

## **FEMALE GENITAL MUTILATION – A HINDRANCE TO WOMEN’S RIGHTS AND FREEDOM**

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In the wake of Women Emancipation all over the world the Female Genital Mutilation is a kind of violence which not only discriminates women in this man dominated society but also infringes her right over her body. It is not only a harmful practice which violates the rights of women but also a practice which tears apart a child’s right over her body and subject her to various forms of atrocities associated with it. Thus, the traditional practice of “*Female Genital Mutilation*”<sup>2</sup> infringes the right of children as well as women. Even though FGM is practiced globally, yet the issue relating to it is not discussed very freely and openly. FGM is practiced in at least 26 of 43 African countries. It is also practiced among some ethnic groups in Oman, the United Arab Emirates, and Yemen, as well as in parts of India, Indonesia, and Malaysia. FGM is also practiced in Australia, Canada, England, France, and the United States by the immigrants from the countries where the practice of FGM is common.<sup>3</sup> It is considered to be a barbaric and horrific act of humans which grossly violates the human rights of another person. FGM, like the other socio-traditional practices of honour killing, breast ironing, beading (sanctioned child rape by young warriors) inflicts harm on women and girls and is the outcome of the patriarchy system. The practice is condemned by the civilized society of today’s world yet we find that FGM is still perpetrated on millions of young girls and women all over the world.

### **What is Female Genital Mutilation?**

The World Health Organization (WHO) defines FGM as "*all procedures involving partial or total removal of the external female genitalia or injury to the female genital organs for non-medical reasons.*" Female Genital Mutilation is the collective name given to the several traditional practices that involve the cutting of female genitals. The procedure is generally performed upon girls between the ages of four and twelve as a part of the culture. In some culture it is practiced as soon as the

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<sup>2</sup> Hereinafter will be referred as FGM.

<sup>3</sup> Toubia, N. (1993). *Female Genital Mutilation: A Call for Global Action*. New York: Women, Ink; pp. 42. Cited in *Female Genital Mutilation : The Facts*, Laura Reymond, Asha Mohamud, and Nancy Ali, <http://www.path.org/files/FGM-The-Facts.htm> [visited on 18/04/2017; 8:35 pm]

child takes birth or just prior to marriage or after the first pregnancy. It is generally performed by a traditional practitioner or circumcisers who come from a family in which generations of women have performed the procedure. The term FGM is used to emphasize the physical, emotional, and psychological consequences associated with this procedure. However, the people who practice this procedure justify the process on the following grounds:-

- (a) **Custom and tradition:-** The communities which practices FGM contends that it is done so because it is deep rooted in their local culture and it has passed from one generation to another. Thus, it is practiced in order to maintain their customs and preserve their cultural identity by continuing the tradition;
- (b) **Women's Sexuality:-** It is generally believed by the pioneers of such traditional practice that it is essential to have control over women and her sexuality. This is preferably called the psychosexual reason for FGM. This procedure will, thus, not only protect the family honour but it is also practiced to ensure that if FGM is performed on women/girls then it will reduce her sexual appetite or aggression which will ensure that she will not be driven by sexual desire to anyone other than her husband. It aims to ensure premarital virginity and marital fidelity. Some communities believe that FGM may be deemed a beautifying procedure which removes 'masculine' aspect of a girl's or woman's body. It is practiced, in other words to make girls attractive. Another reason for practicing FGM is that the female genitalia is considered to be dirty and the women who does not undergo the procedure is considered to be unclean. Thus, the procedure is followed in the name of hygiene and aesthetics.
- (c) **Religion:-** One thing which is important to note down is that FGM is not a religious practice. It is, in fact, a cultural practice. It is practiced by Jews, Christians, Muslims and members of other indigenous religions in Africa. FGM is also practiced among some animists, who believe in the existence of individual spirits and supernatural forces. Hence, religion does not play a role here although it is erroneously connected to the religious practices. Some people believe that although there is no religious scripts prescribing the practice of FGM, practitioners often believe the practice has religious support.
- (d) **Social Pressure:-** FGM is practiced for another reason that is acceptability by the community to which one belongs. The communities where women are circumcised or are forced to undergo the procedure of FGM the family and the friends create an environment in which the practice becomes a requirement for social acceptance.

