



A STUDY ON THE HARMFUL PRACTICES SUCH AS CHILD, EARLY AND FORCED MARRIAGE AND FEMALE GENITAL MUTILATION: VIS-À-VIS A CRITICAL STUDY ON PREVALENCE OF PERSONAL LAWS AGAINST STATUTORY PROVISIONS

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ABSTRACT

The Sustainable Development Goals as adopted in 2015 are a universal call-to-action to achieve peace and prosperity for all by the year 2030. The SDGs are a set of global goals for fair and sustainable health at every level. One of the targets (Target 5.3) identified under Goal 5 of the Sustainable Development Goals is the elimination of all harmful practices such as child, early and forced marriages and female genital mutilation. This research paper aims to identify the practices contributing to the increase in harmful practices leading to child, early and forced marriages and female genital mutilation, in the current day scenario. This paper shall also examine the current statistics in India with special reference to the recent crackdown on child marriages in Assam, where around 4500 cases were registered. It also aims to draw comparisons between practices being conducted among several nations and their implications on welfare of girls/women. It further aims to present the prevalence of personal laws over Statutes such as The Prohibition of Child Marriages Act, 2006. The paper aims to identify the major factors that contribute to the primitive customs and beliefs which lead to the continuation of these practices. The paper will also examine how customs differ in each personal law and how they are in conflict with Statutes that were created to extinguish these practices. The paper further aims to bring to light the possible recommendations that can help abolish such practices.


KEY WORDS: Child Marriage, Female Genital Mutilation, Harmful Practices, Personal Laws, Sustainable Development Goals

I.INTRODUCTION

1.SUSTAINABLE DEVELOPMENT GOALS

The Sustainable Development Goals (SDGs) are a set of 17 global goals adopted by the United Nations General Assembly in 2015 as part of the 2030 Agenda for Sustainable Development. The goals aim to end poverty, protect the planet, and ensure prosperity for all. The SDGs are universal and apply to all countries, regardless of their level of development.

The 17 SDGs are as follows:

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| 1.No Poverty | 10. Reduced Inequalities |
| 2.Zero Hunger | 11. Sustainable Cities and Communities |
| 3.Good Health and Well-being | 12. Responsible Consumption and Production |
| 4.Quality Education | 13. Climate Action |
| 5.Gender Equality | 14. Life Below Water |
| 6.Clean Water and Sanitation | 15. Life On Land |
| 7.Affordable and Clean Energy | 16. Peace, Justice, and Strong Institutions |
| 8.Decent Work and Economic Growth | 17. Partnerships for the Goals |
| 9.Industry, Innovation, and Infrastructure | |

Each SDG has specific targets that are to be achieved by 2030. For example, under SDG 1, the target is to eradicate extreme poverty, defined as people living on less than \$1.25 a day. Under SDG 5, the target is to achieve gender equality and empower all women and girls. The SDGs are interrelated and mutually reinforcing. Achieving one goal can contribute to the achievement of other goals. For example, reducing poverty (SDG 1) can help improve health and well-being (SDG 3) and education (SDG 4). The SDGs are also aligned with the principles of sustainable development, which emphasize the need for economic growth, social inclusion, and environmental protection. The goals are based on a broad range of factors, including economic development, social progress, and environmental sustainability. The achievement of the SDGs requires the participation of all stakeholders, including governments, civil society organizations, the private sector, and individuals. Governments play a critical role in implementing policies and programs to achieve the SDGs, while the private sector can contribute through responsible business practices and investment in sustainable development. Civil society organizations and individuals can support the SDGs by advocating for policies and programs that promote sustainable development and by taking individual actions to reduce their environmental impact.

2.SUSTAINABLE DEVELOPMENT GOAL – 5

SDG – 5 aims at achieving gender equality and empowering all women and girls. The primary focus of the goal is to create and provide for equal opportunities between men and women across all fields including but not limited to economic and political fronts, and to empower women in areas, where they are conventionally disadvantaged

and discriminated against. This particular goal includes six targets and three recommendations for their implementations.

- **Target 5.1** – ‘To end all forms of discrimination against all women and girls everywhere’.
- **Target 5.2** – ‘To eliminate all forms of violence against all women and girls in the public and private spheres including trafficking and sexual and other types of exploitation’.
- **Target 5.3** – ‘To eliminate all harmful practices such as child, early and forced marriage (hereinafter referred to as CEFM) and female genital mutilation (hereinafter referred to as FGM)’.
- Target 5.4** – ‘To Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate’.
- **Target 5.5** – ‘To ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.’
- **Target 5.6** – ‘To ensure universal access to sexual and reproductive health and reproductive rights.’

3.SUSTAINABLE DEVELOPMENT GOAL – 5: TARGET 5.3:

SDG 5.3 is one of 17 goals adopted by the United Nations General Assembly in 2015 as part of the 2030 Agenda for Sustainable Development. The goal aims to "eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation" by 2030. Child, early and forced marriage, and female genital mutilation are harmful practices that violate human rights and have negative consequences on health, education, and economic opportunities. According to UNICEF, it was found that one in five girls worldwide is married before the age of 18, and more than 200 million girls and women alive today have undergone FGM. SDG 5.3 recognizes that eliminating harmful practices such as child, early and forced marriage and FGM is critical to achieving gender equality and empowering women and girls. The goal recognizes the need for a multi-sectoral approach that involves governments, civil society organizations, communities, and individuals working together to eliminate these practices. To achieve SDG 5.3, countries are encouraged to take a range of actions, including enacting and enforcing laws that prohibit harmful practices, raising awareness and providing education about the negative consequences of these practices, and providing support to girls and women who are at risk or have already undergone these practices. Overall, SDG 5.3 is an important step towards achieving gender equality and empowering women and girls, and it highlights the need for a concerted global effort to eliminate harmful practices that have no place in a world that values human rights and dignity for all.

II.CHILD, EARLY AND FORCED MARRIAGE

4.DEFINITION

Child marriage is a widespread phenomenon in majority of the countries. The act of child marriage is a violation of the fundamental human rights of a child and has an adverse impact not only on their physiological, emotional and mental development but also their health and educational opportunities. Further it sets back the society as child marriages reinforce poverty and escalate gender discrimination, malnutrition and illiteracy. Child marriages also contribute to the rise in both infant and maternal mortality rates. It has been observed that, child marriages are more customary in rural areas than in urban geographies and have a much negative effect on girls than on boys.

