



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 6 AND ISSUE 8 OF 2026

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 6 and Issue 8 of 2026 (Access Full Issue on – <https://ijlr.iledu.in/volume-6-and-issue-8-of-2026/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

LEGAL FRAMEWORK AND JUDICIAL APPROACH ON FEMALE GENITAL MUTILATION & CHILD MARRIAGE

AUTHOR – ADITI BHOWMIK, STUDENT AT AMITY UNIVERSITY, NOIDA

BEST CITATION – ADITI BHOWMIK, LEGAL FRAMEWORK AND JUDICIAL APPROACH ON FEMALE GENITAL MUTILATION & CHILD MARRIAGE, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (8) OF 2026, PG. 812-820, APIS – 3920 – 0001 & ISSN – 2583-2344.

In India, historically, there have been several instances where child marriages were common practices due to their cultural significance, as they could also be a way to create alliances within families and deal with socio-economic difficulties. Nonetheless, due to increased sensitization regarding the rights of women and the negative consequences associated with these actions, there have been amendments in the Indian legal system that would discourage child marriages.⁹⁹⁰ Initially, the Child Marriage Restraint Act was passed in 1929, which sought to address child marriages within the Indian society.⁹⁹¹ Further amendments were also made in 1978, increasing the age of marriage from 15 to 18 years old for females. In like manner, FGM is another practice that has received little recognition in India due to the medical and human rights issues involved with it. It can be argued that the lack of any legislative prohibition against the practice of FGM points to a major deficiency in the laws of the nation. As per the provisions of the Indian Penal Code (IPC), there exists no law criminalizing the act of FGM. Due to its culturally-oriented nature, it becomes difficult for courts to reconcile between law and culture regarding the issue of FGM.

Through scholarly studies, it has been shown that any effective legal system is required to have both punitive and preventive components. The scholars have emphasized the need to alter the paradigm from focusing on criminalization alone to adopting a more comprehensive approach that involves both community involvement and education. This is a point made by women activists, who advocate the need to have social movements as part of the reforms, and such a movement will help alter society's attitude towards the practices, especially female genital mutilation (FGM), and early marriages. Another important consideration in terms of legal analysis regarding female genital mutilation and child marriages in India pertains to the process of interpretation by the judiciary and enforcing any applicable laws.⁹⁹² The judicial branch is an institution that significantly contributes to determining the standards within society. In this sense, despite the numerous judgments regarding various forms of sexual abuse and child rights, there have been no explicit decisions taken by the Supreme Court on the matters of FGM and child marriage.⁹⁹³ As a result, the silence on issues of such nature is likely to continue because of cultural considerations and unwillingness to interfere in issues pertaining to human rights violations. Also, the enforcement of the law is hindered due to some structural problems, where there is no professional knowledge among the law enforcement officers on gender violence. Reports show that incidents of child marriage have been turned down or resolved informally because law enforcement officers tend to be hesitant about engaging themselves with the intricacies of these practices. Moreover, judicial delays and inefficiencies make the population skeptical about taking legal recourse for their complaints, which makes it difficult to report any crimes⁹⁹⁴.

⁹⁹⁰ Ministry of Women and Child Development, India (2023), *Policies to Prevent Child Marriage*.

⁹⁹¹ Government of India, *Child Marriage Restraint Act, 1929* and Amendment Act, 1978.

⁹⁹² Seervai, H.M. (2018), *Constitutional Law and Judicial Interpretation in India*.

⁹⁹³ Supreme Court of India Records (2024), *Gender Justice and Child Rights Cases*.

⁹⁹⁴ National Judicial Data Grid (2024), *Judicial Delay and Access to Justice in India*.

