus, do not have the right to choose what is right for them. Even during today's modern times, there are communities and sections of the society which do not provide basic survival rights to women whereas men of the same society enjoy the same. This problem aggravates if the female is a minor as the society presumes that she will not able to take right decisions for herself and is incapable of deciding what is better for her future. This is one of the most common reasons as to why it is majorly practised on girls aged below 15 years. The society performs the gruesome act by wrongfully using the minor age of a victim girl as a protective shield.

Female Genital Mutilation/Cutting (hereinafter, 'FGM/C') includes all procedures resulting in injuring the female genital organs for reasons of culture, religion, tradition and other non-medical purposes. The procedure includes a partial or total removal of the external female genitalia. The reports issued by WHO, UNICEF and UNFPA in 2007 shows that the practice is carried out mostly on girls between the ages of 1 to 15 years.² As per joint statement of WHO/UNICEF/UNFPA, FGM is off our types but the most commonly adopted types are Types I and II which account for

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²United Nations Population Funds and United Nations Children's Fund, UNFPA-UNICEF Joint Programme on Female Genital Mutilation/ Cutting: Accelerating Change, UNFPA (Mar. 30, 2020, 8:00PM), <https://www.unfpa.org/publications/unfpa-unicef-joint-programme-female-genital-mutilationcutting-accelerating-change>.

85% of all procedures.

According to the World Health Organisation (WHO) classification,³Type 1 is known as Clitoridectomy, wherein the clitoris is removed partially or totally. Type 2 classification involves total or partial removal of the labia minora and clitoris either with or without removing the labia majora. Type 3 is also referred to as infibulation, which means that a covering seal is created by narrowing the vaginal orifice and by cutting the labia minora or labia majora, with or without removal of clitoris. The last classification, i.e. Type 4, involves procedures like pricking, piercing, scraping, etc and other injurious procedures which can harm the female genitalia.

Around 100 to 140 million girls and women in the world have undergone the procedure and about 3 million are estimated to be at the risk of being cut every year.⁴It is most common in 30 countries of Africa and some countries in Asia (particularly in the Middle East) and Latin America, as well as among migrants from these areas.⁵

As per WHO, the act of removal of clitoris and labia minora has no health benefits unlike male circumcision. In-fact, it could be harmful to girls and women, not only physically but also emotionally. With extremely limited infrastructure and instruments, cutting is performed by un-trained midwives who are inept in handling any kind of emergencies caused by the process. The immediate consequences of the practice include acute pain and excessive bleeding, difficulty in urination etc. This could further lead to infections, injury to the surrounding tissues, not to mention the mental trauma that the child would go through. In 2012, Priya Goswami, in her documentary film “A pinch of Skin”, quoted an instance that during the process, a seven-year-old girl moved her hand towards her genitalia. The un-trained midwife accidentally cut the fingers of the girl. Due to the lack of expertise and facilities to handle the emergency situation created, the girl lost her finger and had excessive bleeding. In some cases, due to severe bleeding, the child could go through haemorrhagic shock and neurogenic shock, ultimately leading to death.⁶

In the long- run, there could be complications such as urinary and menstrual problems, infertility and painful coitus. Right before marriage or immediately after marriage, they undergo another surgery (de-fibulation and re-infibulation) to remove the stitched opening of the genital area. During birth, the scar tissue might tear, due to which excessive bleeding could take place. In some ethnic communities, immediately after birth, they stitch it back which is an even more painful process. In a study done by WHO and multiple countries, it is observed that due to this practice, women face increased risk of adverse events during childbirth. They further concluded that newborn babies are negatively affected due to their mutilated mothers. Furthermore, on an average,

³Types of Female Genital Mutilation, World Health Organisation (Mar. 30, 2020, 8:00 PM), <http://www.who.int/reproductivehealth/topics/fgm/overview/en/>.

⁴ OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM & WHO, Eliminating Female Genital Mutilation: An interagency statement, World Health Organisation (Mar. 30, 2020, 8:00 PM), https://apps.who.int/iris/bitstream/handle/10665/43839/9789241596442_eng.pdf?sequence=1.

⁵United Nations Population Funds, Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation, UNPF (Mar. 30, 2020, 8:00 PM), <https://www.unfpa.org/sites/default/files/pub-pdf/FGMC-humanrights.pdf>.