The term ‘Child’ has been defined under International law has been defined as a “human being under the age of 18 years”, and has hence been accepted by the United Nations Convention on Rights of Child. It can thus be identified that **“child marriage is a formal marriage or informal union entered into by an individual before attaining the age of 18”**. It has been identifies that, the practice has more dominant effect on girls because the girls who are compelled into this early and forced practice, are not give an opportunity to have gained either physical or mental and emotional maturity. Further, they aren’t allowed to make a free and informed decision about their choice of partner, or any of the responsibilities accompanying this commitment.

5.CAUSES OF CHILD MARRIAGE

The practice of child marriage is deeply embedded in the matrix of culture, socioeconomic and religion. The following are some of the major causes of child marriage:

5.1 Poverty:

Families who are unable to repay their debts or are looking for means to earn income for their survival, consider this practice as a means to escape the vicious cycle of poverty. Child marriage fosters poverty as it ensures that girls who are married off young, do not get an opportunity to seek proper education or skills to make a livelihood.

5.2 Protecting the sexuality of the girl child:

In many cultures, the family places its honour on the ‘sexuality’ of the girl child. A “virgin” girl is considered an epitome of sanctity of the household, and the family takes it upon itself to protect the “virginity” of the girl. There exists a belief that, only a “virgin” girl is the best fit for marriage, and a “non-virgin” is considered “defiled”.

5.3 Customs and traditions: Families face a strong social pressure to face ridicule, embarrassment, disapproval or shame in the society. Several societal constructs have been built with respect to the “ideal age” for the marriage of a girl child and these have extended to economic factors such as dowry, bride price etc.

5.4 Security:

Child marriage is often viewed as a medium to “secure” a bright future for their daughters. In the current day scenario, where sexual assault on woman has become a frequent act, the “safety” of such girl child has become the utmost concern of the parents, they only look to early marriage as a protective or survive mechanism.

5.5 Inadequate implementation of laws:

Many countries across the world such as Pakistan, India, Nepal etc. have laws in place against early or child marriage, which are unfortunately not properly implemented. In countries like Afghanistan, a new legal framework came into place which permits Shite, or Hazara, communities to impose their own family law – which includes provisions that permit the practice of early or child marriage.

5.6 Dowry system:

Dowry can be viewed as another means of “selling” a girl to the boy’s family. The practice of dowry is a huge burden to the girl’s family, as the parents often resort selling their jewellery or lands to make money. Parents, thus often go in search for grooms who would accept less dowry than those who are the right choice for their daughters. These men are often old, or have been divorced previously, or those who already have a wife; and who are in search for young girls who are still “pure”.

6. CONSEQUENCES:

6.1 Violation of fundamental rights of a child

The Convention on the Rights of the Child has been designed to protect the basic and essential rights of a child – which might be denied by child marriage. Early marriages or child marriages deprive the children of their access to education, and also makes them prone to physical and mental violence, injury or abuse, including sexual abuse, rape and exploitation. It takes away their right to have a holistic approach to life, and be protected from any and all forms of exploitation.

6.2 Premature pregnancy

Most of the young brides who are victims of child marriage have limited to no knowledge about sexual advances, pregnancies, contraception and reproductive health. Due to their premature exposure to sexual intercourse with their partners, they are also at a higher risk of getting pregnant, before their body is physically prepared for the process giving birth.

6.3 Maternal mortality It has been observed that girls under the age of 15 are more susceptible to death during child birth or pregnancy. It is of major concern that young girls are not properly educated about the risks of pregnancy and how they must take care of their health along with their baby’s.

6.4 Health problems

Premature childbirth can result in a variety of health issues for mothers, including vaginal injuries, fistula, and general health decline. Fistulous women are frequently abandoned by their spouses and shunned by society. There are approximately 2 million females living with fistula, and this number increases by 100,000 each year.

6.5 HIV/AIDS

Young girls are more prone to being affected by HIV/AIDS, as they are not provided with access to reproductive

education and health services. Due to their lack of knowledge, these girls are often powerless to seek the use of contraceptives.

6.6 Illiteracy

The education of child brides is frequently stopped, and they are not allowed to continue. Additionally, their offspring are more likely to be illiterate. According to human rights studies, child marriage, pregnancy, and household duties provide the biggest barriers to girls' education, as stated in several official reports to human rights monitoring organizations.

6.7 Abuse and Violence Compared to their counterparts who married later, child brides are more likely to experience domestic violence and abuse and are also less likely to intervene. Girls who marry early are also more likely to believe that it is acceptable for a man to abuse his wife and that he has the right to do so.

7. LAWS AND POLICIES AGAINST CEFM IN DIFFERENT COUNTRIES

The marriage of children under the age of 18 is a fairly common practice in several countries across the world, and has been recognized as a major international human rights concern, and a harmful and discriminatory practice.

7.1 India: The Prohibition of Child Marriage Act 2006 prohibits child marriage and imposes penalties on those who facilitate or perform it. The act provides that the legal age for marriage is eighteen for girls and twenty one for boys¹ (**S.2(a)**). It also provides for the appointment of 'Child Marriage Prohibition Officers', who have been given the responsibility to monitor the instances of child marriage, under **S.16(1)**². The act further lays down the grounds under which the act of child marriage may be considered void. The child that has been married off has the option to declare her marriage void, at any time up to two years after reaching adulthood³ (**S.3(3)**). A child marriage may be declared void before the age of adulthood, in circumstances where the child was abducted, trafficked, or was compelled to get married under force, deceit, coercion or misrepresentation⁴ (**S.12**). The government has also launched initiatives such as *Beti Bachao, Beti Padhao* (Save the Daughter, Educate the Daughter) to prevent child marriage and promote girls' education. In furtherance to the Prohibition of Child Marriage Act, the International Centre for Research on Women initiated a program called *Apni Beti, Apni Dhan* (Our Daughter, Our Wealth) in 1994, to elaborate on the cause and consequences of child marriage. The initiative aimed at delaying child marriages, by providing Rs.500 to the mothers upon the birth of a girl child to cover her post-natal requirements. The initiative also promotes delaying of child marriage through the government, which invests in long term bond worth Rs. 2500 in the name of the girl child, which can be cashed for Rs. 25,000 upon attaining the age of majority, and she is still unmarried⁵.

