

In the hunt for 'Taharat' practicing the darkest secret of 'Khafd': Female Genital Circumcision a violation of Human Rights in India

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Abstract

Khafd or Female Genital Circumcision (FGC) is an ancient procedure in which there is a total or partial removal of the external genitals of a girl for non-medical reasons. It is one of the most horrendous forms of Gender Violence against little girls who are not even aware of what exactly is happening with them and their body. FGC is a global problem, as in around 92 countries have some part of their population practicing FGC. FGC is mainly practiced in subsets of religions like Islam, Christianity and Judaism. In India it is mainly practiced in Gujarat, Maharashtra and some parts of Kerala but it has its presence pan India. The unawareness relating to the same is even worse, therefore the main aim of author is to spread awareness about the concept, to elaborate on the negative impact of Female Genital Circumcision and to highlight the need of the legal ban on the practice. In India there is no specific law prohibiting FGC, in 2018 a PIL was filed in the Supreme Court for the same which was ordered to be put before a Larger Bench; which has not been done up till now. Therefore, FGC continues to be practiced behind the doors of secrecy in India violating the basic Human Rights of little girls and women class as a whole.

Keywords – Khafd, Taharat, Female Genital Circumcision, Bohra Community

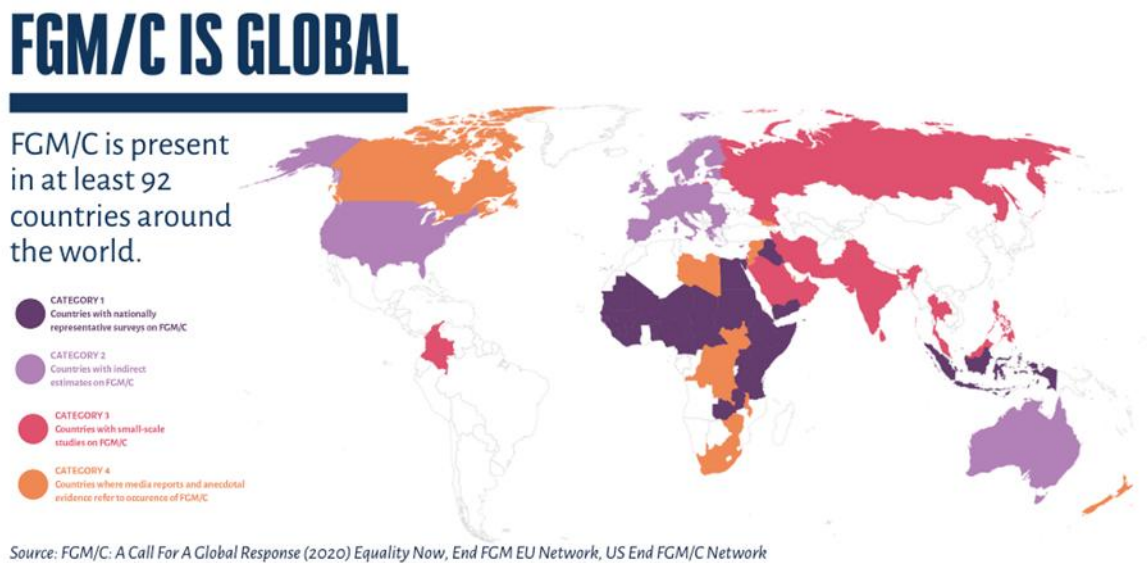
1. Introduction

Syedna Mufaddal Saifuddin, a Muslim spiritual leader and the 53rd "Da'i al-Mutlaq" of the Dawoodi Bohras, press released a public statement supporting *Khafd* stating that "*Male and female circumcision (called khatna and khafz respectively) are religious rites that have been practiced by Dawoodi Bohras throughout their history. Religious books, written over a thousand years ago, specify the requirements for both males and females as acts of religious purity. This religious obligation finds an echo in many other Muslim communities, particularly those following the Sunni Shafi'i school of thought*" (June 2016, n.d.). As we stand in 2022, we know that *Khafd* or Female Genital Circumcision (FGC) is one of the most horrendous forms of Gender Violence against little girls who are not even aware of what exactly is happening with them and their body.