⁶Manfred Nowak, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: mission to Togo, UN Human Rights Council (Mar. 30, 2020, 8:00 PM), <https://www.refworld.org/docid/4795c8b22.html>.

there were additional casualties of approximately 1-2 infants as a result of genital cutting.

II. Practice of Female Genital Mutilation in India

For hundreds of years, this practice has been followed by many communities of Christian, Jew and Muslim religion. Among the Muslims, the Bohra community is one of the largest communities around the world to practice FGM.⁷ Today, there are differences in religious practice, traditions, and customs, often related to its jurisprudence. Although all the sects of the Muslim community regard the holy book of Quran to be divine in nature, both Shia as well as Sunni have their different opinions on the hadith.⁸ Bohra Muslims are part of the Ismaili branch of the Shia Muslims. In addition to India, they are found in Qatar, Yemen, Egypt, Saudi Arabia, Indonesia and other North African and South East Asian countries.

India is a culture driven country which has been in existence since the beginning of civilisation and has innumerable cultures and traditions which forms the base of the most diverse country in the world. Many of the traditions followed in India today have been trickled down for generations for thousands of years. Some of the practices have scientific reasons, however, most do not. It has been observed that cultures and traditions in the modern-day Indian society are very important and the community, on several occasions, condemns those who do not comply with them. Sometimes they are emotionally forced to follow their traditions, even if it is against their wish. Similarly, the sect of Bohra Muslims, which is mostly situated and settled in areas of Maharashtra and Gujarat, get their roots from a heist priest of Bohra Muslims hundreds of years ago when he shifted to Gujarat from Yemen. The term “Bohra” has also been derived from Gujarati language which means “the traders”. As the pages of the calendar passed, the community gradually settled in Surat about 150 years ago. The way the people of this community have evolved over these years is a matter of question as the community is highly rigid about their rituals and do not have a dynamic approach towards the changes of the modern-day world. It is a very closed community which does not welcome the entering of an outer person into their community as it can be rightfully said that a person cannot become a Bohra until and unless he is born in the community. A person is not allowed to convert himself into or out of the community. Marriage outside the community, even to the other sect of Muslims, is highly condemned upon. The level of rigidity is clearly evident from the fact that the place of worship meant for Bohra Muslims is separate and different from that of other sects of the Muslim community. It is preposterous to see that a community which is in general a very educated and rich community indulges in an orthodox practice like Female Genital Mutilation and makes it obligatory for their children to undergo the procedure no matter how gruesome and pointless it is and continue to be justified by baseless and meaningless traditions which only lead to lifelong scarring of the child.

It is necessary to note that even the secular matters in daily lives of people in this community are totally controlled and managed by Dai. There are many people who have faced social flak and boycott by the community, as a consequence of them and their families standing up against this

⁷United Nations Population Funds and United Nations Children’s Fund, UNFPA-UNICEF Joint Programme on Female Genital Mutilation/ Cutting: Accelerating Change, UNFPA (Mar. 30, 2020, 8:00PM), <https://www.unfpa.org/publications/unfpa-unicef-joint-programme-female-genital-mutilationcutting-accelerating-change>.

⁸ Paul T Hellyer, The Money Mafia: The World in Crisis (Credos, 2014).

gruesome act which is considered to be an important religious practice in the Bohras from times immemorial. The main problem is that the victims are extremely afraid to raise their voice against this Gordian knot as it may result in them being thrown out of the community. The exclusion extends to their children being denied marriage because of them raising their voice against the practice and are also often denied the right of being buried in the community burial ground.⁹As a consequence, most women bear with this dreadful practice silently without raising any objection even within their families, proving to become a stimulus for the act to flourish.¹⁰

The voices of people objecting the practice are easily gagged by using coercive forces of social boycott, undermining the victims of bringing about change. There is a dire need to consider the available legal options as there are no signs of female genital mutilations being done away with in the community. Presently, Syedna Muffadal Saifuddin is the head of the Bohra community, who is also, either directly or indirectly, involved in issuing religious sanctions which act as a force upon the people to perform the gruesome practice upon their daughters. There are nearly more than half a million females who have undergone this drivel procedure and hundreds of thousands continue to do so. The procedure is usually conducted by untrained mid-wives with no proper equipment. The equipment is not properly sterilized and there is no way to stop excessive blood loss due to the lack of infrastructure.¹¹In certain places, few doctors attached to the Bohra community perform this procedure, even though they are aware that FGM has no scientific benefit, but only potential threat to the girl child, both mentally and physically.