¹ The Prohibition of Child Marriage Act, 2006, §2(a), No. 06, Acts of Parliament, 2006, (India)

² The Prohibition of Child Marriage Act, 2006, §16(1), No. 06, Acts of Parliament, 2006, (India)

³ The Prohibition of Child Marriage Act, 2006, §3(3), No. 06, Acts of Parliament, 2006, (India)

⁴ The Prohibition of Child Marriage Act, 2006, §12, No. 06, Acts of Parliament, 2006, (India)

⁵ INTERNATIONAL CENTRE FOR RESEARCH ON WOMEN - MOTIVATION TO PREVENT CHILD MARRIAGE- <http://www.icrw.org/media/news/motivation-prevent-child-marriage> , (last visited April, 3rd, 2023)

7.2 Bangladesh: The parliament of Bangladesh passed the **Child Marriage Restraint Act, 2017**⁶, repealing the 1929 Act⁷, and strengthened the punishment for child marriage.

The Child Marriage Restraint Act 2017 prohibits marriage of girls under the age of 18 and boys under the age of 21. Under Ss. 4⁸ and 6⁹ of the Act, the contracting of a child marriage is a punishable offense, with imprisonment up to three months and a fine of one thousand Taka (USD \$14). Any parent or guardian under whose supervision such act may be committed or who solemnizes such marriage shall be punished under the Act. S.3¹⁰ of the Act, further elaborate on the responsibility shouldered by the government to prevent child marriages, through the formation of ‘prevention committees’ consisting of officials from within the government at a national, state and district level, who will work towards the prevention of child marriage. Although the Act aims at certain shifts towards the prevention of child marriage, there are also certain loopholes that are being misused to continue such practices. S.19¹¹ of the Act permits early marriage of a child, in cases for the ‘greater good’ of an adolescent, if such marriage is being conducted by the order of the court and with the consent of parents, following the procedure laid down by law. Bangladesh has further implemented several policies with respect to child marriage such as the National Plan of Action to End child marriage, 2018-2030 [NPA]; the National Children Policy [NCP], 2011; the National Women’s Development Policy [NWDP], 2011; the National Strategy for Adolescent Health [NSAH], 2017-2030; the Population Policy, 2012 etc. The NPA, aimed to end marriages of girls under the age of 15, reduce the rate of marriages under the age of 18 by at least 33%, by 2021 and to completely eliminate child marriage by 2041.

7.3 Ethiopia: The minimum age of marriage is set at 18 for both boys and girls, and those who violate the law can face imprisonment. The government has also launched initiatives such as the National Strategy and Action Plan on Harmful Traditional Practices against Women and Children to address harmful traditional practices, including child marriage. The NSAP was formulated from the existing national strategic framework, the Growth and Transformation Plan (GTP), a plan which aimed at improving the country’s economic growth. This plan specifically aimed at reducing the rate of child marriages and female genital mutilation. The national alliance to end child marriage was launched in compliance with the national strategy launch and played a significant role in directing the HTP strategy’s development. The Ethiopian Government in 2014 further committed to taking action at eradicating child marriage and FGM/C by 2025 by incorporating relevant indicators in the National Plan and National Data Collection Mechanisms to measure the current situation and to establish significant bench-marks. It also aimed to enhance the coordination and effectiveness of the national alliance to end child marriage and the national network to end FGM by engaging different actors with expertise. The country has also accepted the convention on the rights of the child in 1991, which laid down that the minimum age for marriage is 18 years, and ratified the convention on elimination of all forms of discrimination against women (CEDAW), in 1981. It

⁶ The Child Marriage Restraint Act, 2017, No. VI, Acts of Parliament, 2017

⁷ The Child Marriage Restraint Act, 1929, No. XIX, Acts of Parliament, 1929

⁸ The Child Marriage Restraint Act, 2017, § 4, No. VI, Acts of Parliament, 2017

⁹ The Child Marriage Restraint Act, 2017, § 6, No. VI, Acts of Parliament, 2017

¹⁰ The Child Marriage Restraint Act, 2017, § 3, No. VI, Acts of Parliament, 2017

¹¹ The Child Marriage Restraint Act, 2017, § 19, No. VI, Acts of Parliament, 2017

also acted as co-sponsors in the 2013, 2014 and 2018 UN General Assembly resolutions on child, early and forced marriage.

7.4 Nigeria: Nigeria signed the African Children's Charter in 1999, which acts as a more comprehensive instrument dealing with a multitude of rights of the child, including marriage. The practice of child marriage does contravene Article 1 of the African Children's Charter. In contrast to CRC, the prohibition of child marriage is included in the African Children's Charter under article 21(2), which states:

“Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.”

The Marriage Act, 1990 of Nigeria, lays down that the minimum age of marriage is 21 years for both girls and boys, but also permits early marriage with the written consent of their parents or guardians. The Child Rights Act of 2003 sets the minimum age of marriage at 18 for both boys and girls. Out of 36 States, 12 have not implemented the Child's Rights Act, 2003 in their internal legislation, most of which are Islamic law provisions, where the minimum age of marriage is as low as 12 years. However, the law is not enforced in many parts of the country, and child marriage remains prevalent, particularly in northern Nigeria. There is a lack of synchronisation between the Child's Right Act, 2003 and the Sexual Offences Bill, 2015, which sets the minimum age of sexual consent at 11 years.

8.ROLE OF PERSONAL LAWS IN CONTINUING CEFM

Personal laws can have a tremendous impact on the lives of persons who are subject to them, and they differ greatly between countries. Numerous personal laws include provisions that allow for adolescent marriage, and in some cases may even promote or encourage it. In many Muslim nations, for example, Shariah-based personal regulations allow girls as young as nine years old to marry, and some families may opt to marry off their daughters at an early age in order to safeguard their daughters' honor or ensure their financial stability.

