



Long Article

Biggest Dilemma, Circumcision - Religious Ritual or Cruellest of the Cruel Practice: Comparative Analysis of India and France

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Abstract: *Circumcision, one of the most-oldest practices which is performed globally. Records show that different countries have different traditions of performing male circumcision. But there is a huge difference in the level, especially in two countries, which are India and France. In India, circumcision is done by Muslims, mainly. This paper draws light only on the custom of circumcision and addresses the issue of Circumcision in strong contrast to two different countries which are India and France; while referring to France, especially in the Madagascar region. The paper further covers the circumcision issue, its consequences with a special responsibility to India and France, and gives different reasons, that why and how such practice became a custom for both countries. And the most primary and common reasons are religion and the health benefits that the practice of circumcision offers. In the later parts, the paper focuses on the difference in following up on this custom in both countries. Through this paper, the author wants to raise that issue which is very debatable these days. This paper is a detailed study of circumcision, and further explains briefly the problems dealing with circumcision, and the main aim is to explore the context that why and how the practice has emerged.*

The paper is an attempt to draw the attention of the readers toward the most brutal form and unique form of circumcision, which is practiced only in Madagascar, and also draws attention to the irreversible changes that Circumcision causes.

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Keywords: *Circumcision, Violation, Tradition, Consent, France, Muslim, Male Circumcision, HIV.*

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1. Introduction

This paper is an attempt to discover and link those concepts which till now have assessing and analysing the difference in the practices of ‘male circumcision’ in two countries, which are India and France. As in these two countries, the practice of circumcision is considered very important and significant. Though, it is not known till now that how and when this practice of circumcision has started. Only some reasons are given to support that why the practice is needed. The reasons range from command of God to health factors. In this modern era, the main concern for any human is its health and well-being. But how religious rituals come in the way of health! We don’t have any idea.

Circumcision is too a religious ritual which is prevalent in many countries. Be it America, Australia, India, France, or Africa, one can find this practice be followed everywhere. The basic difference is their extent of following. In every country, there is a difference in its level. For some people, circumcision is their status symbol, for some it’s a symbol for showing the change in the person, and for some people, it is their culture and tradition.

Circumcision is derived from Latin word “*circumcidere*” which means to cut. The verbatim meaning of term is to cut or sever. The term circumcision basically implies removal of foreskin, in this skin is folded. In simple words, it can be said that it is the natural covering of penis head. The issue has gained so much popularity in recent times due to the increased attention of people and the increasing complications that have arisen due to the practice. This paper is an attempt to study the ritual, its complication, and its effects.

2. Islam and the History of Circumcision

This practice is rampant especially in Muslim males of India. The largest and primary religion which profess this practice of circumcision is the Muslim religion. The practice of circumcision is performed on young boys for many reasons. The most primary reasons are cultural and religious reasons. Though the said practice has no mention of it in Qur’an but people still follow it. Islam believes in the concept that his people must obey the commands of God, and that is why, the people follow the practice. So, even when the practice has no mention of it in Qur’an, there is a long history of it in Islam religion. In Islam, this practice is considered to be performed for purpose of purification. In Islam, this also mark the change from childhood to adulthood. The term used in Islam is “*tahara*” which means purity. According to Islam, it is believed that Abraham was the first who got circumcised at such early age of eight years, and it is said that Prophet Mohammad was circumcised at the age of thirteen. The primary reason for this practice is cleanliness, as it is very important

for a Muslim man to take care that no urine is left out of their body. So, the ritual of circumcision which is performed fulfil this very essential, as by removing the foreskin, no urine can't be trapped. The followers of this practice also contend that by removal of foreskin, all the dirt, and germs which is amassed, can be easily aloof. Further, it also helps in getting rid of such offensive smell.

In Islam, five things are considered most sound and the religion profess that these five things should be completed. These are: circumcision, trimming of moustache, removal of hair on pubic parts, removal of armpit hair and cutting of nail. This practice of circumcision is a distinctive mark of Islam religion. The practice makes Islam unique from any other religion. Circumcision in Islam is a compulsory practice. It is obligatory for a Muslim man to get circumscribed.