In *Sunita Tiwari v. Union of India & Others*,¹² the Supreme Court came across the issue of FGM. The Court till now has passed an order, holding that India is a signatory to the UN Conventions on the Rights of Child and the Universal Declaration on Human Rights. The Writ Petition urges the Apex Court to criminalize the practice in India as it is in violation of the Fundamental rights. It is being contended before the Court to regard FGM as an offence until any provision is incorporated under the India Penal Code. The court considered this as an act of inhumanity and violation of Article 21 of the Indian Constitution, which gives Right to Life and Personal liberty. The Hon'ble Apex Court also observed that FGM should be regarded as an 'offence' under the Indian Penal Code. By this statement, the Court has made it clear that FGM is an offence in India and State police are directed to take actions against the wrongdoers.

However, The Dawoodi Bohra Women for Religious Freedom (DBWRF) said that practice is wrongly called as FGM and claim it to be circumcision. Further, they claimed that the practice is not a violation of Article 21 as it is a 1400 years old practice and is an integral part of the society. It is backed by religious believers and values and is practiced as a result of the various steps, commands and directions issued by the competent religious authorities. Rather, if it is criminalized, then it would be violation of Article 25 and 26 of the Indian Constitution.

With this procedure, the girl will not be able to attain sexual pleasure and will not indulge into any

⁹Gazala Parveen, *Female Genital Mutilation In India*, IP Leaders (Mar. 30, 2020, 8:00 PM), <https://blog.ipleaders.in/female-genital-mutilation-india/>.

¹⁰Indira Jaising, *Female Genital Mutilation- Guide to Eliminating the FGM Practice in India*, Lawyers Collective (Mar. 30, 2020), <https://www.lawyerscollective.org/>.

¹¹World Health Organization, *Female Genital Mutilation-student manual*, W.H.O. (Jan. 24, 2020, 04:00 PM), www.who.int/frh-whd.

¹²*Sunita Tiwari v. Union of India*, W.P. (C) No. 286/2017.

sexual relationship with anyone before her marriage which will ensure her loyalty towards her husband. This is considered to be the main reason why the community undergoes this practice, as per them. Hence, this act is a symbol of purity for girls of the Bohra community according to their traditions and cultures. However, the purpose of genital mutilation is not fully attained and women experience orgasms even after they have undergone mutilation.¹³ It is a possibility that women who have gone through genital mutilation in their lifetime may experience pleasure and can enjoy the sexual relationships which makes the act even graver as it imposes a compulsion upon young girls to bear unimaginable pain and life risks for no reason. Just to satisfy the patriarchal society, women undergoes these torturous practices in the name of keeping them “pure” and away from sexual pleasure. Whereas, on the other hand, there are no such moral and societal restrictions upon the male child.

According to The National Commission for Women, social development and growth of a nation can only be achieved by empowering women of that nation and eradicating violence against them. In 2017, NCW received a petition which was signed by around eighty thousand people to end FGM in India.¹⁴ According to the commission, FGM is a violation of an individual’s right on her own body. It is an infringement of her basic rights. But till now, the Legislature has not come up with any law penalising the act, neither has the Court issued mandatory guidelines. The authority can play an important part in the fight as it can start from its own office, by educating women and spreading awareness about the prevalence of the practice.

The all India Muslim Personal Board, although, has a different view on the subject. In 2020, while submitting response in a case,¹⁵ the board has clarified its stance by stating that restriction of women on entering in mosque, practicing FGM/C etc. is a religious matter which is guided by the organisation and its member and that it is not appropriate for the Court to interfere in the matter. They also said that Islam doesn’t restrict women from offering prayer in a mosque, but gives them an option to pray at any place they want. The board can highly influence people of their community to ban this practice by interpreting the holy text and educating them, but to no avail yet.