In the case of Nigeria, Braimah contends that "under Second Schedule Part 1 item 61 of the Nigerian Constitution, there is a strong argument that child marriage is not illegal in Nigeria." Due to the residual legislative list, this article, which is part of the exclusive legislative list, allows states of the Federation full control over the formation, annulment, and dissolution of Islamic and customary marriages. He continues:

“When a person marries a child under Islamic law in Northern Nigeria and is consequently in contravention of the Child Rights Act, such a person cannot be prosecuted because the federal government would be interfering with an Islamic marriage and would be in violation of Part 1 Section 61 of the 1999 Constitution. Therefore, in relation to child marriage, Part 1 Section 61 of the 1999 Constitution renders the Child Rights

Act useless, as the 1999 Constitution serves as the supreme law of the land in Nigeria, overriding all other legislation."¹²

Senator Yarima married a 13-year-old Egyptian girl, prompting debate on whether religious freedom is more important than the CRA. The National Assembly was asked to address Senator Yarima's problematic marriage by Nigeria's National Human Rights Commission. The Council sued the federal government and National Assembly in the Federal High Court of Abuja.¹³ The Council also sought to remove section 21 of the CRA 2003, which makes any marriage between under-18s null and void. She claimed that this violated Islamic and Shari'a law and that she was protecting Yarima's right to a tranquil home life from outside intrusion. The Council issued a 13-paragraph statement upholding Yarima's right to take the girl as his fourth wife based on the Holy Quran and Muhammad's teachings. The human rights used to justify child marriage, as shown in Yarima, deprive children of these rights. A young bride has the same legal rights as her adult husband, thus pursuing an Islamic or customary child marriage would seem to violate that right. Child brides have legal rights.¹⁴

Muslims constitute the preponderance of Bangladesh's population. Before the partition, the Muslim Personal Law (Shariat) Application Act of 1937¹⁵ was enacted, which governs family law, marriage, divorce, and succession. In Bangladesh, marriage is predominantly based on religion, and rather than being administered by a unified State Code, Hindu, Muslim, Christian, Parsi, and Sikh laws apply. Different cultural perspectives on marriage result in overlapping legal systems. Typically, these personal laws, which date back to the colonial era, consist of both codified and uncoded norms. Following the country's independence in 1971, the Bangladeshi government created a legal system. This system was intended to apply uniformly to all individuals, regardless of gender or religious affiliation. The Muslim Family Laws Ordinance of 1961¹⁶ codifies some of the Sunni-Hanafi school of thought, which is followed by the majority of Muslims in Bangladesh. Marriage is recognized as a contract under Muslim personal law, and the majority of these norms are discriminatory towards women in marriage. The regulations governing the minimum age of individuals and their permission are an illustration of the legal contradiction inherent in Bangladeshi personal law requirements. According to Muslim personal law, a female may be wed at the age of 14. When a female reaches puberty, the law also permits her to be engaged with parental or guardian consent. In accordance with Bangladeshi Hindu law, a girl is deemed eligible for marriage as soon as she reaches puberty; there is no minimum age requirement. According to Section 19¹⁷ of the Christian Marriage Act of 1872, a juvenile (under the age of 21 and not a widow or widower) may marry with parental or legal guardian consent.

¹² TS Braimah, 'Child marriage in Northern Nigeria: Section 61 of Part 1 of the 1999 Constitution and the protection of children against child marriage', *African Human Rights Law Journal* 474, (2014).

¹³ See K Nwezeh 'Yarima-Shari'a Council drags FG, National Assembly to court' 4 June 2010, <http://www.allafrica.com/stories/201006071572.html> (accessed April 4, 2023);

¹⁴ A Ukwuoma Child marriage in Nigeria: The health hazards and socio-legal implications, Pg. No. 51, (2014).

¹⁵ Muslim Personal Law (Shariat) Application Act of 1937, No. 26, Acts of Parliament, 1937 (India)

¹⁶ referencing: Bangladesh (Adaptation of Existing Laws) Order, 1972); (noting: "Other laws that have a bearing on Muslim marriages and their dissolution are the Dissolution of Muslim Marriages Act of 1939 and the Muslim; Marriages and Divorces (Registration) Act of 1974").

¹⁷ The Christian Marriage Act, 1872, § 19, No. 15, Acts of Parliament, 1872 (India)

Child marriage is a widespread problem in Ethiopia, especially in rural areas where traditional beliefs and practices continue to shape societal standards. Personal laws based on cultural or religious traditions play an important role in the practice's propagation and perpetuation. Marriage and family life are governed by customary or traditional rules in several regions of Ethiopia. These laws typically legalize and, in some situations, require teenage marriage. In Ethiopia's Amhara area, for example, girls as young as 7 or 8 years old are commonly married, and many families see early marriage as a means of maintaining their daughters' chastity and honor. In Ethiopia, in addition to customary law, religious rules allow for juvenile marriage. There is no minimum age restriction for marriage in the Ethiopian Orthodox Church, the country's primary religion, and females as young as 12 or 13 can marry with the agreement of their parents and the church. The Ethiopian government has taken steps to address the issue of child marriage, including the passage of a law in 2014 that raises the legal marriage age to 18 and makes marriage before that age illegal. However, the law's implementation has been slow, and many families continue to marry off their girls at a young age, particularly in rural areas where traditional beliefs remain entrenched.

In addition to Muslim countries, child marriage is also prevalent in other parts of the world, including South Asia, Sub-Saharan Africa, and Latin America. In many of these regions, personal laws that are based on cultural or religious traditions play a significant role in shaping the prevalence of child marriage. For example, in India, personal laws based on Hindu traditions allow for child marriage, and despite the passage of laws banning the practice, it continues to be a widespread issue. Similarly, in parts of Africa, customary laws and practices may permit child marriage, and families may choose to marry their daughters off at a young age in order to strengthen family ties or to ensure the economic stability of the family.