### **Origin of FGM**

There have been some documents which is evident enough to state that the practice of FGM can be traced back in the ancient Egypt at around 2000 BC. However, some believe that it was initiated in Greece, Rome, Pre-Islamic Arabia and Tsarist Russian Federation. Some people also believe that the FGM was practiced in Britain, Canada and the USA in the 18<sup>th</sup> Century to prevent masturbation among the women, cure hysteria, and some psychiatric problems. During this period the practice was known as '*Female Circumcision*.' In 1970's this harmful practice gained support from the international community and it is used to distinguish from male circumcision and to show the gravity of the practice.<sup>4</sup> The practiced was believed to be followed in African and Middle East countries only. However, it is widely and in large scale followed in Australia, the Far East and the immigrant population in European countries like Norway, Denmark, Netherlands, Sweden, UK, and France, and the America. The recent studies show that in fact it is practiced widely and in much larger scale now.

### **Kinds of Female Genital Mutilation**

The World Health Organisation in 1995<sup>5</sup> has grouped FGM into the following four categories/types: -

**(a) Type I:-** This type is commonly referred to as "*clitoridectomy*." This has further been divided into sub-types:

- (i) Type I (a):** Removal of the clitoral hood or prepuce only;
- (ii) Type I (b):** Removal of the clitoris with the prepuce

Thus in this type there is Excision (removal) of the clitoral hood with or without removal of part or the entire clitoris.

**(b) Type II:** This type is commonly referred to as "*Excision*." In this type there is partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision). This type is further sub-grouped into the following: -

- (i) Type II (a):** removal of the labia minora only;

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<sup>4</sup> Fisaha KG, Female Genital Mutilation: A Violation of Human Rights, Journal of Political Science and Public Affairs, <https://www.esciencecentral.org/journals/female-genital-mutilation-a-violation-of-human-rights-2332-0761-1000198.php?aid=74616> [Visited on 19/04/2017 on 10:47 pm].

<sup>5</sup> Hilary Burrage, What Is Female Genital Mutilation? Why Does It Occur? What Are Its Health And Wellbeing Impacts?; <https://hilaryburrage.com/2013/01/15/why-does-female-genital-mutilation-occur-and-what-are-its-impacts/> [Visited on 18/04/2017; 10:47 pm]

- (ii) **Type II (b):** partial or total removal of the clitoris and labia minora;
- (iii) **Type II (c):** partial or total removal of the clitoris, labia minora and labia majora.
- (c) **Type III:** This type is also called “*infibulations*.” In this type the procedure for narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and /or labia majora, with or without excision of the clitoris is followed. This type is further sub-grouped into the following:-
  - (i) **Type III (a):** removal and apposition of the labia minora;
  - (ii) **Type III(b):** removal and apposition of the labia majora;

This is a procedure to recreate an infibulation, for example after childbirth when defibulation is necessary.
- (d) **Type IV:** It is unclassified type of FGM. It covers all the other harmful procedures to the female genitalia for nonmedical purposes, for example, pricking, piercing, incising, scraping and cauterization.

Out of these types of FGM the Type I and II are the most common procedures practiced globally. Type I and II account for more than 85% of all procedure. Type III (infibulation) is common in Djibouti, Somalia and Sudan and in parts of Egypt, Ethiopia, Kenya, Mali, Mauritania, Niger, Nigeria, and Senegal.<sup>6</sup>

### **Female Genital Mutilation Vs. Male Circumcision**

The Female Genital Mutilation is often termed as “*Female Circumcision*.” It is seen in the same angle that of male circumcision. However, FGM and the Male Circumcision cannot be discussed from the same viewpoint. Both the FGM and Male Circumcision cannot be taken as same. The circumcision of both males and females vary from each other depending on the customs and the individual circumciser. In the ancient days, male circumcisers used to remove only the tip of the foreskin of the male genitalia. The biggest difference between the two is that how much tissue of the genitalia is removed. In case of the FGM the degree of the cut is more extensive often impairing a woman's sexual and reproductive functions.