III. Legal Regulations Governing Female Genital Mutilation

There are as such no explicit legal regulations to control the practice of genital mutilations among girls. But the laws provide protection to young girls impliedly through various provisions under different Acts. The Constitution of India explicitly states that a person shall not be deprived of his right to life and personal liberty except and according to procedure established by law.¹⁶ It provides a fundamental right to all the citizens to live a dignified life. Life, bereft of liberty would be without honour and dignity, and it would lose all significance and meaning, when life itself would not be worth living.¹⁷ That is why liberty is called the very essence of a civilised existence.¹⁸ Liberty is

¹³Lucrezia Catania & Omar Abdul Cadir, Pleasure and Orgasm in Women with Female Genital Mutilation/ Cutting (FGM/C), JSM 1666, 1675 (2007).

¹⁴The fight against female genital mutilation, Change.org (Jul.21, 2020, 1:30 PM), <https://www.change.org/l/in/the-fight-against-female-genital-mutilation>.

¹⁵Yasmeen Zuber Ahmad Peerzade v. Union of India, W.P. (C) No. 472/2019.

¹⁶India Const. art. 21.

¹⁷Hukam Chand v. State of Uttar Pradesh, (2001) Misc. Single No. 1019; Vishnu Sahai v. State of Uttarakhand, (2008) Special Appeal No. 739 of 2018.

¹⁸H.R. Khanna, Delhi Bar Council Library Inauguration, EBC-India (Nov. 12, 2019, 01:30 PM), <https://www.ebc->

necessary but it should be controlled keeping in mind the interest of society and social interest must not deprive individual liberty¹⁹.

Liberty must be paired with virtue for ensuring progress and social stability. Man is a rationale individual who has to live in harmony with equal rights of others and more differently for the attainment of antithetic desires. Life, liberty and security are the most prized possessions of an individual. The urge for freedom is a feeling which runs through the veins of every human being is a very natural phenomenon for a person²⁰. Respect for life, liberty and property is not merely a norm or a policy of the state but an essential requirement of any civilised society.²¹ One of the most valuable fundamental rights is individual liberty which is guaranteed by the Constitution of every democratic country. Just and effective administration of justice is the cornerstone of a society and is an essential component of public confidence in the institutions of the government. The term “person” mentioned in the Constitution of India means that everyone has the basic rights provided by the law of the land which cannot be violated by any governmental authority and cannot be taken away from a person. *Field J.* in the case *Munn v Illinois*,²² has rightfully observed that the concept of life is not mere animal existence but the inhibition of its deprivation extends to all limbs and faculties by which life is enjoyed.

The Constitution also prohibits any discrimination on the basis of religion, race, caste, sex or place of birth and the state can also make any special provisions for children and women,²³ but so far there have been no law which prevents people from performing genital mutilation on young girls. The main idea behind indulging into the commission of this act is discriminatory on the basis of the gender of the child.

Moreover, with the aim of giving state the responsibility of governance of the country, The Directive Principles of State Policy (DPSP) were inserted in the Constitution of India under Part IV. In order to promote the welfare of the people of the state, the Constitution obligated the state to take positive steps for state and achieve democracy in all sense. It provides that the state must ensure that the delicate age of children is not abused²⁴ and they must be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and they should be protected against exploitation and against moral and material abandonment.²⁵ Young girls are being mutilated against their will which leaves long lasting mental and physical effects on their health. It further states that the state shall try for early childhood care and education for children below the age of six years.²⁶ However, as previously pointed out, according to the World Health Organisation, the act of genital mutilation is performed on girls aged between 4 to 15 years.²⁷ The DPSPs have been impliedly protecting the interests of children with the help of its provisions and

india.com/lawyer/articles/75v2a1.htm.

¹⁹*Kartar Singh v. State of Punjab*, 1994 S.C.C. (3) 569.

²⁰*Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.*, 2011(1) S.C.C. 694.

²¹Dr. M. Asad Malik, *Government, Governance, Lynching and Rule of Law*, LiveLaw Jul. 5, 2017, 11:04 A.M., <https://www.livelaw.in/government-governance-lynching-rule-law/>.

²²*Munn v. Illinois*, 94 U.S. 113 (1877, U.S. S.C.).

²³India Const., art 15, cl. 1, 3.

²⁴*Id.* At art. 39, cl e.