9. CASE STUDIES OF PERSONAL LAWS AGAINST STATUTORY PROVISIONS ON CEFM

There are many cases where personal laws have prevailed over statutory laws with respect to child, early and forced marriages. Here are a few examples:

9.1 India: In 2018, the Indian Supreme Court struck down a provision in the Muslim personal law that allowed for the marriage of girls as young as 15 and boys as young as 18. However, despite the ruling, child marriage continues to be prevalent among Muslim communities in India due to resistance from conservative religious leaders who claim that the law interferes with their religious practices.

9.2 Nigeria: The Child Rights Act of 2003, which sets the minimum age of marriage at 18, has been adopted by 24 of Nigeria's 36 states. However, in the remaining 12 states, child marriage continues to be allowed under customary and Islamic law, which set the minimum age of marriage at puberty. In some cases, young girls are forced into marriage with older men as a means of settling disputes or debts.

9.3 Afghanistan: The Afghan Personal Status Law allows for the marriage of girls as young as 16 and boys as young as 18 with the consent of their fathers or male guardians. However, in practice, many girls are married off at even younger ages, and forced marriage is common. Despite efforts to strengthen the legal framework to protect girls from child marriage, including the passage of the Law on the Elimination of Violence Against Women in 2009, enforcement of these laws remains weak.

9.4 Sudan: In Sudan, the Child Act of 2010 sets the minimum age of marriage at 18. However, personal laws based on Islamic tradition continue to permit child marriage, and many girls are forced into marriage at a young age due to poverty and lack of education. The situation has been exacerbated by the ongoing conflict in Sudan, which has forced many families to flee their homes and seek refuge in camps where child marriage is common.

These cases illustrate the on-going struggle to reconcile personal laws based on religious and cultural traditions with statutory laws aimed at protecting children from the harms of child, early, and forced marriage. While progress has been made in many countries to raise the legal age of marriage and strengthen protections for children, there is still much work to be done to ensure that these laws are enforced and that social and cultural norms around marriage are changed to promote the well-being and rights of children.

III.FEMALE GENITAL MUTILATION

10. DEFINITION

Female Genital Mutilation can be defined as any procedure that involves a partial or a complete removal of the external female genitalia or any other injury caused for non-medical reasons. FGM/C has been recognised as a cultural practice, not religious in nature that is predominantly practiced in Saharan Africa, parts of East Africa, Asia and Latin America. According to the UNO's report, around 200 million women have already undergone FGM/C, and around 3 million girls are at a risk of the procedure each year. The practice of FGM/C was originally taken up to protect the family honour and societal position, to prevent female promiscuity and rape. The practice of FGM/C is usually carried out on girls between infancy and 15 years of age.¹⁸ It is typically performed by traditional circumcisers, but is now being carried out by health practitioners in some countries. It has been observed that FGM/C causes significant short-term and long-term health risks in young girls and women, including acute and chronic infection, infertility, childbirth difficulties, complications in sexual relationships, and short-term and long-term psychological trauma. Women who have undergone FGM/C are also more susceptible to caesarean section and increased infant mortality rates.¹⁹

The WHO has recognised four types of FGM:

¹⁸ World Health Organisation, Female Genital Mutilation: Fact Sheet, 2012, World Health Organisation: Geneva.

¹⁹ Chibber, R., E. El-Saleh, and J. El Harmi, Female circumcision: obstetrical and psychological sequelae continues unabated in the 21st century. *J Matern Fetal Neonatal Med*, 2011. 24(6): p. 833-6,(last visited April 6, 2023)

- **TYPE I – CLITORIDECTOMY** : the partial or complete removal of the clitoris , and/or in very rare circumstances, the prepuce (the fold of skin surrounding the clitoris)
- **TYPE II – EXCISION** : the partial or complete removal of the labia minora, with or without the excision of the labia majora (the ‘lips’ surrounding the vagina)
- **TYPE III – INFIBULATION** : the narrowing of the vaginal opening by creating a covering seal. The seal is created by cutting and repositioning (through stitching) the inner or outer labia, with or without the removal of the clitoris.
- **TYPE IV – OTHER** : all other harmful practices including pricking, piercing, incising, scraping and cauterizing the genital area, performed for non-medical reasons.

11. CAUSES AND CONSEQUENCES OF FGM

FGM is a manifestation of deeply entrenched gender discrimination. It is practiced to inflict harm upon young girls and to show prevalence of obsolete traditions and cultures over their disadvantages. The causes leading to FGM can be broadly classified into five categories:

11.1 Psychosexual Reasons: FGM is a manifestation of gender inequality, as it is often seen as a way to reinforce patriarchal power structures and control women's bodies. In many communities where FGM is practiced, women have limited access to education, healthcare, and economic opportunities, which further reinforces their subordination and vulnerability.

11.2 Sociological and Cultural Reasons: FGM is often deeply rooted in social and cultural norms that view it as a rite of passage into womanhood, a way to control female sexuality, or a means of ensuring marriageability. Girls and women who do not undergo FGM may be stigmatized and ostracized from their communities. Myths surrounding female genital such as uncut clitoris will grow to the size of a penis, or that such mutilation or cutting can enhance fertility or promote chances of survival of the child, are one of the reasons of continuing such practices.

11.3 Hygiene and Aesthetic Reasons: Some communities believe that FGM is necessary for maintaining good hygiene or preventing disease. This is a misconception, as FGM can actually lead to a range of health problems, including infections, chronic pain, and difficulties with childbirth.

11.4 Religious Reasons: FGM is not endorsed by any major religion, but some communities associate the practice with their religious or spiritual beliefs. However, religious leaders and scholars have spoken out against FGM, pointing out that it has no basis in religious texts or traditions.

11.5 Socio-Economic Factors: Girls and women may feel pressure to undergo FGM in order to conform to social expectations or to be accepted by their peers. In some cases, the practice is seen as a way to demonstrate maturity, courage, or strength.

The practice has no health benefits and can cause a range of physical, psychological, and sexual consequences. Here are some of the consequences of FGM:

11.6 Physical consequences: FGM can cause a range of physical health problems, including chronic pain, infections, and difficulties with childbirth. The severity of the physical consequences depends on the extent of the

cutting, the skill of the practitioner, and the availability of medical care. In some cases, FGM can result in long-term disabilities, such as fistula or incontinence.