3. Circumcision and its Benefits

Circumcision is the amputation of the foreskin. Though with this practice, many benefits are concerned. Some benefits are that it condenses the risk of urinary infections, reduce risk of sexually transmitted diseases etc. Further it is asserted that it reduces risk of getting infections and complications;

- it keeps the penis clean,
- it lowers the risk of catching HIV infection,¹
- it lowers the risk of sexually transmitted diseases,
- it decreases the chances of urinary infections,²
- circumcision helps in prevention of all kind of dirt and dirt, it actually averts collection of irritants on the skin, and³
- circumscribed man does not have to suffer from Phimosis and Paraphimosis.

After a skin get circumscribed, then it gets exposure and that is why it become so much sensitive and it provides a natural lubrication which is considered very useful. Chandhiok & Gangakhedkar mentioned in their article that in countries like India, people have many issues like HIV/AIDS, and the best way to deal with these issues is by circumcision. In recent times, public awareness is being spread by many Organisations for

¹ Bertran Auvert, *et. al.*, 'Randomized, Controlled Intervention Trial of Male Circumcision for Reduction of HIV Infection Risk: The ANRS 1265 Trial' (2005) 2(11) PLoS Med. 298

² Marilyn Fayre Milos & Donna Macris, 'Circumcision: A medical or a Human Rights Issue?' (1992) 37(2) Journal of Nurse-Midwifery 87S-96S

³ 'Information Package on Male Circumcision and HIV Prevention' (WHO) <https://www.who.int/hiv/pub/malecircumcision/infopack_en_3.pdf > accessed on 7 March 2021

protection against HIV infection. So, as this growing concern against HIV is on a rise, the best way to deal with the issue is by practice of circumcision.

4. Circumcision from Medical Point of View

From the purview of development of any country, health is considered a very crucial aspect. Earlier in 18th and 19th century, the solution of all kinds of problem like masturbation or impotency or any sterility, was considered to be circumcision.

4.1. Immediate Complications after getting Circumscribed

Once a person becomes circumscribed, there emerges certain complications. After a person is circumscribed, that area causes a lot of discomfort to him and causes swelling. Another complication that arises is the accumulation of blood or excessive bleeding around the circumscribed part. Redness, swelling, and infection are some common immediate complications which arises after one get circumscribed.

4.2. Risks Associated with the Practice of Circumcision

Everything is two-folded, and has its benefits and its disadvantages. The practice of circumcision also comes with some risks. As all kind of surgeries come with certain risks, male circumcision is not new. Though the benefits of circumcision are there, but that should never be a ground to consider the relevance of the practice. As certain benefits can never outweigh a number of risks. The risks associated with circumcision are adumbrated as under:

The foremost risk associated with circumcision is the unbearable pain, excessive bleeding, injury to the penis, and excessive irritation. Sometimes, some extreme complications also occur which can affect the life of person in long run. Sometimes cases emerge which assert that the practice affect in long run and can also lead to severe death concerns. In some cases, it is seen that while operating, some person even get trauma, further there are some cases in which deformity of penis has also occurred.⁴ Some reports even mention that how such small children are subjected to physical pain for sake of tradition and custom. This practice is not always done under septic conditions and here lies the main issue, and also it is pertinent to mention that those people who do circumcision are not always knowledgeable and equipped.

⁴ Hansa D. Bhargava, 'Circumcision' (*WebMD*, 16 July 2020) <<https://www.webmd.com/sexual-conditions/guide/circumcision> > accessed on July 14, 2021

These are some of the potential risks associated with the practice of circumcision. Apart from these above-mentioned risks, there are plenty of human rights which get violated due to practising of this practice. The practice can have many bad experiences for a child. As medical procedure never leaves a person. They show their presence. As a person body is included, it causes lot of trauma to the person. So, as it is evident that the practice has many negative consequences and it gives lot of trauma and harm.

5. Significance of Circumcision

Everyone who hear about this practice comes with this question that why? Why this harsh traditional practice is still continued? What is the significance of this practice? So, here lies the answer. The foremost reason assigned is that it has importance in their culture and subsequent most primary reason is its use in practical world. Though the most important significance of circumcision is to mark the beginning of the phase from childhood to adulthood. Though the practice is adumbrated due to various religious and traditional reasons as well. In some countries, this is not just treated as a custom or a practice. In fact, it is considered a huge ceremony! A huge festival. In simple words, it can be said that there are number of factors responsible for this practice. The factors range from cultural, religious, ethical to medical benefits.⁵ So, every country has its different factors which led to this practice. The factors range from religious purpose to mark the beginning of adulthood to hygiene purposes and many more.