Approximately 200 million girls globally have been impacted by Female Genital Circumcision ("Where Does FGC Happen?," n.d.). Even today Female Genital Circumcision is practiced secretly in many countries like Africa, Russia, South Asia, Middle East, India, Pakistan etc. Around 92 countries have some part of its population practicing FGC and hence FGC is a global concern (Figure 1.1). Many non-profitable organizations like "Equality Now" ("Who We Are," n.d.) across the globe have started movements to stop the practice of FGC.

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Figure 1.1



2. What is Female Genital Circumcision?

Female Genital Circumcision is a harmful ancient practice in which a part of the external genitals of a girl is cut permanently for non-medical reasons. Often the age of the victim girl is about 5 years, although the age might vary from community to community. The World Health Organization provides 4 major types (Figure 1.2) of Female Genital Circumcision (*Female Genital Mutilation*, n.d.).

Figure 1.2

Type1: - The partial or total removal of the clitoral glans that is the external and visible part of the clitoris, which is a sensitive part of the female genitals, or the clitoral hood that is the fold of skin surrounding the clitoral glans.

Type2: - The partial or total removal of the clitoral glans and the labia minora that is the inner folds of the vulva, with or without removal of the labia majora that is the outer folds of skin of the vulva.

Type3: - Also known as infibulation, the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoral hood and glans.

Type4: - It includes all other harmful procedures to the female genitalia for non-medical purposes, e.g., pricking, piercing, incising, scraping and cauterizing the genital area.

3. Historical Background

It is difficult to trace the exact origin of Female Genital Circumcision, but it was mainly practiced within Islam, Christianity and Judaism. The earliest prevalence of FGC can be traced from Egypt. Marry Knight in one of her works elaborates a Greek hieroglyph inscribed on a coffin from around 163 BCE which showed a woman getting circumcised (Knight, 2001). FGC, which is traced back to Egypt where circumcised mummies were found, gradually spread to various parts Red Sea Coast through Arab Traders and the African Slave trade.

One of the prominent religions under which FGC is followed is Islam. Islam as a culture is based on the teachings of Prophet Mohammad. It has two main schools of thoughts, that is, Sunni and Shia. Further Sunni School of thought has subsects of Hanafi, Maliki, Shaffie and Hanbali. Within Hanafi & Maliki, FGC is recommended for women and Male Circumcision is obligatory. Within Shaffie circumcision is obligatory for both female and male and lastly within Hanbali circumcision is obligatory for males and honourable for females.

Shia School of thought has further three subjects Ithna-Asharis, Ismaili and Bohra. Under both Ismaili and Bohra subjects FGC is required for females (Ghadially, 1991). Different subjects of Islam follow different Haidiths and FGC cannot be linked to any one particular subject of Islam as the practice perpetuated in nearly all the subjects; obligatory in some, recommended in some & honourable in some.

The Fatimid Caliphate or Fatimid Dynasty was a caliphate of Ismaili Shia which extended from 10th to 11th century AD. It spanned from North Africa to the eastern costal side of the Red Sea. Fatimid Dynasty had its political and religious center at Egypt in the 10th century (Draftary & Jiva, 2018). Female Genital Circumcision was endemic during that time in Egypt. During the 11th Century Fatimid Missionaries came to India from Egypt and Yemen. They tried to sought major conversions specially of the then Hindus to Ismaili Fatimid faith. In 1500 the headquarter of the Bohra moved to Gujarat, India from Yemen (*The Globalised Dawoodi Bohras of Bombay - Gateway House*, n.d.). Presently, around 80% of the total Bohra community lives in India and Pakistan apart from Middle East, Africa, Australia, Europe, Asia and North America (Duivenbode & Padela, 2019). As the Bohras trace their religious heritage from Egypt and Yemen, FGC was a cultural practice there so it becomes a part of the cultural tradition for the Bohras as well.