11.7 Psychological consequences: FGM can have severe psychological consequences, including depression, anxiety, and post-traumatic stress disorder (PTSD). Girls and women who undergo FGM may experience feelings of shame, isolation, and trauma, which can lead to low self-esteem and difficulty forming healthy relationships.

11.8 Sexual consequences: FGM can have a range of negative sexual consequences, including reduced sexual pleasure, pain during intercourse, and difficulties with sexual arousal. Girls and women who undergo FGM may also experience difficulties with menstruation and urination.

11.9 Social consequences: Girls and women who undergo FGM may be stigmatized and ostracized from their communities. This can lead to social isolation, limited access to education and economic opportunities, and difficulties in finding a suitable marriage partner. In some cases, girls and women who refuse to undergo FGM may face violence or threats of violence from their families or communities.

11.10 Inter-generational consequences: FGM is often passed down from one generation to the next, perpetuating the cycle of violence and harm. Girls who undergo FGM are more likely to drop out of school, marry at a young age, and have children at an early age, which can perpetuate poverty and reinforce gender inequality.

These are just a few of the many consequences of FGM. Addressing FGM requires a comprehensive approach that involves engaging with communities to challenge harmful social norms, promoting gender equality and women's empowerment, improving access to education and healthcare, and enforcing laws that prohibit the practice.²⁰

11.11 PREVALENCE OF FGM IN DIFFERENT PARTS OF THE WORLD

INDIA: FGM, or female genital mutilation, is not a common practice in India. FGM is practiced in a few isolated areas in India, however it is not prevalent or regularly practiced throughout the country. Female genital mutilation (FGM) is allegedly done in some isolated areas of the country, particularly among **the Dawoodi Bohra group**. FGM is practiced as a religious rite by some members of the **Shia Muslim group known as the Dawoodi Bohras**. Traditional Islamic teachings do not endorse this practice, **and there is no theological mandate in Islam for female genital mutilation**. In 2017, a petition was filed with the Supreme Court of India to prohibit FGM within the Dawoodi Bohra community. The matter is still ongoing after being referred to a larger bench for review by the court. In recent years, there has been an upsurge in awareness and advocacy against female genital mutilation (FGM) in India, particularly among the Dawoodi Bohra community. Several civil society and human rights organizations have tried to raise awareness about the harmful effects of FGM and to encourage alternative rites of passage. The Indian government has failed to pass clear legislation or regulations prohibiting FGM. Existing laws prohibiting female genital excision and mutilation, but not FGM. In India, these laws can be used to convict FGM practitioners.

²⁰United Nations Population Fund, <https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#why>, (last accessed on Apr, 6, 2023)

11.12 KENYA:

Female genital mutilation (FGM) is prevalent in Kenya, particularly among certain ethnic groups. According to a 2014 estimate by the United Nations Population Fund (UNFPA), approximately 21 percent of Kenyan women and girls have undergone FGM. The prevalence of FGM varies by location and ethnicity in Kenya. The practice is most prevalent in rural areas, specifically the northeastern provinces. Several ethnic groups practice FGM, including the Maasai, Somali, Samburu, and Kalenjin. In Kenya, FGM is acknowledged as a violation of human rights, and the government has enacted laws and policies to combat the practice. The Prohibition of Female Genital Mutilation Act, which was enacted in 2011, makes FGM illegal and punishes those who practice it. The law also protects and assists girls and women who are at risk for FGM or who have survived the practice. In addition to legal measures, the Kenyan government has implemented a number of programs and activities to educate the public about the harmful effects of FGM and to promote alternative rites of passage. In addition, the government has coordinated advocacy and outreach efforts with civil society organizations and community groups. Despite these efforts, FGM is prevalent in Kenya, and additional lobbying and education are required to eradicate the practice.

11.13 EGYPT:

Egypt has a high rate of female genital mutilation (FGM), particularly in rural areas and among certain populations. According to the 2014 Egypt Demographic and Health Survey, almost 87% of Egyptian women between the ages of 15 and 49 underwent FGM. Upper Egypt's governorates of Assiut, Qena, and Sohag have the highest rates of female genital mutilation. (FGM). Women who live in rural regions, have less education, and come from lower-income families are more likely to be involved in this conduct. FGM has been illegal in Egypt since 2008, when the Egyptian government passed a law prohibiting it. FGM practitioners, as well as their parents or guardians who consent to the practice, are breaking the law. Despite this, FGM is still commonly done with few legal ramifications. In recent years, the harmful consequences of female genital mutilation (FGM) have been highlighted, and alternative rites of passage have been recommended. Education and outreach efforts are part of a bigger national campaign in Egypt to end female genital mutilation. Community and civil organizations have also taken part in the advocacy and education initiatives. Despite these efforts, FGM is still extensively practiced in Egypt; more advocacy and education are required to permanently eradicate this terrible habit.

11.14 NIGERIA: Female Genital Mutilation (FGM) is widespread in Nigeria, especially in the country's southern and northern regions. According to the 2018 Nigeria Demographic and Health Survey, approximately 20% of 15-49-year-old women and girls have undergone FGM. FGM is most prevalent in the southern Nigerian regions of Ebonyi, Ekiti, Imo, and Osun. Some northern states, such as Bauchi, Gombe, and Sokoto, also engage in this practice. In Nigeria, the prevalence of FGM differs by community and socioeconomic status. The practice is more prevalent among rural, less-educated women and low-income families. President Goodluck Jonathan signed into law the Violence Against Persons (Prohibition) Act in 2015, which incorporates provisions prohibiting the practice of female genital mutilation (FGM). The law penalizes both those who perform FGM and parents or guardians who consent to it. The practice of female genital mutilation (FGM) persists in Nigeria despite legal prohibition, particularly in remote and rural areas where traditional beliefs and customs are profoundly entrenched. Continued advocacy and education are necessary to raise awareness of the detrimental effects of FGM

and to promote alternative rites of passage. There have been successful interventions to reduce the prevalence of female genital mutilation (FGM) in certain communities, which have involved advocacy and education efforts by civil society and community groups.