International human rights systems have equally contributed to shaping the Indian legal systems dealing with FGM and child marriage. India is a party to several international agreements, including the CRC and CEDAW, whose main duty is to protect the rights of children and women. The challenge here is to find ways of ensuring that these international commitments translate into effective policies in the domestic arena. According to scholars, the success of any legal framework will be limited unless there is serious commitment from the country to comply with international standards. Based on comparative analysis of law, some experts believe that incorporating best practices from regions where laws banning FGM and child marriage are enforced effectively may offer better results in India. For example, countries where non-governmental organizations engaged in awareness campaigns and public education regarding the dangers of FGM are successful in implementing laws related to the prohibition of such practices. In the same manner, India needs to work towards cooperation among government institutions, NGOs, and community members in developing comprehensive legal and educational efforts. Furthermore, there is an urgent requirement to reconsider the definition and legal parameters of both FGM and child marriage in the context of India. The proper categorization of both practices will help develop effective measures to enforce legal instruments.⁹⁹⁵The legal ban on FGM must incorporate measures to educate communities regarding the health implications of the practice. Additionally, India needs to enforce its age of marriage laws strictly, impose heavy fines on facilitators of child marriage, and promote equality initiatives.

In conclusion, determining the success or effectiveness of the existing laws against FGM and child marriages requires a comprehensive analysis of the evolution process, laws, and scholarly findings. Even though tremendous

efforts have been exerted to create favorable legislation on these topics, there still exists some room for improvement. It would be important for the Indian government to use a holistic strategy, not limiting itself to merely enforcing these laws. Instead, there should be greater emphasis on educating the local community and raising their voices in favor of these women's rights issues.⁹⁹⁶In addition, by improving the definition of these practices and involving the judiciary in the process, India would lay ground for successfully fighting against FGM and child marriages.

Legal Framework of FGM

There is a complex legal structure governing the issue of Female Genital Mutilation (FGM). International laws, as well as national laws, have an impact on this issue.⁹⁹⁷Internationally, institutions such as the World Health Organization (WHO), together with different conventions from the United Nations, have been at the forefront of the fight to eradicate FGM by laying down a basis for fighting for legal and human rights against this dangerous act. FGM has been explicitly condemned by the WHO because it is considered an assault on human rights and carries short- and long-term health risks for women. Furthermore, under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), member states must make sure to eliminate any discriminating activities, including FGM.

While considering the international approach toward FGM, the national law in India shows another perspective toward the ban on FGM. Presently, there is no specific legal provision in India that prohibits the practice of FGM in the country. Hence, there exist some loopholes in terms of the legal provisions that ensure women and girls' security against the act. Rather than that, the laws like IPC and POCSO can come into play in cases where an injury is caused, even if there is no explicit provision for FGM within these laws.⁹⁹⁸Meanwhile, some countries in Africa have

⁹⁹⁵ Equality Now (2020), *FGM in India: Legal Gaps and Reform Needs*.

⁹⁹⁶ UNICEF India (2022), *Community Awareness and Ending Harmful Practices*.

⁹⁹⁷ United Nations (2021), *International Human Rights Obligations on Harmful Practices*.

⁹⁹⁸ Government of India (2012), *Protection of Children from Sexual Offences Act (POCSO)*.

introduced special legal provisions to ban FGM. Nations like Somalia and Sudan have adopted such provisions in their laws. Moreover, these laws are supplemented by public awareness campaigns against FGM⁹⁹⁹.

For criminal laws to effectively deal with FGM, it is important to have clear legislative provisions in place. Where this is the case in African countries, the levels of awareness and campaign activities have been found to go hand in hand with higher levels of reporting and prosecutions in connection with this form of crime. On the other hand, due to the lack of legislation specifically aimed at criminalizing this practice, the levels of compliance in India remain low in spite of all efforts being put in place. The need for clearly defined legislation against FGM cannot be overemphasized.

It is clear that without clear laws in place, attempts to discourage and stop FGM will most likely prove futile. Although international laws offer a guideline to act upon, the role of the country in question still remains crucial in this regard. It is important to note that countries which do have explicitly formulated laws against this practice demonstrate how laws can become effective within a community where there is a clear legislative framework and commitment from the government to implement this legislation.

