**TITLE PAGE**

**Title:** The “Secret Cut”: An Indian Perspective

**Author:** Dr Apurva Jain

+91 9920592055

apujain94@gmail.com

Affiliation- Dentist based in Mumbai and a Public Health scholar at Tata Institute of Social Sciences, Mumbai.

**Corresponding Author:** Same as above

**Funding Support:** None

**Competing Interests:** None

**Date of Submission:** 20-03-2020

The article is not under consideration for publication in any other journal.

**THE “SECRET CUT”: AN INDIAN PERSPECTIVE**

Abstract:

Female Genital Mutilation (FGM) is an alteration of female genital parts which is practiced as a customary act in some religions across the world, especially in the Dawoodi Bohra sub-sect of the Shiya Muslim community. Though it is an age-old practice, research has now brought out its harmful consequences. Into the bargain is the issue of infringement of human rights. As per the press release the UNICEF on the 5th of February 2016, 200 million alive girls and women have been subjected to this practice. Many international efforts have been undertaken to put an end to this inhuman practice. Many studies have shown its presence in India too, mainly in the states of Maharashtra, Gujarat, Rajasthan and Madhya Pradesh. However, the central and state governments cite unavailability of official data on the same. This article primarily explains the reasons for the practice and the various grounds on which the practice should be stopped in India.

Keywords: Female Genital Mutilation, Female Circumcision, Bohra, health, rights violation, public interest litigation, policy, gender issues.

Introduction

In May 2017, a Public Interest Litigation (PIL) was filed by Lawyer Sunita Tiwari in the Supreme Court of India under Article 32 of the Indian Constitution requesting to “impose a complete ban on the practice of Female Genital Mutilation(FGM) throughout the territory of India and for making it a cognizable, non-compoundable and non-bailable offense*.”[ Sunita Tiwari v. Union of India,* Writ Petition (Civil) No. 286/2017 (Public Interest Litigation)]. 1 In the same month, Mrs. Maneka Gandhi, the then Minister of Woman and Child Development, declared the government’s intention of passing a law against the practice, if the community voluntarily did not curb the same.2

However, media reports say that in December 2017, the Government of India in an affidavit to the Supreme Court stated that “..It is respectfully submitted that at present there is no official data or study which supports the existence of Female Genital Mutilation in India”. 3 In September 2018, based on the arguments placed by Dr. Abhishek Manu Singhvi, the representative of the respondent, and Mr. K.K. Venugopal, the Attorney General of India, and after the decision of Mr. Dipak Mishra, the then Chief Justice of India, the case was transferred to a larger bench of five judges.4 And though the Indian Government maintains that there is no official data on the prevalence of FGM in India, many studies done by individual researchers and social organizations do not concur with the same,5,6,7,8,9

While we still await further proceedings and judgement, many international and national organizations, activists, the medical fraternity, and religious leaders and communities have come out with arguments and facts related to the issue.

Basis for Practice

The practice of FGM has social, religious, and cultural implications. It is a 1400 years old traditional practice.4 Performed on the girl child of the Dawoodi Bohra, sub-sect of Shiya Muslim community before she attains puberty, it is considered as her passage to adulthood and believed to control her sexual desire, thus avoiding ‘illicit’ extra-marital intercourse. It is performed by local females or religious leaders of the community in completely unsterile conditions, with no anaesthesia, with either a blade or piece of glass, behind either closed doors or as a ceremonial ritual, with complete consent of the family. This, in their belief, increases the girl’s purity, her prospects for marriage, and also brings along, honour to the family. The tradition is viewed by the Dawoodi Bohra Muslims as a distinct identity of their sect as compared to other sects, and older women who have undergone this are the gatekeepers of the practice. Some girls are forced to get it done, while others agree to undergo it out of their own will, due to peer pressure, fear of social stigmatization, gender obligation, or in exchange for rewards or celebrations.