²⁵*Id.* At art. 39, cl. f.

²⁶*Id.* At art. 45.

²⁷World Health Organization, *Female Genital Mutilation*, World Health Organisation (Mar. 30, 2020, 8:00 P.M.), <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.

tries to impose obligations upon the government to try for providing better infrastructure for children for their brighter futures but the practice of FGM violates every such notion of the law of the land.

The Indian Penal Code of 1860, on the other hand, provides that any act which has the capability to endanger life or which can cause the sufferer to be in severe bodily pain during the space of 20 days, will be considered as 'Grievous Hurt'.²⁸ If a person causes hurt which he intends to cause or he knows himself to be likely to cause grievous hurt is said to have committed it voluntarily²⁹ which is punishable with imprisonment which may extend to seven years and the person shall also be liable to fine.³⁰ If in case there is an act by a person causing grievous hurt by means of an instrument used for shooting, stabbing or cutting, it shall be punishable with imprisonment of life or with imprisonment for a term which may extend to 10 years and the person shall also be liable to fine.³¹ The Code also provides that any act which has been done in a negligent manner so as to endanger human life or personal safety of others will be punishable with imprisonment for three months or with fine which may extend to ₹250 or with both.³² It also provides that if a person causes grievous hurt to any person by committing any act in a negligent manner which has the capability of endangering human life shall be punishable with imprisonment of 2 years or fine extending to ₹1000 or both.³³

The victim girl child is wrongfully confined³⁴ in a place where the act is performed upon her in a forceful manner knowing the fact that the act may endanger the life of the child. They are restrained in those spaces so that they cannot escape from the dark dingy rooms. The Code makes the act of wrongfully restraining the person from proceeding beyond certain limits punishable with imprisonment of 1 year or fine extending to ₹1000 or both.³⁵

Similarly, the vision of the Commission for Protection of Child Rights Act, 2005 is that, in accordance with the Constitutional framework, law, policy and UNCRC, each and every child should enjoy their basic and inalienable rights, that is, survival, development, and protection across the country.³⁶ It is ensured by the Act that none of the laws, policies, programmes and administrative mechanisms are in conflict with the child rights, as enshrined in the Constitution of India and in the United Nation Convention on Rights of the Child, which India ratified in 1992.³⁷ The function of the Commission is to look into all factors that prohibit a child from enjoying her rights and check whether a child is affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and/or prostitution. It has the power to recommend appropriate remedial

²⁸Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, s. 320.

²⁹*Id.* At s. 322.

³⁰*Id.* At s. 325.

³¹*Id.* At s. 326.

³²*Id.* At s. 336.

³³*Id.* At s. 338.

³⁴*Id.* At s. 340.

³⁵*Id.* At s. 342.

³⁶ I Jamir Ahmed Chaudhary, *Anti- Natural Framework-I & Its Consequences* (1st ed., Notion Press, 2019).

³⁷The National Commission for Protection of Child Rights, *Citizen's Charter of National Commission for Protection of Child's Rights*, N.C.P.C.R. (Aug. 27, 2019, 7:00 P.M.), <https://www.ncpcr.gov.in/>.

measures.³⁸The act of FGM is nothing short of violence, maltreatment and torture upon the young girls for no scientific reasons. The traditions and customs of the community have completely shadowed the level of enormous cruelty – both physically and mentally on a girl child.

The Protection of Children from Sexual Offences (POCSO) Act, mark any insertion of any foreign object into the vagina of a girl, by any person on any child, as penetrative sexual assault.³⁹ Precedence has established that the penetration, under this Act, need not to be complete. Punishment of imprisonment for a term not be less than seven years but which may also extent to imprisonment for life and shall also be liable to fine for the act of penetrative sexual assault is provided under the Act.⁴⁰

The Act of penetrative sexual assault on a child using any deadly weapon⁴¹or any penetrative sexual assault which causes grievous hurt or causes bodily harm or injury to the sexual organs of the child⁴² or any penetrative sexual assault on a child who is below the age of 12 years⁴³is punishable with rigorous imprisonment for a term not be less than 10 years which may extent to imprisonment for life and shall also be liable to fine.⁴⁴

