

# LEGALFOXES LAW TIMES

## FEMALE GENITAL MUTILATION – SUBORDINATING WOMEN THROUGH GENERATIONS

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### ZERO TOLERANCE TO FEMALE GENITAL MUTILATION

Visualize being a cute innocent five-year-old girl. Visualize the grandma you love and trust taking you to a dark dilapidated building. Visualize being pinned down to the floor. Visualize your undies being taken off. Visualize a stranger sitting there holding a knife heated on the stove. Visualize that same hot knife being used to cut off your clitoris. Visualize the screeching pain. Visualize the intense agony. Visualize there is nobody to call out. Isn't it depressing enough to even visualize? But astonishingly more than 200 million women and girls all around the world are subjected to this monstrosity which came to be known as female genital mutilation or circumcision<sup>1</sup>(hereinafter called "FGM").

This hideous practise of FGM includes slicing of the clitoral hood, clitoral gland, and removal of inner-outer labia. In certain cases, stitching up of the vulva leaving just a tiny hole to urinate and mensurate. what's more surprising is that this stitched vagina is unsealed later either by her spouse with his penis on the wedding night or by a midwife with the help of a blunt razor blade without any anesthesia only for the sake of men's sexual contentment and to stop pre-marital sex. Religion, societal acceptance, virginity preservation, family reputation, and marriageability are a few among the other common reasons given by people for the practice of FGM <sup>2</sup>.

Women across the world have the legal right and liberty for their reproduction and reproductive health. This whole practise of FGM ruined the core meaning of the reproductive rights, subordinating their sexuality, entirely curbing their sexual desires. This practice is embedded in gender inequality which altered the whole definition of purity, beauty and modesty. Seeing this

<sup>1</sup> UNICEF, <https://www.unicef.org/reports/female-genital-mutilation-cutting> (last visited Feb. 22, 2022).

<sup>2</sup> Ekta Bansal, *Female Genital Mutilation*, LegalServiceIndia.com, (Feb. 23, 2022, 11: 30 AM), <http://www.legalservicesindia.com/article/2503/Female-Genital-Mutilation.html>.

as a source of honour, women were frightened that if they fail to do so, their daughters and granddaughters would be exposed to social exclusion. Many women from around the world have stated that “if they denied to undergo this procedure, they would be considered stray in the society as well as their marriage life as they believed the head of the clitoris as a ‘source of sin’, ‘immoral lump of flesh’ or ‘unwanted skin’.”

Accompanying the practice, there are other cruel women-degrading practices involving breast ironing, virgin test, hymen repair, Leblouh, applying snail secretion, and several more. Young girls are force-fed to fatten for the sake of beauty and nuptials, practised as customary prestige in African countries like Nigeria, Mauritania, Kenya, etc. The outrageous practice of breast ironing caused the Intra uterine death of 23-year-old Karnataka women in 2013 in India.<sup>3</sup> To prevent girls from having sexual desires, breast flattening is done using heated tools by their mothers and grandmothers which has the risk of causing breast cancer and breast tissue damage.

**This bizarre practice in our Country:** In the name of rituals, this grotesque practise is followed in more than 31 countries including India although there is no mention of such practise in the Quran, the Bible, or any other religious holy books for that matter.<sup>4</sup> This tradition of genital mutilation being in the darker side of India is practised in the heart of Mumbai and Gujarat by Dawoodi Bohra Community including Alvi Bohra, Suleimani Bohras, Sunni Muslims of Kerala, etc. affects the basic fundamental and human right of women by abusing and unsignifying their sexual pleasures.

Studies show that almost 80% of Bohra Community-women have gone through FGM calling it a social norm passed down from generation to generation. Many such incidents of horror happening in India goes unnoticed and unreported. Among many saddening incidents are the stories of Asma, Fatima, Sadia who experienced unimaginable trauma as a result of the suturing of the vulva, experiencing abuse and degradation from among their husbands and the society. Girls were forced to apply snail secretion on their genitals to slow them down during the intercourse for the man to dominate and have sexual pleasure for a longer duration of time.

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<sup>3</sup> Sumanth Mallikarjuna Majgi, Shameful practice of Breast Ironing of Intra Uterine Death from India, vol 4, journal of basic and clinical research (jcbr), 1, 30-32 (2017), <https://jbcrr.net.in/JBCRR-VOL-%204-Issue-2/volume4-issue2-article7-html.html>.

<sup>4</sup> ISLAMIC RELIEF WORLDWIDE, <https://www.islamic-relief.org/islam-must-never-be-used-to-justify-fgm/> (last visited Feb. 24, 2022).

Fatima stated that “she could neither masturbate nor reach a Clitoral orgasm like other normal girls”. Ashgan, another Bohra woman said that “her genitals were mutilated after her husband discovered that she wasn’t circumcised so that her husband can penetrate and enjoy sex”<sup>5</sup>.