Implications on Health

As per the World Health Organization:“Female genital mutilation (FGM) includes procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons”*.*

The World Health Organisation, along with other international organisations like the UNICEF, UNDP, UNHCR, UNESCO, ONCHR have described the health implications of FGM in an interagency statement titled “Eliminating Female Genital Mutilation,” released in the year 2008. The practice leads to pain and bleeding, which can sometimes be uncontrollable. As it is done by people who are not skilled or professionally educated in the field of medicine, it might be difficult to control the immediate untoward consequences. Besides, any movement by the child due to pain or resistance may lead to a cut elsewhere too. In addition to this, it could cause infection, abscess formation, cyst, swelling in the area and inability to pass urine for a few days. Impaired wound healing may lead to infibulation and girls may have their leg movement restricted for weeks. Due to the unhygienic and unsterile conditions under which it is performed, it may lead to tetanus and when the same instrument is used on multiple girls, it could lead to HIV. In the long term, it may lead to painful menstruation, chronic pain, decreased sexual desire and satisfaction. Studies have also shown that women who have undergone FGM may experience painful sexual intercourse and are at a greater chance of birth-related complications than those who have not.6 In certain instances, it could also be fatal. Besides, the psychological impact related to the pain can lead to post-traumatic stress disorder in some.

The community claims that the word ‘mutilation’ cannot be equated to what they practice, which is simply a circumcision or a nick in the genital. The WHO however includes such a nick or an incision in the Type IV of its classification of FGM. Furthermore, the community’s argument of equating the practice of female circumcision with male circumcision could be scientifically countered using the points made in the policy brief of the American Academy of Pediatrics. In two separate policy briefs, the Academy states that the practice of male circumcision can be justified as its health benefits outweigh the risks10; however such is not the case in female genital mutilation or female circumcision.11

The Rights Perspective

The practice is against the natural human right to be protected from all forms of violence. Performing a traumatic and an irreversible change on the body of a child, without his or her informed consent, that too for no proven health benefits infringes the right to be free from cruel and inhuman behaviour and torture.

As we know, the Constitution of India protects against violation of these natural human rights through various fundamental rights guaranteed to every citizen irrespective of caste, religion and sex. The practice of FGM can be seen as violating The Right to life and Personal Liberty (Article 21) and its interpretation of The Right to Privacy. Moreover, looking at the extent to which it can adversely affect the health of a woman, it impinges on an individual’s right to attain the highest possible state of health as the practice is completely avoidable. In addition to this, the motive to control the sexual desire of a female only, violates Article 14 and Article 15 of the Indian Constitution which deals with the Right to Equality and non-discrimination on grounds of sex.

As far as recognizing the practice as a criminal offence is concerned, Sections 319 to 325 of the Indian Penal Code, which otherwise criminalize all other forms of causing hurt, are unclear about its interpretation in case of violence happening in the name of traditional norms. Even the POCSO Act which protects children from sexual offences does not extend its scope to FGM on the grounds that the custom has no sexual, but only traditional, intent.

International Efforts

In 1990, the Committee under the Convention on Elimination of all Forms of Discrimination against Women, in its General Recommendation No.14 (ninth session), raised its concerns about the practice and stated measures for eliminating the same. India being a signatory of the convention should take measures to curb the practice.

The United Nations General Assembly on the 20th of December 2012 unanimously passed a resolution seeking a ban on the practice, calling it an ‘irreparable, irreversible abuse.’ And though the resolution is not legally binding on member nations, it urges the countries to strengthen their efforts to curb the practice. In the light of the same, the 6th of February of every year was declared as the *‘International Day for Zero Tolerance Against female genital Mutilation*’. On similar lines, Goal 5 Target 3 of the Sustainable Development Goals aims to eliminate the practice by the year 2030.

An Interagency statement to eliminate FGM was released in 2008 by Office of the United Nations High Commissioner for Human Rights, Joint United Nations Programme on HIV/AIDS, United Nations Development Programme, United Nations Economic Commission for Africa, United Nations Educational, Scientific and Cultural Organization, United Nations Population Fund, United Nations High Commissioner for Refugees, United Nations Children’s Fund, United Nations Development Fund for Women, and the World Health Organization – which reaffirms their commitment against the practice.

Many conventions and covenants on human and child rights, and gender, though not directly mentioning FGM, can still be extended to it.

Countries, for example, France, Senegal, the United Kingdom, and Egypt have laws to tackle the issue.12

The Religious Angle

Many Islamic religious leaders have come out to oppose the practice of FGM claiming that it has nothing to do with religion. In their argument, they state that the *Qur’an* which is the religious text of Islam and is said to be approved by the Prophet Muhammad, has no mention of female circumcision. There is no proof indicating that the women in his household were circumcised. Besides, the few *hadiths* which have a mention of FGM are weak and inauthentic.13

In fact, a principle of *Shari’ah*, the religious law of Islam, mentions that a permissible act can be prohibited (*haraam*) if it is proved to cause harm.13 The proven suffering indeed refutes the intent of the Qur’an to protect life and safeguard humanity. Moreover, alteration of any form in the creation of God is forbidden.14 All of this truly makes a strong Islamic religious case against the practice.