According to the Act, a person shall be punished with imprisonment for one half of his life or one half of the longest term of imprisonment or with fine or both, if he attempts to commit any offence and does any act towards the commission of the offence.⁴⁵

IV. International Approach Towards Tackling the Problem o FGM

NGOs play a vital role in ensuring that no Fundamental Right of a citizen is violated. They conduct extensive research, funded by many organisations and mostly victims. There are many charities, campaigns and organisations which are moving heaven and Earth towards the eradication of FGM/C from all over the globe.²⁸ Too Many is a charity working in region of Africa and focuses on 28 nations in the African subcontinent regarding the awaking people about the ill effects of this practice. Similarly, The African Women’s Organisation is an NGO which also works extensively in the African countries in order to decrease the practice. The fight against FGM is now moving at a global level, and most of such organisations are mainly working in the United States of America and the United Kingdom. With a vision to decrease the practice in European regions, “END FGM European Campaign” has been started by the European Union which is supported by Amnesty International at every level. In Austria, FGM-HILFE is an organisation which supports the programs of Al Bakara Foundation in Somaliland and helps in educating people about FGM in various regions of Austria and Italy. GAMS, in France, works with the victims of Female Genital Mutilation, forced child marriages, gender based violence, etc. On the other hand, in Sweden, there is an NGO named RISK which works towards to end FGM from grassroots’ levels of the society.⁴⁶

³⁸ Commission of The Protection of Child’s Rights Act, 2005, No. 4, Acts of Parliament, 2006, s. 13(d).

³⁹Protection of Child from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012, s.3.

⁴⁰*Id.* At s. 4.

⁴¹*Id.* At s. 5(h).

⁴²*Id.* At s. 5(i).

⁴³*Id.* At s. 5(m).

⁴⁴*Id.* At s. 6.

⁴⁵*Id.* At s. 18.

⁴⁶Regina, 16 Organisations, Charities and Grassroots Groups Working to Stop Female Genital Mutilation, The Pixel

One such organisation in India, fighting for the rights of young girls is *Sahiyo*. Aiming to empower the Asian communities against genital cutting, ‘*Sahiyo*’⁴⁷ conducted an International Online Survey of Bohra Women for the first time in India. They want to end the practice in India by creating positive social change with the help of awareness, education and collaboration which must be based upon community involvement.⁴⁸ Many such NGOs around the world have joined hands to fight for the rights of children and women, and to recognize the significance of her right to consent and autonomy over her own body.

Emphasising on the current need for concerned actions in section like health, education, finance, justice and women affairs, World Health Assembly, in the year 2008, passed a resolution to eliminate FGM.⁴⁹ Its data and survey reports reveal that between 2015-2030, around 68 million girls are at high risk of this practice in the world. As a result of this resolution, it has been decided that the 6th day of February, 2019 will be marked as International Day of Zero Tolerance for Female Genital Mutilation.

The first ever Convention, which was convened at the world level with an intention to make it obligatory upon the countries to work in compliance of it, was the Istanbul Convention. The main aim of the Convention was to protect the victims from any kind of violence and eradicate the practice of FGM by creating universal legal framework.⁵⁰ Female genital mutilation, forced marriage, etc. are the kind of violence which are defined and criminalized by the Convention. It gives powers to the government agencies and NGOs to monitor and report about the practice. Signing and ratification is not restricted and can be done by any state in the world, irrespective of it being a member of the Council of Europe or not.⁵¹ Article 38 of the Council of Europe Convention on preventing and combating violence against women and domestic violence also defines Female Genital Mutilation.⁵² It provides that legislatures will take all the necessary steps to criminalize FGM. Article 61 provides that the victim of the violence, the women who need protection and who might be at high risk of being subjected to torture, cruel and degrading treatment or punishment, shall not return under any circumstances to the country of oppression and legislative measures must be taken to protect the victim.⁵³ On 7th February 2018, the European Parliament adopted a resolution on Zero Tolerance for FGM.⁵⁴

Project (Mar. 30, 2020, 8:00 P.M.), <https://16days.thepixelproject.net/16-organisations-charities-and-grassroots-groups-working-to-stop-fgm/>.

⁴⁷Mariya Taher, Understanding Female Genital Cutting in the Dawoodi Bohra Community: An Exploratory Survey, *Sahiyo* (Mar. 30, 2020, 8:00 P.M.), <https://sahiyo.com/>.