12. LAWS AND POLICIES AGAINST FGM

In response, many countries and international organizations have implemented laws and policies aimed at preventing and ending the practice. Here are some of the key laws and policies related to FGM/C:

12.1 International laws and policies: The United Nations (UN) has adopted several resolutions and declarations aimed at eliminating FGM/C. These include the 1993 Declaration on the Elimination of Violence against Women, the 2000 Millennium Development Goals, which includes a target to eliminate FGM/C, and the 2015 Sustainable Development Goals, which includes a specific target to eliminate FGM/C by 2030.

12.2 National laws and policies: Many countries have laws that prohibit FGM/C, including criminalizing the practice and imposing penalties on those who perform it or facilitate it.

12.3 Community-led initiatives: In addition to legal and policy measures, community-led initiatives have played an important role in addressing FGM/C. These initiatives involve working with community leaders, parents, and young people to raise awareness about the harmful effects of FGM/C and to promote alternative rites of passage. For example, in Senegal, the Tostan Community Empowerment Program has been successful in reducing FGM/C by promoting alternative rites of passage and engaging with communities to challenge harmful social norms.

12.4 International cooperation: International organizations, such as the UN and the World Health Organization, have played a key role in promoting global efforts to eliminate FGM/C. They have supported research and data collection, provided technical assistance and training, and facilitated dialogue among governments and civil society organizations to promote coordinated action.

These laws and policies have played an important role in raising awareness about the harmful effects of FGM/C, promoting legal and policy reforms, and supporting community-led initiatives to eliminate the practice. However, much work remains to be done to fully eliminate FGM/C and protect the human rights of women and girls.

Following are few examples of the following countries and their legal frameworks and policies:

12.5 India: In India, there are no specific laws that prohibit FGM/C. However, FGM/C is considered a criminal offense under the Indian Penal Code's provisions on grievous hurt (Section 320) and causing hurt by dangerous weapons (Section 324). These provisions can be used to prosecute those who perform FGM/C. Considering the fact that FGM/C leads to long-term health deficits, such as excessive bleeding (haemorrhage), delayed healing of the wounds, injury to the genital tissue, shock (both physically and psychologically), difficulties with menstruation, or in worst case scenarios even death, it is considered an offence under Sections 319 to 326 of the Indian Penal Code, 1860. Under Indian jurisprudence, FGM/C is recorded as an offence under S.326, i.e. voluntarily causing grievous hurt.

Additionally, the Ministry of Women and Child Development has issued advisories to states and Union Territories asking them to take steps to eliminate the practice of FGM/C.

12.6 Kenya: Kenya has made significant progress in addressing FGM through a combination of legal and policy measures. The country passed the Prohibition of Female Genital Mutilation Act in 2011, which made it illegal to practice FGM and imposed penalties for those who perform or facilitate the practice. The act also criminalizes anyone who knowingly permits their child to undergo FGM, and anyone who fails to report the commission of the offense.

12.7 Kenya:

In addition to the legal framework, Kenya has also implemented various policies and initiatives to address FGM. The government has established the Anti-FGM Board, which is responsible for coordinating efforts to eliminate the practice. The board works with communities and other stakeholders to raise awareness about the harmful effects of FGM and promote alternative rites of passage. The government has also launched a national campaign called "Alternative Rites of Passage" (ARP), which offers girls a safe and culturally sensitive alternative to FGM. The ARP involves a week-long educational program that teaches girls about their rights and health, as well as traditional ceremonies that do not involve cutting.

12.8 Egypt: FGM/C was criminalized in 2008, and the government has implemented a national strategy to combat the practice. This includes public awareness campaigns, training for healthcare professionals, and collaboration with religious leaders to promote alternative rites of passage. FGM is illegal in Egypt under Article 242 of the Penal Code, which prohibits the practice of "mutilating female genital organs." The law imposes penalties of imprisonment and fines for those who perform or facilitate the practice. In addition to the legal framework, Egypt has implemented various policies and initiatives to address FGM. The government launched a national campaign to combat FGM in 2008, which aims to raise awareness about the harmful effects of the practice and promote alternative rites of passage. The government has also established a hotline to report cases of FGM, and medical professionals are required to report cases of FGM to the authorities.

12.9 Nigeria: FGM is illegal in Nigeria under the Violence Against Persons (Prohibition) Act 2015²¹, which prohibits the practice of FGM and imposes penalties of imprisonment and fines for those who perform or facilitate the practice. The law applies to all states in Nigeria, including those that have their own legal systems based on Islamic law.

In addition to the legal framework, Nigeria has implemented various policies and initiatives to address FGM. The National Strategy to End FGM/C in Nigeria was launched in 2019, which aims to eliminate FGM in Nigeria by 2030 through a multi-sectoral approach involving government agencies, civil society organizations, traditional and religious leaders, and the media. The strategy includes measures to increase awareness about the harmful effects of FGM, strengthen law enforcement, promote alternative practices, and provide support services for survivors of FGM. The government has also established a national FGM/C Response Unit to coordinate efforts to end FGM in Nigeria.

²¹ the Violence Against Persons (Prohibition) Act 2015 (Nigeria)

INDIA: *There are no explicit personal laws in India that promote female genital mutilation. (FGM). The Dawoodi Bohra community, a small Muslim sect predominantly based in the state of Gujarat, is the only community in India that practices FGM. The Dawoodi Bohra community engages in khatna or khafd, a form of FGM involving the partial or complete removal of the clitoral hood or clitoris of females. Considered a rite of passage into womanhood, this practice is performed on females between the ages of six and twelve. Nonetheless, neither personal law nor religious scripture mandates the practice of khatna or khafd. It is believed to be a cultural tradition that has been handed down from generation to generation within the Dawoodi Bohra community. In 2017, the Supreme Court of India issued a landmark ruling declaring FGM illegal and unconstitutional. The court ruled that khatna or khafd violates the rights of female children and has no religious or cultural justification. Some Dawoodi Bohra families continue to perform FGM in private, despite the legal prohibition against the practice. The leaders of the community have also opposed the moratorium and urged their constituents to continue the practice.*

12.11 KENYA: In Kenya, there are certain communities that practice Female Genital Mutilation (FGM) as part of their cultural and traditional beliefs. These communities include the Maasai, Kisii, Kuria, Samburu, and Somali communities. Although the Kenyan government has criminalized FGM through the Prohibition of Female Genital Mutilation Act, 2011, some of these communities continue to practice it, citing cultural and religious reasons. Additionally, personal laws and traditional practices play a significant role in promoting FGM in Kenya. For instance, in the Somali community, which practices Type III FGM (also known as infibulation), girls are usually cut in a ceremony known as "sunat," which is held between the ages of 7 and 14 years. The Somali community follows Islamic law, which they interpret as requiring the practice of FGM. Some elders in the community believe that uncut girls are impure and cannot be married. Similarly, in the Maasai community, FGM is a rite of passage for girls, and it is believed to prepare them for marriage. Personal laws and traditional practices play a significant role in promoting FGM in the Maasai community.