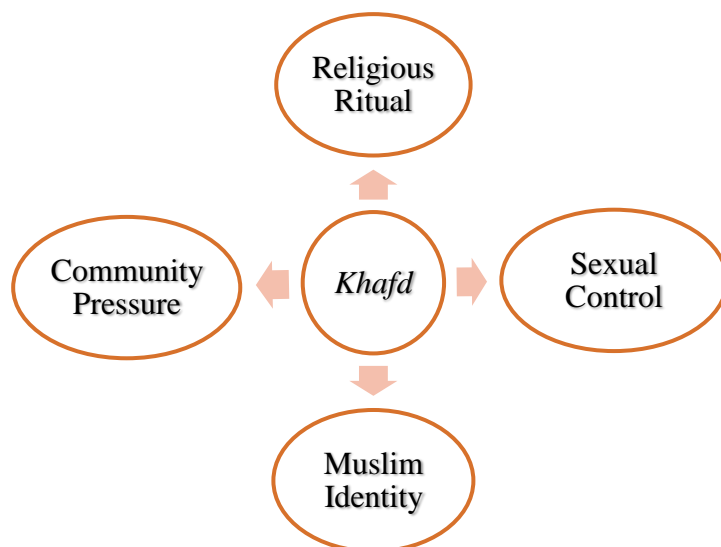
“Some jurists consider circumcision to be a recommended (sunna) rather than an obligatory (wājib) practice, although custom has usually supported it strongly, particularly in the case of males. Thus, while explicit qur’anic support is lacking, the strong support for circumcision in the Islamic tradition suggests that it was simply assumed by Muhammad and his community” (agoerner, 2014). Therefore, FGC is not explicitly supported by the Quran it is more or less a tradition that Islamic communities are following.

4. Reasons for Practicing *Khafd*

The most common reason to practice *Khafd* or Female Genital Circumcision is tradition, that it is a cultural practice which has been practiced since ages in their community. A national level study was carried out in 2018 by *“We Speak Out”* (*We Speak Out: For Women’s Rights*, n.d.) to understand what is *Khafd*, how it is done, by whom it is done, why it is done and what is the impact of the same. According to the interviewees the *Khafd* is practice as a religious ritual since ages. It is practiced to control women’s sexuality, reproduction and to prevent women’s promiscuity. The interviewees admitted the fact that pressure is created by the community including the family members and distant kindred to ensure that all the girls in the family are subjected to the practice so that a distinct identity of the Bohra community is maintained. Many other interviewees admitted that it is not just one but a combination of different reasons because of which they have to adhere to the practice of *Khafd* (Anantnarayan et al., 2018).

Therefore, there is not just one but several reasons of continuation of the practice of *Khafd* which is depicted in the form a flow chart (Figure 1.3) below:

Figure 1.3

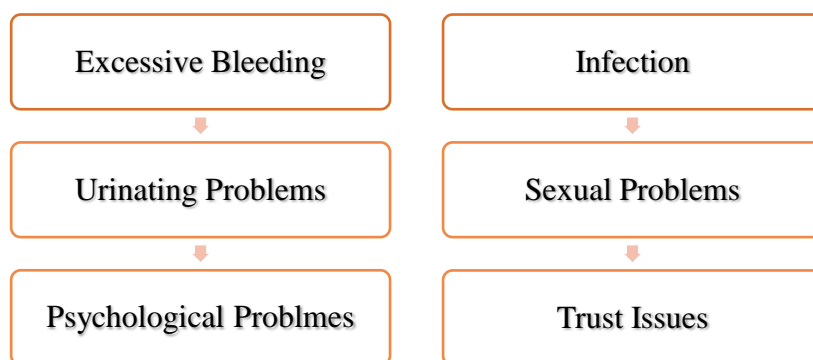


Practicing *Khafd* as a Religious Ritual is mainly for achieving *Taharat* or Purity. As regards the community pressure, *Khafd* is considered as a pre-requisite for *Niqab* with a Bohra Muslim. It is also believed that by *Khafd* the sexual desires of a women can be controlled towards only her husband. On the other hand, practicing *Khafd* is also seen as a means to maintain the distinct Muslim identity.