⁴⁸Christina Julios, Female Genital Mutilation and Social Media (1st ed., Routledge, 2018).

⁴⁹ World Health Organization, Female Genital Mutilation, World Health Assembly (Mar. 30, 2020, 8:00 P.M.), https://apps.who.int/iris/bitstream/handle/10665/23532/A61_R16-en.pdf;jsessionid=8A47296FE028AC584F06B0020AF5B697?sequence=1.

⁵⁰ Amnesty International & The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), End FGM European Network (Mar. 30, 2020, 8:00 P.M.), <https://www.endfgm.eu/resources/international/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence-istanbul-convention/>.

⁵¹Id.

⁵²The Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Portal (Mar. 30, 2020, 8:00 P.M.), <https://www.coe.int/en/web/conventions/full-list//conventions/rms/090000168008482e>.

⁵³Id.

⁵⁴European Parliament, European Parliament resolution of 7 February 2018 on zero tolerance for Female Genital Mutilation (FGM)(2017/2936(RSP)), European Parliament (Mar. 30, 2020, 8:00 P.M.),

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, was passed by the United States of America, which criminalises FGM. To protect a child from mental suffering, physical pain and any other injuries and to prohibit anyone from endangering life of a child by any act of female genital mutilation, California passed California Prohibition of Female Genital Mutilation Act in 1996, which came into force in 1997.⁵⁵

Model criminal code of Australia also criminalizes FGM. It defines, prohibits and penalizes FGM. State legislates penalties of the said offences and can punish the wrongdoer with imprisonment of up to 21 years.⁵⁶ The Australian High Court has held in the case of *The Queen v A2*⁵⁷ that a female's genitals do not need to be made imperfect or damaged irreparably in some fashion for the offence of female genital mutilation to be completed. The High Court overturned the decision of the New South Wales Court of Criminal Appeal, which observed that there is a need of real damage for the offence of female genital mutilation to have been occurred. The term "otherwise mutilates" will also fall within the ambit of temporary or repairable injury inflicted on female genitalia and the definition of the term "clitoris" will also covers "clitoral hood", as has been observed by Hon'ble Chief Justice Keifel and Justice Keane after considering several reports, including those issued by WHO, some research reports from the 19th century and a detailed report by the Family Law Council, among others. The court held that all kinds of female genital mutilation will be considered illegal and will invite punishment for the wrongdoer.

The scope and approach of the legal provisions regarding FGM/C varies from country to country. More than 21 countries athwart Africa and 13 countries have laws criminalising FGM/C till now. Special provisions have been subsumed in the penal code of many countries like Ghana, Egypt, Austria, Belgium, Cyprus, Denmark, Italy, Norway, Portugal, Spain and Sweden, while some countries have made specific Acts (like Kenya Children's Act, 2001) to criminalize the practice. Current and existing penal code provisions have been applied by the countries like the United States, France, Germany, Mali, the Netherlands and Switzerland, to criminalise FGM/C.⁵⁸

Other countries and organisations all over the world are working day and night to achieve the goal of elimination of this practice from all social levels. Many countries have amended their legal structure in a way to take steps in furtherance of this goal. This brings us to the question of proposing a model law for India, which lacks specific legislation in this respect.

V. Conclusion And Way Forward

The future of our nation lies with our children. One of the youngest populations of the world is in India. It is estimated that by 2020, the average age of Indians will be 29 years which is the youngest in the world.⁵⁹ A healthy economic growth can only be achieved when the population of the nation

https://www.europarl.europa.eu/doceo/document/TA-8-2018-0033_EN.html.

⁵⁵ The California Prohibition of Female Genital Mutilation Act, 1996, Cal. Adv. Legis. Serv. 790 (1996).

⁵⁶ Review of Australia's Female Genital Mutilation legal framework Final Report, Australian Government- Attorney General's Department (Mar. 30, 2020, 8:00 P.M.), <https://www.ag.gov.au/>.

⁵⁷ *The Queen v. A2*, (2019) HCA 35, Case no. S43/2019 S44/2019 S45/2019.

⁵⁸ Parveen, *supra*.