It is essential to conclude by acknowledging that, even though international organizations such as the WHO and UN offer critical assistance in efforts aimed at combating FGM, national legislations need comprehensive legislation and public participation in order to have a considerable impact on curbing this practice. The fact that India indirectly prohibits FGM indicates the importance of having a proper law that will aid in enforcing the legislation and educating people about the practice¹⁰⁰⁰. Unlike many African countries that have had a more

developed legislative approach, India needs to adopt a new stance on this issue.

Legal Framework of child Marriage

The Indian legislation relating to child marriage aims at protecting the innocence of children and ensuring that everyone gets into adulthood healthy and educated.¹⁰⁰¹ In terms of my dissertation, it would be vital to consider the development of legislation in relation to child marriage in the sense of the evolution from being a "silent spectator" to becoming an "active protector".

The Prohibition of Child Marriage Act (PCMA) 2006: This law is referred to as "Special Law" for its primary objective lies in tackling this social ill. It stands apart from general laws for it concentrates on prevention and penalization

- I. Section 3 says states that a child marriage is "voidable". Thus, if a girl has been married off at the age of 15, when she becomes an adult of 18, she has all rights to approach the Judge asking him/her to "cancel" her marriage legally¹⁰⁰².
- II. Section 9 & 10 (The Punishment): Not only is it about the "husband"; the law also imposes penalties on anyone who marries an underage girl and on those who perform and facilitate such ceremonies. It targets the priest, caterers, and even the neighborhood people who participated knowing fully well that it is a child marriage¹⁰⁰³.
- III. Section 11 holds the parents or the guardians responsible. In case of child marriages, it assumes that the parents approved unless they provide evidence that they have prevented it.

Example: a real-life incident comes from rural Rajasthan where the activist Kriti Bharti saved a girl who had been married at age one. Under Section 3 of PCMA, when the girl became old enough, they took the matter to the court. The court issued a landmark annulment order,

⁹⁹⁹ UNICEF Africa (2023), *FGM Laws and Awareness Campaigns in Africa*.

¹⁰⁰⁰ Equality Now (2020), *FGM in India: Legal Gaps and Reform Needs*.

¹⁰⁰¹ UNFPA (2022), *Protecting Children Through Legal Reform*.

¹⁰⁰² Ministry of Women and Child Development (2023), *Implementation of PCMA*.

¹⁰⁰³ Government of India (2006), *Prohibition of Child Marriage Act, 2006*

thereby legalizing the marriage's nullity. This demonstrates that the law offers a "second chance" to its victims¹⁰⁰⁴.

Bharatiya Nyaya Sanhita (BNS)/Indian Penal Code (IPC), Whereas the PCMA focuses on the contract of marriage, the BNS (which was substituted for the IPC from July 2024 onwards) focuses on the physical safety of the child. Section 64 of the BNS (Earlier Section 375 of the IPC): This is an important legal safeguard. According to this section, having sexual intercourse with a minor girl under the age of 18 is considered "Rape" even if the individual committing the act is her "husband" by way of a child marriage. Logical reasoning is a child lacks the capacity to provide "legal consent," the marriage does not grant the male the right to physically touch the child.

Landmark Case: ¹⁰⁰⁵*Independent Thought vs. Union of India (2017)*

The Supreme Court ruled that: A child is a child, and the body integrity of the child cannot be encroached upon on the pretext of marriage. Prior to this case, there was a legal provision where a man would not be charged for having sexual intercourse with his "child-bride" (aged between 15-18). However, this loophole has been closed through the dictation of the Justice which says the protection of the child outweighs traditional marital rights. In many parts of the country, silent wedding takes place in the night or in private houses to evade the police.¹⁰⁰⁶ Through Section 13 of the PCMA (Injunction), courts can stop marriages from occurring. When a teacher or a neighbor reports to the Magistrate about an intended wedding, a "stay order" can be issued against it.