5. Impact of FGC

Many women are not completely aware about their body even today in the year 2022, so it can be well understood that the bodily awareness was the slimmest in the earlier times when the practice of FGC was started. As far as FGC is concerned most women never speak about it to anyone, a friend or family member. Apart from the medical issues like excessive bleeding, infection, urinating problems, sexual problems, psychological problems there are trust issues that these little victims face for their life. Children in the younger years are very fragile and they are dependent on their parents for everything, they trust them the most but when these people only make them go through such a practice, these girls are shaken for life. The negative impact of FGC is depicted in the Figure (Figure 1.4) below:

Figure 1.4



One of the victim's mother in the study conducted by 'We Speak Out' shared that *"My daughter is eight years old. In May 2017 I had her Khatna done. I had taken her to a traditional cutter. My daughter had been bleeding so heavily, the blood had soaked three bed sheets and I was very worried. The circumciser kept saying apply some Soframycin. I began to worry that my daughter may just bleed herself to death during the night. I felt as if I had put my own daughter in danger by doing this procedure. Then we took my daughter to the hospital. The circumciser accepted that maybe my girl must have moved a little and so a little more of her part had been cut. Once the doctor came, he started the treatment. He first tried to fix the skin together with some kind of an instrument but that was extremely painful. Finally, they had to stitch her in that place. We are seeking help from a child psychologist"* (Anantnarayan et al., 2018).

She further shared that *"Now that I have lived through this, I will always tell others to think before doing Khatna. I had no memories about my own Khatna and I did not even see what was done to my daughter. I just thought it was an old tradition that had been happening for years and so, let me just get it done for my daughter. I almost felt as if I got her back from the hands of death. The doctor who treated my child was absolutely nervous to take our case because it felt to him like a rape case. I fear and worry whether my daughter's sexuality has been completely affected. A child usually trusts the mother and I am responsible to have instilled this fear in her by doing what I have done to her"* (Anantnarayan et al., 2018).

6. FGC in India

In India FGC is practiced mainly within Dawoodi Bohra Community. Dawoodi Bohra Community is a subset of the Shia School of the thought under Islam. The Bohraz migrated to India from Egypt and Yemen in the 12th Century. All across the globe the total population of Bohra's is estimated to be 1,309,003 and they are based in three main countries which are India, Pakistan and Sri Lanka. India has 1,302,000 Bohra population; Pakistan has 5,300 Bohra population and Sri Lanka has 2,000 Bohra population (*Bohra People Group in All Countries | Joshua Project*, n.d.). In India there is no official data on the practice of FGC but through some studies it is estimated to be as high as 80% for women belonging to the Bohra community living in India (Anantnarayan et al., 2018).

Therefore, *Khafd* or FGC is practiced in India behind the dark door of secrecy and is a well-kept secret. It recently in 2018 came to the fore front and was highlighted when a PIL (Sunita Tiwari vs. Union of India, 2018) was filed by a Delhi based lawyer Sunita Tiwari in the Supreme Court under Article 32 for putting a ban on the practice of FGC as it was violative of Article 21 of the Indian Constitution. Though, it was contended that *"the practice has been wrongly called Female Genital Mutilation (FGM). The practice is almost 1400 years old and commands issued by the competent religious authorities have made the said practice an integral part of the religion of the Dawoodi Bohra Community and a protection in that regard is sought under Article 26 of the Constitution"* (Sunita Tiwari vs. Union of India, 2018). The bench comprising Chief Justice Dipak Misra, Justice A.M. Khanwilkar and Justice D.Y. Chandrachud prima facie it appears that

“It is violative of Article 21 of the Constitution to put the female child to the trauma of FGM, as the Centre told the court that it supports the petitioner’s plea that it is a crime punishable under the Indian Penal Code and the Protection of Children from Sexual Offences Act (POCSO Act)”(*Female Genital Mutilation Violative of Constitutional Rights*, n.d.). However, the petition has now been referred to a larger bench of 9 Judges as the cases involves larger issue of the scope and ambit of Right to Religious freedom (Constitution of India art. 25 & 26) on one hand and right to physical integrity (Constitution of India art. 21) on the other.