Way forward:

On this account, we see how FGM completely disregards the health and rights of women. And though it is deeply rooted in age-old religious customs, there can also be a case made against it on the grounds of religion. Even when there is serious international effort and commitment regarding elimination of the practice, not much concern regarding the same has been shown in India as evidenced in the lack of government data on the existence of the same – though reports by organisations reveal its presence in India.

In contemporary times, when the narrative of the Constitution is interpreted in a way where human rights and gender equality are given more importance over age-old customs and norms, it is time we address an issue which is generally spoken less about in our country. We can no longer afford to turn a blind eye and a deaf ear to this issue.

No radical change in archaic practises has ever been possible without strong political will and community participation. Government interventions in the form of policies and programmes involving education and strong social engagement are imperative. As the practice is related to religious traditions, it should be tackled in a way which is sensitive towards the emotional sensibilities of the people. Religious interpretation itself could be used to reorient community mind-set. Roping in religious leaders, institutions, communities, and organisations could be a way to do the same. Muslim majority countries, with laws against FGM can be used as examples to address communal insecurities, if any. Moreover, families who are about to have a child in the subject community could be personally counselled by ASHAs (Accredited Social Healthcare Activists), anganwadi workers, midwives and doctors who give them ante-natal, natal and post-natal care and have developed a rapport with them.

Girl children in schools should be sensitised about the issue and a helpline number could be created to report any threat arising in relation to the practice. A safe platform should be made available for females who have already experienced the trauma, so that they can seek psychological and medical support if needed. In addition to all this, field research and relevant real-time data collection can be included in national surveys to aid in policy interventions at all levels.

Having a law against FGM in the current situation, when the practice is largely underreported, could lead to further underreporting in the fear of prosecution of a family member. Hence, campaigning and awareness could be highly effective approaches in the present situation, with legal deterrence being the long-term goal.

The way forward for our country is the engagement of all stakeholders from top to bottom viz. the law makers; health specialists like doctors and nurses; public healthcare professionals and frontline health workers; non-governmental organisations and activists; religious leaders and faith-based agencies; traditional circumcisers; international organisations; and most importantly, men and elder women in the community, as also the girl child who is the ‘victim.’

References

1. Sunita Tiwari v. Union of India, Writ Petition (Civil) No. 286/2017 (Public Interest Litigation).

2. Moushumi Das Gupta. Government will end Female Genital Mutilation if Bohras don’t: Maneka Gandhi. The Hindustan Times, May 29, 2017

3. There’s no data on female genital cutting in India, Women and Child Development Ministry tells SC. Scroll.in, Dec 28, 2017

4. Supreme Court of India, Order dated 24 September 2018 in WP (C) No. 286/2017

5. UNICEF’s data work on FMG (2016). Female Genital Mutilation/cutting: A global concern.

6. Suriya Nazeer. Female Genital Mutilation: Secret Practice in India. International Journal of Scientific and Research Publications. 2017. Volume 7, Issue 7, pg. 341-344.

7. Mariya Taher. Understanding Female Genital Mutilation in the Dawoodi Bohra Community. Sahiyo.

8. WeSpeakOut, Nari Samata Manch. The Clitoral hood: A contested site. 2018

9. Dr. Ambalika Sinha, Jyotsna Tiwari, Anamika Ghosh. Prevalence of FGM In India: A Huge Violation of Human Rights in This Era. Indian conference on research developments in arts, social science and humanities. 2018. pg. 602-607

10. American Academy of Pediatrics. Circumcision Policy Statement. 2012. Vol 130, No. 3, pg. 585-586.

11. American Academy of Pediatrics. Policy Statement: Ritual Genital Cutting of Female Minors. 2010. Vol.125, No. 5, pg.1088-1093

12. UNFPA. Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation. 2014.

13. Islamic Relief Worldwide. One Cut Too many: A Policy Brief on Female Genital Mutilation/Cutting.

14. Dr. Mohamed Selim Al-Awa. FGM in the Context of Islam. The National Council for Childhood and Motherhood, Cairo.