Criminalization vs Enforcement

Child marriages have been criminalized in India through PCMA of 2006, setting the minimum age of marriage at 18 years for women and 21 years

for men, and penalties for the perpetrators including parents and priests among others. Equally, even though there is no specific law in India outlawing FGM, there have been several PILs (Public Interest Litigations) in India challenging the practice as an infringement of fundamental rights as per Articles 14 and 21 of the Indian Constitution.¹⁰⁰⁷ Nevertheless, legislation alone cannot stop the practice from happening. According to international studies on the issue, legislation alone cannot solve the problem but should be accompanied by other measures such as social transformation. For instance, despite legislation in the country, India still has one of the highest rates of child marriages in the world because of the existing traditions and socio-economic factors.

Enforcement pertains to the extent to which authorities take measures to curb, detect, and penalize such offenses. There are enforcement lapses even when there are stringent laws: Many cases are not reported out of fear, stigma, and ignorance.

¹⁰⁰⁸The social acceptance in some groups outweighs fear of law. Lack of capacity or coordination by authorities is prevalent. In the latest news story from 2026, it was revealed that a minor girl aged 16 years in Pune was forcibly married, and it was only because she called a helpline that the police registered an FIR based on the Act. This indicates that the enforcement process is reactive and not proactive. Likewise, in Karnataka (2024-25), while 154 marriages were stopped, 42 others were still conducted. Where there's active enforcement measures, there are positive outcomes:

For instance, in Odisha, district-level monitoring, incentives, and registration have brought down the rates of child marriage from 23% to 19%¹⁰⁰⁹. The law grants power to Child Marriage Prohibition Officers to stop marriages, gather evidence and raise awareness, suggesting the

¹⁰⁰⁴ National Commission for Protection of Child Rights (2021), *Case Studies on Annulment of Child Marriages*.

¹⁰⁰⁵ Supreme Court of India (2017), *Independent Thought v. Union of India*.

¹⁰⁰⁶ Human Rights Watch (2021), *Hidden Child Marriages in India*.

¹⁰⁰⁷ Constitution of India, Articles 14 and 21.

¹⁰⁰⁸ National Crime Records Bureau (2024), *Crimes Against Children and Reporting Gaps*.

¹⁰⁰⁹ Odisha Government (2025), *District Monitoring and Child Marriage Reduction Data*.

presence of enforcement methods. In cases of strict enforcement such as the enforcement measure by Assam where thousands were arrested (even priests and relatives), there have been concerns about potential repercussions—people becoming jobless, for example. Therefore, it can be argued that enforcement should go hand-in-hand with social measures.

¹⁰¹⁰The High Court (Karnataka, Madras and Gujarat) has declared that the Prohibition of Child Marriage Act takes precedence over personal laws. FGM has been brought up before the judiciary as an unconstitutional practice, suggesting reliance on courts when legislation fails. This ensures that no cultural and/or religious excuses can be given to violate children's rights.

FGM:- Additional support for the inadequacy of enforcement comes from news and the testimonies of survivors themselves. The investigative reports that were conducted in India by journalists indicate that FGM is practiced in secret during the school vacations to prevent being caught. ¹⁰¹¹In most cases, victims revealed their stories years after coming to know their rights, but few FIRs and cases have been filed in India. It does not mean that the practice is uncommon, rather it is covert, socially accepted in some communities, and lacks legal sanctions. As stated by UNICEF, more than 200 million girls and women around the world have been subjected to FGM. Each year, there are about 3 million girls at risk. ¹⁰¹²Even with laws against the practice in many nations, the figures still persist, which definitely proves how poorly these laws are enforced. In India, research conducted in 2017 by Sahiyo revealed that approximately 75% of Bohra women interviewed had been subjected to FGM, despite the practice being done in secrecy and without any legal approval¹⁰¹³. The lack of data regarding the issue in India alone is an indication of the poor enforcement in the region. Most importantly, there is a dual deficiency in the Indian case—one

in terms of criminalization and another in terms of enforcement. Lack of a law leaves no basis for action, while enforcement would make it visible. In terms of human rights, FGM is clearly an infringement of the individual's dignity, health, physical integrity, and freedom from torture.