Today, India is becoming the hub for the getting FGC done. With the lack of any specific law on FGC it is easier for foreign nationals to visit India for practicing FGC and then going back to their own country where the same is illegal (*With No Laws, India a Hub of Female Genital Mutilation for Expats, Foreigners*, 2018). It is popularly called the *“Vacation Cutting”* wherein Bohra Families domiciled outside India visit India for a vacation and for fulfilling the *Khafd* ritual. It is also because of the fact that many countries where FGC was not illegal earlier are making the act of FGC illegal now, like the Australian High Court adjudicated in a recent judgment that the practice of *khafd* will be covered under the definition of Female Genital Mutilation and would be illegal (Oct 17 et al., n.d.).

Internationally, 6th February is observed as Zero Tolerance Day for Female Genital Mutilation. Female Genital Mutilation *“is the name given to procedures that involve altering or injuring the female genitalia for non-medical or cultural reasons, and is recognized internationally as a violation of human rights and the health and integrity of girls and women”*(*Explained: What Is Female Genital Mutilation, and Why Is It Practiced?* | *Explained News, The Indian Express*, n.d.).

7. FGC a Human Right Violation

Female Genital Circumcision is a violation of Right to Equality (Constitution of India art. 14), Right to Non-Discrimination (Constitution of India art. 15) and Right to Privacy (Constitution of India art. 21) which are enshrined in the Constitution of India as Fundamental Rights. FGC severely impacts the bodily integrity of the little girls and women who become victim of the same. The practice not only violates the constitutional Fundamental Rights but also infringes several International Treaties such as *“Convention on the Rights of the Child (CRC)”*, *“International Covenant on Civil and Political Rights (ICCPR)”*, *“Convention on the Elimination of all forms of Discrimination against Women (CEDAW)”* and *“International Covenant on Economic, Social and Cultural Rights (ICESCR)”*.

In the present legal framework of India, the practice of FGC can be punished for *“Grievous Hurt”* (Indian Penal Code § 320 (1860)) under the Indian Penal Code and also a crime under the Protection of Children from Sexual Offences Act 2012, for *“Penetrative sexual assault by any person on any child”* (The Protection of Children from Sexual Offences Act § 3 (2012)) where it is well established that for an act to be a Sexual Offence under Section 3 penetration is not required to be complete. However, these provisions have never been used to prosecute anyone for practicing FGC. Due the lack of a specific law prohibiting FGC the community practicing FGC does it in secrecy and out casting those who break this secrecy.

8. Conclusion

A community’s practices and beliefs are a result of the influence from History, Tradition, Culture and Religion. The practice of *Khafd* or FGC in the Islamic Subjects is similarly a result of a combination of History running from the Fatimid Dynasty and the Islamic Religion. The battle against the practice of FGC in India is a fight against age-old tradition which in the popular imagination of the Islamic community is regarded as a *“Religious Identity”*. But a practice which violates the basic Human Rights i.e. Right to Life or Right to bodily integrity should not be allowed to continue just in the name of Religion. Such as, the practice of *“Sati”* in the Hindu community was prohibited by the law of the land way back in the year 1987 with the enactment of *“The Commission of Sati (Prevention) Act”*. The lack of data on the practice of FGC is attributed to the fact that it is done behind the doors of secrecy and the community members are not allowed to talk about it. But this fact should not translate into that the practice is not practiced or that it is harmless. FGC is another expression of the patriarchal notion to control the identity and freedom of women, through FGC they wished to control women’s sexual behavior and reproduction.

It is the need of the hour to ensure prohibition and elimination of the practice of FGC. The same can only be achieved by the enactment of a specific law on the prohibition and elimination of FGC. Such a specific law on FGC should also include provision for prohibition and punishment for aiding & abetting the practice, provisions providing punishment and cancellation of the license of the medical practitioners who help people in carrying out the practice of FGC and provision providing the obligation on the State and the Central Government to spread awareness about the practice and its impact. There can be a little light of hope with laws like this which can correct the mistakes of the past and give humans a better world to live in.

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