6. When Circumcision Should be Done - Early or Late?

Often it is done either within the first two weeks of birth or at time of adolescence. But this is still not a standard rule of age for circumcision. As there is no ideal time to get a boy circumscribed, but it is often advisable by experts that it should be done at an early age. In different cultures, they have different age criteria. But often it is asserted by doctors and experts that circumcision should be done as early as possible because in early nascent stage of a child life, the penis is not so much developed, the layer is much thinner and less vascular as compared to older men. So, it is often advisable by the doctors that circumcision should be done earlier as in earlier stages complications are less and healing is much more-quicker. Further, it is asserted by experts that circumcision should be done in initial stages of a child life as the procedure becomes difficult as a child grows.

⁵ Brian J Morris, John N Krieger & Jeffrey D Klausner, 'CDC Male Circumcision Recommendations Represent a Key Public Health Measure' (2017) 5(1) *Global Health: Science and Practice* 15-27

7. Madagascar and its Unique Customs of Circumcision

Madagascar is inhabited not only by French people, but it also has a huge population of Africans, Arabs, and Indonesian people. If we see generally, Madagascar is full of fascinating and unique things. But the most bewildering thing among all is their tradition of ‘circumcision’. Though the tradition is quite prevalent in various countries, but the extent to which it is followed in Madagascar is astonishing. Circumcision in Madagascar is considered not only a custom but in fact, it is more than a custom there. Though the carrying of practice like circumcision have the potential to violate such a large number of rights. But still, it is followed.

Circumcision in Madagascar is known by various names such as *Didim–Poitra* or Grace Children etc. This exercise is considered very crucial and its compulsory for every male to be circumcised. It is only the grandfather or the maternal uncle who is allowed to swallow the foreskin of that child. This is the most astonishing and distinguishing feature of circumcision of Madagascar. It is swallowed with a banana. The primary reason behind this tradition is that by circumcision, a boy acquires the status of a man. This practice is done without full moon, to avoid bleeding. This tradition is accompanied with great joy and happiness by dancing, games etc. So, the practice of circumcision is not only considered a practice in Madagascar, but in fact, it is considered a big festival in Madagascar.

The practice of circumcision involves some steps. The first step, is the cutting of the foreskin, and once the person gets circumscribed, the blood that is split is considered as a status symbol for unification of the boy. Often it is the oldest person of the family that perform the circumcision practice and it is only that oldest person who will swallow the foreskin and that too would be swallowed on a banana dish. So, it is mainly the grandfather who swallow the foreskin. And this has significance as it marks and build a bond between both of them. Often, the man who is going to participate in this ritual has to do fast for eight days before circumcision is done. Circumcision in Madagascar is done during period of rising moon. But full moon is recommended as it causes less bleeding and pain. In this tradition, only man is allowed to take part.

So, one of the most important community paybacks of circumcision is that it gives the male a right to marry and a right for safe burial. And apart from it, if it is viewed from the point of love and affection, it can be said that then the father and the son share a common bond. It makes both the person attached towards each other. So, it is often believed that the practice of circumcision will bind all the present generation to their peers. So, these are some beliefs in Madagascar related to circumcision. In Madagascar, it is compulsory for a male to be

circumscribed, otherwise, he won't get any women to marry. As the practice is compulsory in Madagascar, it is said that a boy must be circumscribed, if he wants to marry and an uncircumscribed man is not even buried.

7.1. Ancient Tales regarding Madagascar Circumcision Ritual

This ritual came into practice with the ancient stories. One of the most ancient stories associated with the custom is that a king named Andriamanelo was the first to initiate this ritual. The king during his reign had made it compulsory for every male to be circumscribed after every seven years. This ritual which is done after every seven years has a peculiar reason behind it. As only after seven years, the first month of the year is a Friday.⁶ So, in Madagascar circumcision play a significant role in their society as that mark the beginning of a boy being entered into manhood.

8. French Legal Framework on Circumcision

Article 222-9 and Article 222-10 of French Penal Code - Article 222-9 of French penal code says that, “acts of violence causing mutilation or permanent disability are punished by 10 years imprisonment and a fine of €150,000”. The court had accepted and considered the harm which a man has to face as a result of circumcision. A case had come in the year 2007, the person who was circumscribed had filed a case against the surgeon for not informing him about the risks involved. The victim in response to the injuries he had to sustain filed a case against the surgeon and won it.