Judicial approach and enforcement reality

For India, judicial approaches to addressing FGM have been pursued mainly via constitutional litigation as India lacks an explicit anti-FGM statute. A significant event occurred when PIL was filed in the Supreme Court of India by Sunita Tiwari in 2017. The case contended that FGM amounts to:

- Violation of Article 21 (Right to life and personal liberty, which includes the right to dignity and bodily integrity)
- Violation of Article 14 (Equal protection of laws)
- Violation of Article 15 (Non-discrimination)

The court then ordered the case to be heard by a Constitution Bench due to its potential conflict with Article 25 (Freedom of Religion). While the decision is yet to be made, the case's importance lies in the fact that: FGM has been incorporated into national legal discussion. The government had to make a stance (the government was initially in favor of a ban on FGM). Explicit criminalization is required.

There is also an indirect judicial influence through the privacy law. The Supreme Court, in *Justice K.S. Puttaswamy v. Union of India*, ruled that bodily autonomy and privacy are fundamental rights under the Constitution. This decision has bolstered the case against FGM because any procedure performed on the body without the person's consent is unconstitutional. In *Independent Thought v. Union of India*, the Court struck down a provision of the rape law that allowed minor wives to be excluded from its provisions. The Court held that the welfare and

¹⁰¹⁰ High Court Judgments (Karnataka, Madras, Gujarat), *PCMA Overrides Personal Laws*.

¹⁰¹¹ Sahiyo & Media Investigations (2017–2024), *FGM Practices in India*.

¹⁰¹² UNICEF (2023), *Female Genital Mutilation Global Data*.

¹⁰¹³ Sahiyo (2017), *Understanding FGM in the Bohra Community*.

physical well-being of the child must take precedence over social customs.

FGM as a violation of bodily integrity and dignity

Bodily autonomy refers to the fact that each person retains the right to make decisions regarding their body. This is violated in FGM because: It targets young girls aged between 5–10 years. Consent is not given voluntarily or is coerced through familial influence. Permanent damage to both physical and mental well being is inflicted.

Constitutional rights under Article 21 (right to life and dignity) have been broadly construed in India by the Supreme Court to include bodily autonomy and human dignity. It has been conclusively stated in the landmark judgment in *Justice K.S. Puttaswamy v. Union of India* that privacy entails bodily autonomy. FGM goes against this very notion in a complete manner, as it inflicts permanent harm upon the body involuntarily.

Violation of Article 21 – Right to Life and Personal Liberty, According to Indian Supreme Court's interpretation of Article 21, it covers the right to live with dignity, health, and liberty of person. Child marriages are in violation of this article on multiple grounds: Health issues arise due to early pregnancies, resulting in maternal mortality rates being very high in the case of minors. The lack of personal liberty arises due to children not having the ability to freely choose marriage. Child marriages prevent girls from pursuing further education, which will affect their career in the future. Being exposed to physical and mental abuse at an early age. In the case of *Independent Thought v. Union of India*, it was found by the court that sexual activity between minors constitutes rape under Article 21.

Violation of Article 14: Equality, the article grants individuals the right to equality before the law, yet child marriages are more prevalent among girls, thus constituting discrimination on grounds of gender: Girls get married at a younger age compared to boys, this results in less access to

education and employment for women. This perpetuates the stereotype of women as inferior to men. The Prohibition of Child Marriage Act, 2006 seeks to correct this inequality through establishing minimum ages for marriage (18 for females and 21 for males) and punishing those helping with the marriage. As per reports from UNICEF, India is among the countries with the most number of child brides in the world, although its percentage has reduced over the years. According to the National Family Health Survey-5, about 23-25% of women between the age of 20 and 24 had been married below the age of 18. Lack of financial stability, education, and societal customs are some of the factors that make it possible.