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<sup>6</sup> Hosken, F. (1993). *The Hosken Report: Genital and Sexual Mutilation of Females*, fourth edition. Lexington, MA: Women's International Network; pp. 3. Cited in *Female Genital Mutilation : The Facts*, Laura Reymond, Asha Mohamud, and Nancy Ali, <http://www.path.org/files/FGM-The-Facts.htm> [visited on 18/04/2017 at 8:35 pm].

### **Impact of FGM on women and children**

The practice of FGM has been vehemently criticized and is considered to be a harmful practice as it has devastating short-term and long-term impact on the health and lives of the women and girls. These impacts can be studied under the following heads:-

- (a) Impact on physical health:** - FGM can impose severe health hazards to the women and children who undergo this process. This impact can further be divided into the following categories:-
  - (i) Short-term impact:-** This means the immediate impact on the physical health of the women and children who undergo the process of FGM. It includes haemorrhage, shock (sometimes death), severe pain, acute urinary retention, injury to adjacent tissues, infection, urinary tract infection, fracture or dislocation, abscesses and ulcers, fever, septicemia, failure to heal, tetanus, Gangrene etc
  - (ii) Long-term impact:-** This means the complications which arises out of the process of FGM and having impact upon the persons for a longer period or may be life long. It includes problems like delay in wound healing due to infection, malnutrition and anaemia, chronic pelvic infection, fibrosis, cheloids (abnormal growth of scar tissue), synechia (abnormal fusion of labia), Tissue rotation, chronic back and pelvic pain, urinary problem which may result in incontinence and kidney failure, bladder calculus (stone formation), hypersensitivity of entire genital area including neuroma on the dorsal nerve of the clitoris, dysmenorrhoea (menstrual problems), haematocolpos (accumulation internally of menstrual blood), pain at sexual intercourse, recto/vaginal fistulae, hepatitis and increased risk of HIV transmission due to the poorly healed wounds.
- (b) Sexual Complications:-** Women who have undergone the process of FGM has certain sexual complications like discomfort and pain during sexual intercourse, anxiety resulting in vaginal dryness, less sexual satisfaction, less sexual desire, shame or embarrassment about intimacy, greater risk of HIV due to cuts which bleed, infertility, and morbidity due to anal intercourse.
- (c) Childbirth complications:-** The women who undergo the process of FGM can also have various range of child birth complications which can have affect on her as well as on the child. With respect to the childbirth complications on the women, it consist of problems relating to difficulties in performing good pelvic examination during labour which can result in inadequate management of delivery of the child, prolongation of second stage of labour, tearing and recourse to episiotomy, caesarian section, perineal lacerations, torn uterus, post-partum haemorrhage, perineal wound infections, post-partum sepsis and

repeated pregnancies because of infant mortality. With respect to the complications concerning the health of the child during child birth, a women who undergo the process of FGM can also have stillbirth, need for resuscitation, neonatal distress or mortality, failure to thrive, cerebral palsy, death or serious incapacity of mother, so high risk also to child.

- (d) Psychological Problems:-** With respect to the psychological problem of the women who undergo the process of FGM very limited research is done. However, it cannot be denied from the study of the women who underwent the said procedure that these women do suffer from psychological problems like psychological vulnerability, anger, fear, anxiety, depression, confusion, lack of trust, post-traumatic stress disorder, psychosexual problems, hyper-arousal, hyper-vigilance, psychological disturbance, behavioural problems, relationship difficulties or disorders, emotional distance, sense of helplessness, somatization, phobia, sleep disorders, low self-esteem, social isolation, flashbacks, cognitive dissonance, rejection by other, and stigma.