**Abuse in the name of religion:** Dr. Syedna Mohammad Burhanuddin, the Dawoodi Bohra religious leader issued a press statement describing the practice as an act of “religious purity” in June 2016.<sup>6</sup> Despite cutting female Genitalia not being propounded in the Quran, priests of Bohra community-initiated FGM to India as an obligatory practice of Islam due to its focus on women’s chastity and seclusion. To give this practice religious sanction is illicit, because religion accepts Human beings as a creation of God and nothing gives anybody any right to tamper or mess with that. The intention behind this practice is stuffed with centuries of masculinity and patriarchy. They say if a woman knows the pleasure, she can go “astray” and bring humiliation to the community.

The practice of FGM remained as a subject never to be discussed, a taboo and a well-kept secret for so long. The World Health Organisation states that the procedure has no health benefits but only health hazards. The 2003 Burkina Faso demographic and health survey helped us to traverse the relationship between religious obligation and FGM. In the name of religious requirements, 77% of women in Burkina Faso between ages 5-49 have experienced FGM.<sup>7</sup>

**Education for the downfall of FGM:** This horrifying practise might cause recurrent urinal and menstrual infections, chronic pain, cyst formation, infertility, fatal bleeding, anaemia and sometimes even lose their life. In recent years, a 13-year-old girl lost her life as a result of FGM in Somalia due to over bleeding among several other FGM deaths all over the world.<sup>8</sup> Apart from

<sup>5</sup> Harinder Baweja, *India’s dark Secret*, HINDUSTANTIMES (Feb. 25, 2022, 12:20 AM), <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>.

<sup>6</sup> Pallabi Munsî, *A continuing injustice*, THEINDIANEXPRESS (Jan. 8, 2018, 9:52 AM), <https://indianexpress.com/article/opinion/columns/dawoodi-bohra-community-prime-minister-narendra-modi-female-genital-mutilation-5015435/>.

<sup>7</sup> P. Stanley Yoder, *Female Genital Cutting in the Demographic and Health Surveys: A Critical and Comparative Analysis*, THE DHS PROGRAM (Feb. 25, 2022, 1:30 PM), <https://dhsprogram.com/publications/publication-cr7-comparative-reports.cfm>.

<sup>8</sup> THE GAURDIAN, <https://www.theguardian.com/global-development/2021/jul/21/death-of-13-year-old-girl-sparks-calls-for-action-on-fgm-in-somalia> (last visited Feb. 21, 2022).

this, these women also suffer from angst, depression, anxiety, and post-traumatic stress disorder which they carry for the rest of their lives.<sup>9</sup>

In the 21<sup>st</sup> century world, the happening of this hideous practice would be due to the lack of proper education for men and women in the society among the animalistic arrogance of the patriarchal society, shrinking women's capability to make informed choices. This practice is something which was dumped onto them from their mothers, so they are doing it for their daughters and granddaughters without understanding, questioning or knowing about it. Enlightening the society is the key to eradicate the practice which would nurture the questioning and discussion to individuals to take up their collective social roles that do not rely on FGM for approval. As per the UNICEF global health survey database 2022, women with higher education are more likely to oppose FGM. Constructive employment along with good education aids in empowering women to make their own life choices.<sup>10</sup>

**Violative to the fundamental and human rights of women:** Article 3 of The Universal Declaration of Human Rights (UDHR) enunciated that “everybody has the right to security, liberty, and life”.<sup>11</sup> Sadly, Indian women and girls do not possess full control of their personal rights including their bodies. Now the need of the hour is not about the origination or the statistics of the practice, the existence itself is hushed and determined enduring human rights violation.

The practice of FGM infringes several provisions of The Indian Constitution. The Right to privacy of women is violated under Article 21 which deals with the right to life and personal liberty.<sup>12</sup> FGM also abuses the fundamental rights of women under Article 15(discrimination based on Gender) and Article 14 (providing equality before law). Deepak Misra, the chief justice of India quoted that “subjugation caused by FGM to a husband will not pass the test of constitutionality”.<sup>13</sup> This barbaric practice is as well to be covered under the POSCO (protection

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<sup>9</sup> World Health Organisation, Department of Reproductive Health and Research, *Female Genital Mutilation and Obstetric outcome*, WORLD HEALTH ORGANISATION (Feb. 19, 2022, 4:15 PM), <https://www.who.int/reproductivehealth/publications/fgm/fgm-obstetric-outcome-study/en/>.

<sup>10</sup> Supra 1.

<sup>11</sup> United Nations, *Universal Declaration of Human Rights*, UNITED NATIONS (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>12</sup> INDIA CONST. art. 21.