International Human Right instruments & Convention

The CEDAW convention holds great significance due to the recognition of the existence of discrimination against women in terms of tradition and private life and not only legal frameworks. As per Article 1, discrimination can be understood as an act that affects women's rights, and therefore, practices such as FGM and child marriages can be considered as acts of discrimination since they have a negative impact on women. The significance of Article 2(f) lies in the fact that it requires States Parties to change or eliminate customs and practices that can lead to discrimination against women, which means that States are responsible for eliminating private acts as well. According to Article 5(a), States must take measures to change societal and cultural patterns that affect women adversely. This article is among the earliest international laws recognizing the fact that gender discrimination is socially constructed. Article 12 establishes a relationship between discrimination and health rights, pointing out that practices such as FGM and child marriages have adverse effects on physical and mental health.

The true power of the CEDAW Convention can be found within its interpretive development. For example, General Recommendation No. 14 is one

of the earliest international instruments which dealt with FGM in particular, encouraging states to enact legislation, gather statistics and raise awareness on this issue. General Recommendations Nos. 19 and 35 subsequently transformed the perception of FGM and child marriage from harmful cultural traditions into gender-based violence which should be subject to prosecution. An especially important aspect is that of Joint General Recommendation No. 31 (with CRC Committee), which views such practices as “harmful practices”, based on systemic inequalities and therefore demanding an extensive multi-faceted response from states. One of the most overlooked yet influential principles of the CEDAW Convention is that of due diligence which holds states responsible for private acts if they have failed to take preventive measures, investigate or prosecute them.

The Convention on the Rights of the Child supplements the CEDAW in that the Convention puts the child at the focal point of the discussion. Article 3 provides for the child’s best interests, a notion that is fundamentally in conflict with any practice that may damage the child’s physical and psychological well-being. The child’s right to express his or her views without interference, as provided in Article 12, is rarely discussed in regard to FGM and child marriage, but it raises an important point, that is, children who are exposed to such harmful practices lack participation and self-determination. Children’s rights under Article 19 are protected from all forms of violence, even from within their families. Moreover, Article 24(3) requires states to eliminate harmful traditions that negatively affect the health of the child, which makes the Convention’s provision on FGM particularly effective among international instruments. Another distinct but underexplored aspect of the CRC is its evolving capacities doctrine, which acknowledges that children develop self-reliance and decision-making skills. The practice of child marriage clearly contradicts this theory because it entails assigning adulthood to children before they can physically, emotionally, and intellectually mature. This perspective has

been further strengthened by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, who have collaborated in developing joint interpretative comments.

The global impact of these treaties has been revolutionary in shaping national laws and policies. Several African and Middle Eastern countries have passed stronger anti-FGM legislation due to consistent pressure from CEDAW reporting. European countries such as the UK and France have adopted strong implementation strategies for FGM and child marriage by enforcing protection orders and establishing a prosecution framework through the impact of international treaties. The United Nation’s campaign against FGM and child marriage by 2030 is yet another example that is based on commitments made in these treaties. An important, albeit overlooked, impact of these treaties is shadow reporting, in which nongovernmental organizations present their reports and data related to the problem. The latest events in the global arena illustrate the continued importance of the above frameworks. In this context, the UN recently stated that because of economic instability, climate change, and disruptions after the pandemic, there is an increase in the likelihood of child marriage and FGM, putting millions more girls at risk owing to their schools closing and poverty. This example indicates that progress can be fragile and strongly linked to socio-economic factors. Also, in some countries such as India, ongoing constitutional arguments before courts, especially the Supreme Court of India, regarding FGM, exemplify how international human rights principles are employed to interpret and apply fundamental human rights including dignity, equality, and personal liberty. Both conventions function within the larger system of international law, including the UDHR that establishes the right to dignity and voluntary consent for marriage; ICPPR that prohibits torture, cruel, and degrading treatment; and ICESPR that recognizes the right to health and development. The above instruments form a complex and integrated