#### **FGM and Violation of Human Rights of Women and Children**

Female Genital Mutilation is practiced globally and every year around about 100-140 million infants, girl-children and women undergo the operation every year. It is vehemently criticized as it not only put women at the prejudice of health hazards but also reflects the deep-rooted gender inequalities in the society. FGM is now recognized as not only a process which imposes health hazards to the women and girl child but as a severe violation of human rights of women and children who undergo this process. FGM of any type is recognized as gross violation of human rights of women. Efua Dorkenoo argued that female genital mutilation is a clear demonstration of gender-based human rights violation, which intends to control women's sexuality and freedom.<sup>7</sup> Thus, we can say that the Female genital mutilation has been recognized as discrimination based on sex because it is deeply rooted in gender inequalities and power imbalances between men and women and inhibits women's full and equal enjoyment of their human rights. Following are some of the human rights which gets violated or are at risk due to the practice of FGM:-

- (a) Right to Health:-** The procedure of FGM involves the cutting of female genitals generally performed by a traditional practitioner or

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<sup>7</sup> Fisaha KG, Female Genital Mutilation: A Violation of Human Rights, Journal of Political Science and Public Affairs, <https://www.esciencecentral.org/journals/female-genital-mutilation-a-violation-of-human-rights-2332-0761-1000198.php?aid=74616> [Visited on 19/04/2017 on 10:47 pm].

circumcisers who come from a family in which generations of women have performed the procedure. These traditional practitioners do not have any medical qualifications. This imposes a threat to the health of the women and the children who undergo the process. The procedure is conducted in very unhygienic conditions which put the women and girl child at the risk of getting infections and various other life-threatening dangers. It not only affects the physical health of the person but also imposes great psychological disorder. Thus, putting the health of a person at risk in the absence of proper medical supervision is a violation of that person's right to health.

- (b) Rights of the Child:-** Children are vulnerable and are unable to defend themselves. There has been a series of international laws which protect the rights of the child. The Convention on the Rights of the Child provides that it is essential to see that the act is in the 'best interests of the child.' However, the process of FGM which usually is done at a very young age and is generally decided as a result of social pressure and expectations of the community cannot be said to be in the best interests of the child as it imposes a high degree of health hazards and other related problems and is definitely not done with free consent, rather it is done with force, coercion, undue influence, and generally by fraud. Hence, it is very clear that it violates the rights of the child.
- (c) The Right to Sexual and physical integrity:-** FGM also violates the rights of women and girls to sexual and physical integrity. The procedure is practiced without the free consent of the women and the child as it is done generally when the girl is very young and is unable to understand the procedure and its hazards. It can be termed as unauthorized invasion in the body of the person which is in disregard of the fundamental right of the person concerned. As discussed above, one of the reasons for FGM is to control the sexuality of a woman. This is evident enough to the gender biasness of the community which practices FGM. Apart from this as per the long-term complication of FGM the person may suffer from severe pain during sexual intercourse throughout her life and even if there is no pain there is no sexual fulfillment. Thus, it takes away the right of a person over one's sexuality and physical integrity. This is a gross violation of human rights.
- (d) Right to be free from torture, cruel, inhuman and degrading treatment:-** FGM violates the rights of women and children from torture, cruel, inhuman and degrading treatment. The Convention on the Rights of the Child states that "*no child shall be subjected to torture or other cruel, inhuman or degrading treatment.*"<sup>8</sup> FGM is the procedure which requires the cutting away of the sexual part of a girl which is a

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<sup>8</sup> Article 37(a) of Convention on the Rights of the Child.

torture as the girl undergoes severe pain and suffering during the process minus the proper health care. It thus also violates the rights of the child over their privacy.

- (e) **Right to be free from discrimination:-** FGM also hits hard on the concept of free from any form of discrimination on the basis of sex because the very basis of the practice of FGM is deeply rooted in gender inequalities and power imbalances between men and women. The process of FGM deprives girls and women from making an independent decision about an intervention that has a lasting effect on their bodies and infringes on their autonomy and control over their lives. Thus, FGM discriminates women and lets the community stakeholders to take charge over the body of the women and children. This is again a gross violation of human rights of women and children.

### **Fight Against the Female Genital Mutilation**

The period of the practice of FGM is not well known but it can be traced back at least 2000 years. The first mention of male and female circumcision appears in writings by a Greek geographer who visited Egypt around 25 B.C.<sup>9</sup> It was practiced in ancient Egypt as a sign of distinction amongst the aristocracy. However, it is unknown from where it was originated. Although the first documented protest against the practice of FGM can be traced in the 20<sup>th</sup> century, but early attempts were made by the colonial administrators and missionaries who tried to ban the practice in some African countries. The Governments of Sudan and Egypt passed laws prohibiting FGM which were ineffective because they were not accompanied by adequate information campaigns and outreach. In the 1960's and 1970's women's groups in many countries led campaigns to raise awareness about the harmful effects of the practice. WHO sponsored the *first Seminar on Harmful Traditional Practices Affecting the Health of Women and Children Khartoum (Sudan)* in 1979, however, the suggestions made by the medical participants that FGM be performed under favourable hygienic conditions were rejected.