The judgement is a landmark case, as Paris Court had fined the Surgeon for almost £32,000.⁷ The court while considering the harm and its violent form had ruled in favour of the victim.

Article 3(1) of European Union Charter of Fundamental Rights - Article 3(1) states that every person has a right to respect his bodily integrity. Every person has self-determination right over his body, which means that until and unless we give them permission, that person don't have a right to touch us.⁸

⁶ Guides, 'Circumcision in Madagascar' (*Tour-Malin-Madagascar*, 6 July 2019) <<https://www.tour-malin-madagascar.com/la-circconcision-a-madagascar?lang=en>> accessed on 27 March 2021

⁷ Jason Fairfield 'Legal Victory in France as Surgeon fined for Circumcision' (*ARC*, 24 June 2016) <<https://www.arclaw.org/news/legal-victory-in-france-as-surgeon-fined-for-circumcision>> accessed on 27 March 2021

⁸ Jennifer Ismat, 'A Handshake and the Right to Bodily Integrity' (*ILG*, 28 April 2018) <<https://ilg2.org/2018/04/28/a-handshake-and-the-right-to-bodily-integrity/>> accessed on 27 March 2021

8.1. France Efforts for Banning Circumcision

The government of France while considering the harm circumcision causes has done many efforts for banning the practice. A petition has been published by CRIF which calls for banning the ritual of male circumcision as it affects bodily integrity of the child and the man.⁹

9. Circumcision Practice and Article 21 of Constitution of India

Article 21 of Indian constitution grant right to bodily integrity under the category of right to life.¹⁰ The Constitution of India doesn't allow for any surgery which result in adverse outcome on anyone's health, and also provides for integrity of body. It is pertinent from the bare reading of the Article that it prohibits all types of surgery or anything related to the body if the person on whom it is to be done does not consent it to be done.

9.1. Bodily Integrity and Freedom of Choice

In this modern era, everyone has a right of his freedom of choice and to do and protect his bodily integrity. Even, every law of the land provides its citizen with right to physical integrity, which ensures and provide the citizen with the right that every person has a right over his body. Only the concerned person has the right to make a choice related to any part of his body.

As a parent consents on his son's behalf, then the son right to bodily integrity and his right of choice is violated. As circumscribing a small boy without his consent is a sheer violation of his fundamental right. The practice is ethically and physically immoral as it does not take into consideration the consent factor. This not only violates bodily integrity but also violates universal declaration of human right and convention on rights of child.

Though not denying the fact that the circumcision practice has lot of benefits but it is also not less than a torture. No law support that a child right of bodily integrity should be violated at the cost of religion or any custom. As to be in a fully perfect condition is the right of every person. So, an infant also has a right to have its genitals fully functioned and without any cut or forced surgery.

⁹ JTA, 'French Jews push back on efforts to ban Circumcision' (*Forward*, 24 October 2013) <<https://forward.com/news/breaking-news/186144/french-jews-push-back-on-efforts-to-ban-circumcisi/>> accessed on 6 July 2021

¹⁰ *Aarushi Dhasmana v Union of India* (2013) 9 SCC 475

10. Demerit of Circumcision in an Early Stage of Life

If circumcision is done at an early stage, then the main issue lies in the lack of consent factor as the child is not so mature enough to give his consent. It should be made a compulsory law that only those people who had consented themselves about being known of all the risks, benefits and procedures related to circumcision should be allowed to have gone for circumcision. Second, main issue is that circumcision violates a person's fundamental right of having bodily integrity. As it is only a child who can consent for alteration of any form in his body. Though parent has authority over their child, but that authority is not absolute in itself.

A number of disparities are there when circumcision is done on a young child and when it is done on an old man. One of the most important differences is that of a procedure, while circumcision, if done in an early stage is quite simple, involve less risk, low maintenance cost, less bleeding, fast healing, convenient body etc.¹¹, and in contrast to this when circumcision is done on an old man then the process and procedure which is involved is much complex, expensive as compared to if it was done at an early stage, involves risks such as that of surgery, bleeding etc. This irreversible practice of circumcision giving pain to the child has many consequences. The practice has severe bad impact on the body of the person who is going to be circumscribed. The impacts diverge from short term to long term. In some cases, many complications can also be emerged as the practice is extremely painful.