legal mechanism addressing both legal prohibition and root causes of harmful practices. It is crucial and sometimes forgotten that with these treaties, the emphasis shifts from merely prohibiting harmful practices to transforming society and preventing such practices through social change. They ask states to not only criminalize acts of FGM but also to educate people, raise awareness, provide health care services, and promote gender equality. Additionally, they change the nature of accountability by bringing it into the realm of private law and placing greater emphasis on collecting information. Nevertheless, the problem lies in the inability of international laws to find a way into national practices. This can be shown in the example of India, where, although the country has ratified these conventions, there is no specific ban on FGM and problems with implementing legislation against child marriages. Overall, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child have had a significant effect around the globe through their redefinition of female genital mutilation and child marriages as a breach of basic human rights instead of being mere customs. By virtue of their elaborate clauses and dynamic interpretations, as well as strict monitoring processes, they have brought about changes in laws, judicial rulings, and international advocacy work. Nonetheless, their success lies in how much these states implement their requirements in terms of legislation and law enforcement.

state obligation v/s community practices

FGM takes various forms, although each one entails a certain level of violence. According to categories that are established by the World Health Organization, they are: Type I (clitoridectomy) – removal of part or all of the clitoris; Type II (excision) – removal of the clitoris and labia; Type III (infibulation) – narrowing of the vaginal orifice; and Type IV – practices that include pricking and scraping. In India, the most prevalent form practiced by some communities within the Bohra section is a less severe type

(usually Type I), yet it is still an act of bodily violation.

The procedures for both FGM and early marriages involve social and familial coercion rather than personal consent. For instance, in FGM, young girls are usually abducted by women within their families in the name of conducting traditional ceremonies and then forced to undergo the operation. They do not have any say on the matter because they are too young to understand what happens and because they might be punished or even ostracized if they refuse. The same applies to early marriages where parents and society force girls into the marriages. Girls are usually brought up to think that their sole purpose in life is to get married. The implications of these practices are grave and far-reaching. FGM causes physical harm, including pain, infections, and problems during childbirth; psychological damage; and issues related to sexual and reproductive health. Early marriage causes premature pregnancies, health dangers for mothers, school withdrawal, dependency, and an elevated risk of domestic abuse. Both deny girls their autonomy and perpetuate cycles of gender discrimination and poverty, reducing their ability to contribute effectively to society.

Under a human rights approach, it becomes evident that these effects violate fundamental rights established at both national and international levels. The Supreme Court of India, for instance, has clarified that the "right to life" enshrined in Article 21 of the Indian Constitution includes the concepts of dignity, bodily integrity, and personal autonomy, while Article 14 provides the right to equality. Similarly, international human rights law obligates governments to prohibit any practices that are harmful to women and children, even if those practices are culturally entrenched.

The ground realities show how the practices continue despite legal prohibition. FGM is normally performed clandestinely at home, especially during school vacations to escape any detection. Child marriage ceremonies are

performed either unregistered or under the guise of social gatherings. Local government officials may refrain from taking action due to social pressure, ignorance, or political reasons, hindering the implementation process. Such practices show the conflict between the state's obligations and community sovereignty. Under international law, states have the duty to use due diligence to prevent, investigate, and punish such practices even when they occur within the private sphere. However, purely punitive measures may drive the practices underground. Hence, effective interventions must take into account both legal prohibitions and community participation.





GRASP - EDUCATE - EVOLVE



INSTITUTE OF LEGAL EDUCATION

(Managed by L TO J LAW ASSOCIATES)

NO. 08, ARUL NAGAR, SEERA THOPPU,
MARUDHAANDA KURICHI, SRIRANGAM - 620102,
TAMILNADU, INDIA.

ISSN 2583-2344



9 772583 234004