⁵⁹ FE online, Population database of United Nation's Population Division, Financial Express (Mar. 30, 2020, 8:00 P.M.), <https://www.financialexpress.com/india-news/with-an-average-age-of-29-india-will-be-the-worlds-youngest->

is healthy. We are one of the fast-growing economies in the world. After 73 years of Independence, it is disheartening to see that social taboos still exist in our country. It is high time that parliament should enact a law which deals with FGM and criminalizes this practice.

Women have encountered discrimination in the male dominated society from ages and the scar of such harsh practices is present in the modern society till date. These taboos can be removed through gender sensitization. The customs of our society are made according to these discriminatory beliefs. Some claim that the procedure of FGM is just to 'purify' the girl by cutting off excess flesh. Others have a baseless claim that it prevents girls from having sexual arousals and ensures that they are true to their husbands. Children are continuously forced by their parents and society to suffer, even after extensive research work proves otherwise. In this case, schools and religious institutions like Madaras can play an important role by educating young minds and give more preference to the development of girl child. The purpose of undergoing this practice is not achieved as is perceived as women are able to reach orgasms even in the absence of clitoris, which makes the act even more redundant and only exists to satisfy the consciousness of the patriarchal mind-set of the community. This is a clear fence to the Freedom of Liberty that our forefathers had envisioned while framing the Constitution. FGM and compulsory mutilation of the girls are nowhere mentioned in Quran, which is religiously followed by the Bohra Muslims. Hence, taking a religious stance on this issue does not hold water. Religious organizations can spread awareness as they have a very strong reach and hold over the people of their community and can serve as a very good medium to educate people about the ill effects of FGM.

In 2010, over 6000 communities in Africa abandoned Female Genital Mutilation/ cutting. In Ethiopia, the existence rate has decreased from 80 per cent to 74 per cent, in Kenya it has decreased from 32 per cent to 27 per cent, and in Egypt it has reached to 91 percent from the staggering rate of 97 percent.⁶⁰The Legislature can use its law-making power and can criminalize FGM by defining the term, 'Female Genital Mutilation' in an inclusive manner and prescribing its punishment in severe terms. In doing so, it can cue help from other countries where the practice has been criminalized. If under-developed countries in Africa can abandon such a practice within one generation, India, being the fastest developing country, should do everything in its powers to ensure abandonment of this practise.

In India, there needs to be a culturally sensitive approach. Rather than condemning the practise, engaging in dialogues with all the groups of the community, including religious leaders and young girls themselves is essential in bringing about a voluntary renunciation and abandonment of the practise. Religious organizations must propagate the right interpretation of their religious text to their people so that they can get rid of their uninformed mind-sets regarding the cruel practices. Moreover, comprehensive, scientific research needs to be conducted on FGM to understand it better.

The number of half a million who have been cut in India does not include hundreds of thousands of girls who escaped being mutilated. For thousands already mutilated, some treatment needs to be given to help them overcome the trauma physically and emotionally. Workshops along with

country-by-2020/603435/.

⁶⁰ UNICEF, Over 6000 communities across Africa abandon female genital mutilation, UNICEF (Mar. 30, 2020, 8:00 P.M.), https://www.unicef.org/media/media_57613.html.

social media should be used to reach out to these women and encourage them to come forward and receive the much-required treatment. NGOs, with the help of government agencies, can arrange awareness drives in the areas which need to be educated the most. Lack of awareness is the biggest reason behind the prevalence of the practice. FGM in India needs to be banned as it is a cold-hearted and baseless tradition which is opposed to public health and order. The Legislature and the Judiciary must introduce new laws to prevent this cruelty.

Our population is growing. Over half a million children in India have gone through FGM and many are in danger of being forced through the process. The government, in order to maintain a welfare state must bring the laws as to ban this practice. There are many parents who, after being educated and informed about FGM, have put their foot down and refused to put their young girls through the process. This resulted in their humiliation, being ostracised, and disowned by the community members. Many families succumb to the peer pressure and forcefully mutilate their children.

To cast off this practice from the society, the Legislature and Judiciary should take immediate and strict steps. A practice cannot be treated as a custom if it infringes the Fundamental rights of a person. The Judiciary should give a decision in favour of women to protect their health and right to life and not in favour of religious institutions.