10.1. Reasons for Prevalence of Circumcision

As the practice of circumcision is backed by various traditions and customs. Some of the most common reasons for its prevalence are that the practice offers many health and sexual life benefits. There might be many other reasons as well but the most rudimentary reason that proves why the practice is still prevalent is that after getting circumscribed, it gives an enhancement in terms of sexual pleasure. And when there is enhancement in getting sexual pleasure, both the partners can live happily. But none of any reason is deemed to be valid when such an irreversible harm is caused to the child just for the sake of the tradition. It is evident from the practice of circumcision that it is tied mainly to tradition and religious reasons.

11. Violation of Rights and their Conflict with Tradition

Though circumcision occurs in diverse variations and forms, some are invasive while others are not. The practice of circumcision is backed with some traditions. The UN Agencies also entrench that among many

¹¹ Brian J Morris (n 5)

reasons for circumcision, the most common reason is religious reason. The practice of circumcision affects young boys who have to get themselves circumscribed. The practice causes a direct conflict with human rights and with some allied rights. The concerned practice of circumcision is a gruesome example of how a tradition comes into way of human rights and violate the rights of the people. The practice causes severe pain to the male child who is going to be circumscribed, and interestingly, what things disturb the most is that the consent of the child does not matter.

Article 15 of Universal Declaration of Human Right clearly state that no person shall be subject to any form of cruelty without his or her free consent to medical or scientific experimentation. Though if it is seen from a legal perspective, then it is contented that every parent has a right to bring up the child the way they want to, but this is very vague. As whatever parents think that this will be in the best interests of their child interests can-not always happen. As parents are not always right and they do not have any absolute authority over their child.

12. Is Circumcision as a Traditional Religious Practice, Valid and Justified?

The practice of circumcision marks the beginning of a person of his entering into adulthood. The main reasons which are linked with it following up are the religious reasons. The Constitution of India has recognized the freedom of religion under Article 25, and it deals with freedom of conscience and free profession, practice and propagation of religion. Article 26 of Constitution of India especially deals with freedom to manage religious affairs. It is well established fact that Article 26 of Indian constitution includes various things in its ambit of term “religion”. The term religion includes all practices, rights that are prevalent in a community.

The main reason which Muslim men give to practice circumcision is that it is because of cleanliness that they do this practice. But the question lies here that is purity so important that we harm a person at its stake? Though if we see historically, circumcision which is a religious ritual is considered of great value. But that does not mean that we can't go beyond customs and traditions. Still today, circumcision is concerned only with state of purity and holiness. But we should come forward now to be driven apart from old visions of purity.

Every individual has a right to live his life with utmost satisfaction, and the right is not restricted in any sense. In fact, the right extends its spheres to a number of fields. Every country has its own traditional practices. The practice ranges from decent ones to immoral and wicked ones. There are some old practices which are prevalent till date which are inconsistent but are still followed, and there are some practices which are not

inconsistent. The pain and agony which a person has to suffer can't be comprehend even by any person. Often, it is seen that those religion who favour this practice and follow this practice, is mainly because of social snubbing and eviction from the community. And that's the main fear of the parents who want to get their child circumscribed.

The function of law is to ban such traditional practices which are inconsistent. As the harm associated with the practice of circumcision is clearly evident then the need is to protect the people who have been trapped in such traditional practices.

13. Suggestions: The Way Forward

Our system has various loopholes when it comes to protection of any person interests. Often it is seen that the tradition and religious customs over-ride the person's interests. So, what is seen is that people surrender their rights when it comes to their religion. They don't care about their rights and follow their religion blindly. So, the need of the hour is to call for complete abolition of the practice concerned. And apart from this, there is need of awareness also. There is need of some initiative which can aware people about the importance of life than to take into consideration the religious reasons of circumcision. So, the need is to impose complete ban on this inhumane practice of circumcision, and the best way of stopping this barbaric practice is by making it an offence and strict punishment should be imposed on those who profess such practice. Now, the time has arisen to take into consideration the child's right and interests as top most priority. The need is to pass such a law which declare such practice as a criminal offence whoever commits such barbaric activity to any children.