12.12 EGYPT:

Egypt has one of the highest rates of FGM in the world, and the practice is deeply rooted in the traditions and culture of the nation. In Egypt, FGM is primarily carried out on the country's rural and urban poor, however it is also widespread among affluent families. Egypt is thought to have one of the highest rates of FGM in the world, with a prevalence rate of almost 90%. Despite being against the law, FGM is nonetheless carried out in Egypt because of insufficient enforcement and low public awareness. Egypt's government has taken action to end FGM, including drafting legislation making the practice illegal and developing a National FGM Abandonment Strategy in 2016. The impact of these efforts has been constrained by cultural and societal constraints. The existence of personal laws that support the practice is one of the most challenging barriers to eliminating FGM in Egypt. Personal laws, which commonly conflict with statutory laws, are legal frameworks based on religion or societal customs. FGM, which is considered to be a religious need in Egypt, is commonly justified by citing Islamic law and practices. According to certain families, FGM is a technique to preserve a girl's chastity and purity while also guaranteeing her acceptance in the community. The National Council for Childhood and Motherhood, which

advocates for children's rights and works to prevent violence against women and girls, was established by the Egyptian government as part of its efforts to address how personal laws encourage FGM.

12.13 . NIGERIA

Although FGM is not mandated by any religion, it is commonly performed due to cultural practices and social pressure. FGM is regarded as a rite of passage and a means of preserving women's "purity" and "cleanliness." In Nigeria, the FGM legal framework consists of both federal and provincial statutes. The National Policy on the Elimination of Female Genital Mutilation, which was enacted in 2014, addresses FGM in its entirety. Lagos, Ogun, and Ekiti are among the states that have passed legislation criminalizing FGM. Despite the existence of these laws, FGM is still prevalent in Nigeria, particularly in rural areas where traditional beliefs are strong. Frequently, personal laws, notably those based on custom and religion, support FGM. In some societies, female genital mutilation (FGM) is regarded as a means of upholding purity and discouraging promiscuity, as well as an integral part of a girl's transition into womanhood. In the southwest of Nigeria, the Yoruba tribe practices FGM known as "gishiri" or "kunle." After cutting the clitoral hood and labia minora with a blade, a herbal mixture is applied to the wound to staunch the hemorrhaging. Typically, elderly women in the community or traditional birth attendants perform the practice. In northern Nigeria, the Fulani tribe engages in "hannu da kafo," a form of FGM similar to this. This procedure, which involves the removal of the clitoris and labia minora, is frequently performed by traditional midwives using non-sterile apparatus. In Nigeria, personal laws that promote FGM are frequently endorsed by the community and can be difficult to abolish. Even though female genital mutilation (FGM) has become less prevalent in Nigeria, there is still much work to be done to modify cultural attitudes and ensure that laws protecting the rights of girls and women are enforced.

13. *CASE STUDIES ON FGM*

13.1 NIGERIA: The case of Ifeoma Akabogu-Chinwuba: In 2018, the Nigerian lawyer and human rights activist, Ifeoma Akabogu-Chinwuba, successfully secured the first-ever conviction for FGM in Nigeria. The case involved a father who had arranged for his three daughters to undergo the procedure. The father was sentenced to two years in prison, while the two women who carried out the procedure were sentenced to one year each.

13.2 EGYPT: In 2020, a group of female activists in Egypt launched a campaign against FGM, calling for stricter laws and increased education and awareness-raising efforts. The campaign included a series of videos featuring survivors of FGM sharing their experiences and calling for an end to the practice. Despite the efforts of these activists, FGM remains deeply entrenched in many parts of Egypt, particularly in rural areas where traditional beliefs and customs hold sway.

13.3 KENYA: Nice Nailantei Leng'ete: Nice Nailantei Leng'ete is another Kenyan activist who has been working to end FGM in her community. She is a member of the Maasai community and has been able to persuade many elders to abandon the practice. Nice's efforts have been particularly successful in the Loita Hills region of Kenya, where she has convinced over 15,000 girls to forego FGM. Her work has been recognized internationally, and she has received numerous awards for her activism.

IV.CONCLUSION

In conclusion, the harmful practices of child, early and forced marriage and female genital mutilation (FGM) are prevalent in many countries around the world. These practices have a detrimental impact on the health and well-being of girls and women and violate their basic human rights. Despite the existence of statutory laws and international conventions to prohibit and eradicate these practices, personal laws in some countries continue to promote and perpetuate these harmful traditions. The prevalence of personal laws over statutory laws is a significant obstacle to the elimination of child, early and forced marriage and FGM. In some countries, personal laws allow for the continuation of these practices under the guise of tradition and culture. This is particularly problematic in cases where these laws conflict with the constitutional and legal frameworks that have been established to protect the rights of girls and women. It is crucial that countries take action to address the prevalence of harmful practices such as child, early and forced marriage and FGM. This can be achieved through a range of measures, including raising awareness about the negative impact of these practices, enforcing existing laws and policies, and implementing comprehensive strategies to prevent and respond to these harmful practices. Efforts should also be made to address the underlying causes of these practices, such as poverty, gender inequality, and lack of education.

In conclusion, the elimination of harmful practices such as child, early and forced marriage and FGM requires a concerted effort from governments, civil society organizations, and communities. It is essential that we work together to ensure that every girl and woman is able to live a life free from violence and discrimination, and that their human rights are protected and respected.

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