Globally the FGM has been considered to be an act which violates the human rights of women and children. It inflicts pain and torture and is an extreme form of violence and discrimination against women and girls. It violates number of human rights of women and girls like right to equality, right to life when the women or girls who undergo the procedure dies, right to human dignity and security, right to freedom from discrimination,

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<sup>9</sup> Rossella Lorenzi, *How Did Female Genital Mutilation Begin?*, <https://www.seeker.com/how-did-female-genital-mutilation-begin-1766105357.html> [Visited on 17th April 2017 at 12:50 pm].

torture, cruel, inhuman or degrading treatment as it interferes with the genital tissues in the absence of any medical necessity.

In the international front there are many treaties of the various monitoring bodies of United Nations which addresses the issue of the FGM. They advocate the strong support for the protection of women and girls from FGM. International laws against FGM can be classified under international treaties, regional treaties and consensus documents. The International Treaties namely the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987* aims at protecting against torture and other cruel, inhuman or degrading treatment or punishment. It obligates the state parties to make effective legislations, administrative, judicial or other measures to prevent the acts of torture. The *Covenant on Civil and Political Rights, 1966* too speaks about equality, non-discrimination, right to life, right to be free from torture, cruel or degrading treatment, rights of the children to be protected and equal protection of law. The *Covenant on Social, Economic and Cultural Rights, 1966* spells out obligations relating to labour rights, family rights, and individual rights. It also recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The *Convention the Elimination of All forms of Discrimination Against Women, 1979 (CEDAW)* aims at eliminating all forms of discrimination against women. It provides provisions for the protection of the human rights of women. In *1990 CEDAW General Recommendation No 14: Female Circumcision* was adopted at 9<sup>th</sup> Session of the Committee on the Elimination of Discrimination Against Women. It recommends the State parties to take appropriate and effective measures with a view to eradicate the practice of female circumcision. The *Convention on the Rights of the Child, 1989* provides that the parents should act to the best interest of the child. The Convention on the Rights of the Child refers to the evolving capacity of children to make decisions regarding matters that affect them.

These international treaties are supplemented by the regional treaties which explicitly condemn the practice of FGM. The *Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003* better known as **Maputo Protocol** guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality with men, improved autonomy in their reproductive health decisions, and an end to female genital mutilation. The *Council of Europe Convention on Preventing and Combating violence Against Women and Domestic Violence* was adopted in May 2011. The convention aims at prevention of violence, victim protection and "to end with the impunity of perpetrators."

Along with these treaties additional sources of human rights laws protecting women and children from FGM have been playing important role

in fighting against it. Declarations and Resolutions adopted by inter-governmental international organizations, such as the ***Declaration on the Elimination of Violence Against Women***, which has been adopted by the General Assembly and which characterizes FGM as a form of violence. Documents adopted at international and regional conferences like the ***Programme of Action of the International Conference on Population and Development (ICPD), 1994*** and the ***Beijing Declaration and Platform for Action, 1995*** both of which call upon governments to take action against FGM. However, these international and regional treaties along with the consensus documents are not implemented strictly or mandatorily applicable to the member states.