<sup>13</sup> THE ECONOMIC TIMES, <https://economictimes.indiatimes.com/news/politics-and-nation/genital-mutilation-case-goes-to-5-judge-sc-bench/articleshow/65942631.cms?from=mdr> (last visited Feb. 23, 2022).

of children from sexual offences) act which brought touching of genitals of girls below 18 as a criminal act.

**Need for sensitization of the judicial system:** FGM being a serious issue in India has not received adequate attention among people, legislation, and judiciary. There is no peculiar law specifically banning FGM in India. Taking judicial actions against this issue, so far there has been no major law or enactments for banning FGM and the cruelty to girls and women from this practice goes unnoticed and underreported.

In September 2018, the case of Sunita Tiwari v. Union of India<sup>14</sup> surfaced before the Supreme Court of India. Sunita Tiwari, a renowned Human rights Advocate filed a Public Interest Litigation For banning the abusive practice of FGM in India. She advocated that “the practice is derogatory to women and is violative to the women and children’s Human rights as well as their basic right to life, equality, privacy, and personal liberty.”

The respondent in the case defended that circumcision is a religious practice that is protected under Articles 25 and 26 of the constitution and that it is practised in a safe and non-mutilating manner. This case was later referred to the constitutional bench of the apex court to determine whether the practice is a requisite religious practice or not. The bigger concern here should be to ban the practice and the course of action to be taken in that regard rather than discussing whether it is a religious practice or not.

The judgement on this case is yet to be made. It is such a crucial issue but there is nothing made by the legislative or the judiciary to curb this horrific practice of FGM. In 2012 a resolution was passed by The United Nations General Assembly for the eradication of FGM which made various countries including The USA, Australia, Sudan ban FGM. Whereas even in the 21<sup>st</sup> century a drastically developing country like India still hasn’t made a specific law for the ban of this monstrosity called FGM which is a national and global concern.

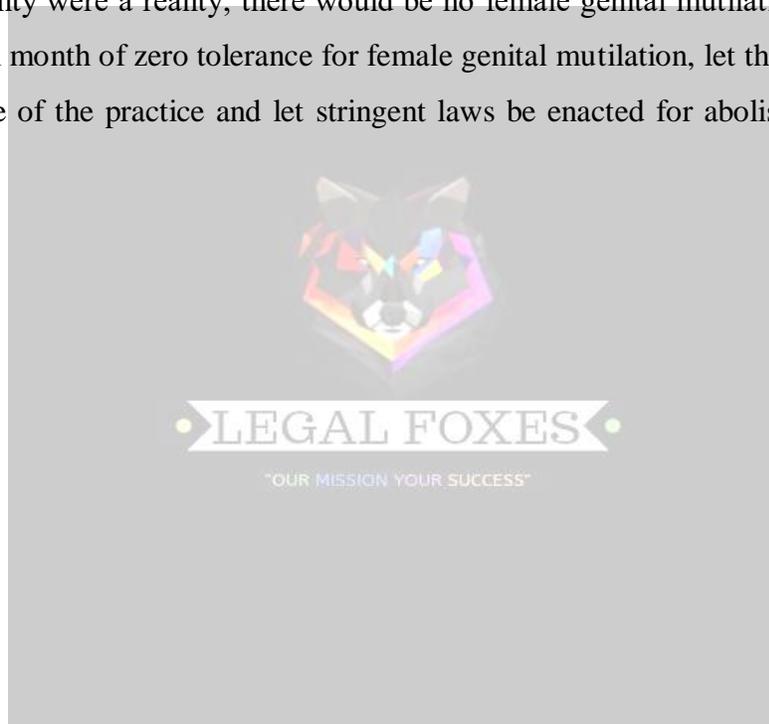
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<sup>14</sup> Sunita Tiwari v. Union of India, WP(C) No.286/17.

WCD (Ministry of women and child development) minister, Maneka Gandhi in 2017 said that “FGM practised by the Bohra community is a criminal offence and is against Human rights and if the community does not stop it then the government will bring in a law to ban the practice”.<sup>15</sup>

In a world where people are fighting for reproductive rights, there are still millions of women and girls who are infibulated unnoticed. These women are coerced to mutilate their genitals which can be seen as an indication of female inferiority and inequality prevalent in our societies. Let’s stop making every girl child suffer in the name of purity, in the name of religion, or in the name of culture. Let’s just stop this!

“If gender equality were a reality, there would be no female genital mutilation”. February being the international month of zero tolerance for female genital mutilation, let the people be educated and made aware of the practice and let stringent laws be enacted for abolishing the practice of FGM.



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<sup>15</sup> HINDUSTAN TIMES, <https://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should-be-banned-in-india-maneka-gandhi/story-kQhNA4rIYOLQTurkN5zAAM.html> (last visited Feb. 27, 2022).