The best way of dealing with circumcision issue is to declare it a criminal offence, and the next step which must be taken by government is to make strict laws for declaring this practice as illegal and unconstitutional. The government must issue strict guidelines regarding the practice. There is a need to consider the consent factor. It should be a person's personal choice whether he wants to be circumscribed or not. The decision to be circumscribed should be absolute decision of the person who is to be circumscribed, not the decision of parents. The concern is about the bodily pain, inhumane behaviour and torture which a concerned person has to face. As the practice is inumbrated in childhood, it affects a lot as it intrudes the right of privacy of the child.

Some countries and religion are too fighting with this such barbaric practice. These countries struggle because there is no proper implementation of such a law. The best way, is to change the outlook of people, need is to

reduce the occurrence of this practice. Another way of dealing with this practice, is that the age of getting circumscribed should be increased to that one when a person has enough ability of maturity and understanding. When one person is enough capable to give his valid consent and acceptance of getting circumscribed, only then the ritual should be done on that person. So, the best way is to get the permission from the person who is to be circumscribed and to wait for such age when the person is mature enough to understand the consequences of such act.

Criminalization is the only ray of hope which can be seen now. By criminalizing this practice, we can save many people. Circumcision is a dehumanizing violent act which is being practiced because it is deep rooted in our traditions. The necessity is of a proper implementation. The need of the hour is to focus on some initiative with which the practice can be eradicated. Those people who are in reign of terror due to this practice should also come forward. People should come forward and should not further tolerate this cruel practice.

13.1. Considerations for Banning Circumcision

Since this tradition is followed from quite a long time, but still now there is no religion which could prove its validity or its reference in any of the religious writings or any type of religious texts. Since, there are various countries who had taken an initiative in completely banning this barbaric practice but there are some countries like India and France who did not have banned it till now, and despite of banning it, they even had not taken any step for formulating any legislation to deal with the issue. The main issue which is seen in those countries which are supporter of this barbaric practice are themselves not in favour of this practice. They too are not in favour of getting circumscribed. The issue therefore is that people don't dare to speak. As the main problem which emerges in countries like India is the problem of custom. People just follow the custom for the sake of society. They don't even dare to question the authority of custom even if it is brutal one. So, the best way is by banning it. The government should take a serious note of this issue and should come forward to make some effective steps to deal with this issue.

It is pertinent to mention that Human rights are applicable universally. There is a huge debate going on these days regarding whether local customs can be challenged or not? India is famous for tolerance of traditional cultural practices. It is submitted that if there is any conflicting custom and tradition, then it can be challenged. It is not erroneous to mention that India gives so much preference to cultural practices even though they affect human rights. Because we live in a society that will not tolerate anything pity but it will tolerate all bad

practices associated with any cultural tradition. Now, comes the need of Law, because only law and law makers can eradicate this bad practice.

13.2. Criminalization of Infant Circumcision

The practice of circumcision is not tolerable when it comes to infant. Because the child is the most vulnerable person. The way forward to deal with cruel practice of circumcision is by criminalizing the practice. As it is the duty of the court to ban such practices if it affects members of the society. The issue mainly lies in case of an infant as he is not mature enough to understand the benefits and risks of the practice. It is pertinent to mention here that USA had even passed a bill on 8th January, 2007. The bill proposes to increase the punishment to fourteen years imprisonment in cases non consenting adults. In fact, it is urged and submitted that there is no organisation which recommend that an infant male circumcision should be done. The time has come to consider the torture and pain which any male has to face, and it's time for them as well to come forward and raise their voice against such inhumane practice.

14. Conclusion

The reasons given for the prevalence of this practice of circumcision is less convincing and it is clearly evident from the practice that it is deep rooted in its tradition. As nothing worth to be considered has come to outweigh that practice should be continued, it's an urgent need of the hour to deal with this issue. As most people allow their children for only sake that it is the tradition, and they have to act according to it. Be it any reason, hygiene, tradition, or anything, the pain which is suffered by a person can't be compensated by anything. So, considering all the facts, effects, consequences and harmful effects of the practice, this barbaric practice should be declared banned in light of the pain which the concerned person has to face in long run also. So, putting forward the author will conclude it as though the practice may be advantageous only to some health point but still there are many disadvantages of it more than the benefits.