In India there is no specific law against FGM. It is evident from recent reports that in India also FGM is practiced by Bohra Community, a Shia sub-sect. The issue relating to the FGM can be brought under the purview of ***Indian Penal Code*** under Section 320 which deals with the definition of grievous hurt. Section 322 which deals with voluntarily causing grievous hurt and Section 326 which deals with voluntarily causing “grievous hurt by means of any instrument for shooting, tabbing or cutting. FGM can also be brought under the purview of Section 9 of the ***Protection of Children from Sexual offences Act, 2012*** which deals with the aggravated sexual assault. The ***Goa Children’s Act, 2003*** can also bring in FGM under its purview as it speaks about including deliberately causing injury to the sexual organs of children in its definition of Grave Sexual Assault. FGM can also be brought under the purview of the ***Protection of Women from Domestic Violence Act, 2005*** as the process of FGM is no less the domestic violence mentioned under the Act. Recently it was reported on 6<sup>th</sup> February 2017 that NCW in India has started the campaign to bring in a law to curb the practice of FGM in India.<sup>10</sup>

### **Challenges in Implementing the Existing Laws in Case of FGM**

Despite so many international laws condemning the FGM and existence of national laws it is difficult to fight the FGM due to various reasons. First of the survivors of FGM are basically the disempowered girls without any status in the society plus in fear due to the experience they had to undergo. These girls are often confused about the happening and there are cases wherein the girls do not know about what has happened with them. There is lack of witness as these are done very secretly plus the people who witness is often the family members who are the ones who take their children for such procedure. They often believe that if FGM is not

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<sup>10</sup> *NCW for law to ban female genital mutilation*, <http://indianexpress.com/article/india/ncw-for-law-to-ban-female-genital-mutilation-4511115/> [Visited on 18/04/2017].

performed then their family will have to face various economic and social problems. The traditional circumcisers are generally not professionally trained and they care more about the culture and the tradition of their community rather than harboring much about the laws. Most important of all the children will never testify against their parents. Identifying the culprit is also difficult as it is not always that the parents take their child for FGM. Often it is done by instigation of other persons. In most of the countries there isn't any legislation against the FGM. The issue of FGM is a perfect storm of taboo subject, gender violence, sexual liberty and race. It includes multitude of problems to be answered and to fight with.

### **Recommendations to Fight With the Issue of FGM**

It is evident from the above discussion that FGM is gross violation of human rights towards women and girl children because of its gender bias discrimination, infliction of torture, cruel, inhuman and degrading treatment. Thus, it is essential to curb this socio-traditional practice which imposes health hazards and other complications to the health of women and children who undergo this process. In the absence of any law and improper implementation of the existing law for curbing FGM the following recommendations are made:

1. The Government of the States should ensure that human rights laws should not only refrain from violating the human rights of the people but also to ensure that rights are universally enjoyed in their jurisdiction. For this purpose they will have to take steps to curb the practice of FGM like make attempts to modify such customs by creating public awareness, prohibiting the practice by introducing legislations, to provide support and assistance to the victims, to ensure health care and services, and also to frame policies to educate the people against such practices.
2. Although international laws are there which condemn the practice of FGM but due to non-ratification of the instrument implementation of the same is difficult. Hence, the states are advised to ratify such instruments and implement such laws. Ratification of the international instrument is the first step of the Government to bring in the social change.
3. All State Government should conform to the norms established by their nation's constitution and protect their citizens. The rights of women as provided by the constitution should be protected by the government.
4. The government should adopt reformative measures of changing the existing laws which are discriminatory to women and are obstacle in the women's equality.

5. One of the important recommendations is the formulation of the clear definition of the term “FGM,” kinds of FGM and who will be punished specifically (parents, practitioners).
6. Parents of the girls who take their child for FGM should also be punished and this issue should be addressed by the criminal law of the land.
7. If an adult woman is undergoing the process of FGM then the Government of the nation should see that whether such consent is given freely or under some undue influence, coercion, force etc.
8. FGM is practiced by the minority group of people, so this should not be taken as pretext to harass the people of minority group. In order to avoid it the government should be in constant touch with the minority group of people especially the immigrants.
9. Medical practitioners who practice this should be punished with disciplinary proceedings and should even be made to lose their license to practice medicine.
10. NGO’s play important roles in stopping the practice of FGM. Hence, they should be allowed to work without interference from the Government and organize camps for the same.
11. Governments should make an effort to educate people with the harmful effects of FGM to the communities who practice it.
12. The media should also play a major role in spreading the effects of FGM and for educating people against it.
13. Women should be empowered to decide for themselves then only she can fight the practice of FGM.
14. Alternative rites and ceremony should be determined in consultation with the communities.
15. The circumcisers should be educated through the introduction of various programmes.