Recent Developments

In this new section, we present selected recent developments in the law that impact women traditionally underrepresented in legal scholarship—namely, women of color, poor women, lesbians, and disabled women. By providing brief discussions of cases and legislation, we hope to provoke future scholarship in these areas.

Federal Prohibition of Female Genital Mutilation: The Female Genital Mutilation Act of 1993, H.R. 3247

In October 1993, Congresswoman Patricia Schroeder (D-Colo.) introduced a bill banning female genital mutilation (FGM) in the United States. As the number of African immigrants from nations where FGM is practiced increase, the United States has joined other nations in addressing the issue of banning FGM. Presently, several African communities, including Cameroon, Djibouti, Egypt, Ghana, and the Sudan, have legislation outlawing FGM. Other countries are either applying existing laws to criminalize the practice or have passed laws specifically banning FGM.3

I. THE ACT

(a) IN GENERAL.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following new section:
“§ 116. Female genital mutilation
“(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not...
attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) A surgical operation is not a violation of this section if the operation is—

"(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

"(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

"(c) In applying subsection (b) (1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual.

"(d) Whoever knowingly denies to any person medical care or services or otherwise discriminates against any person in the provision of medical care or services, because—

"(1) that person has undergone female circumcision, excision, or infibulation; or

"(2) that person has requested that female circumcision, excision, or infibulation be performed on any person; shall be fined under this title or imprisoned not more than one year, or both."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

"116. Female genital mutilation. . ."4

II. WHAT IS FEMALE GENITAL MUTILATION?

The bill addresses several types of genital operations. The mildest form is clitoridectomy where the tip of the clitoris is removed. Excision is where the entire clitoris and the labia minora (small lips of the vagina) are removed but the labia majora (large lips of the vagina) is left intact and the rest of the vulva is not stitched. In infibulation, the clitoris and the labia minora are removed and the sides of the labia majora are sewn together.5

FGM is often called female circumcision. This mistakenly implies that it is equivalent to male circumcision. FGM, however, is far more extensive

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and "the male equivalent to FGM would be the cutting and/or amputation of the penis and its surrounding tissues." In African nations, the operation is usually conducted without anesthesia and under unsanitary conditions. Some instruments that can be used in the procedure include razor blades, iron knives, pieces of cut glass, and other similar homemade tools.

The age of women at which FGM is performed varies from culture to culture. In some African cultures, FGM is practiced on infant girls while in other cultures FGM is practiced on girls of marriageable age—approximately 14 to 16 years old. The U.S. bill would ban FGM on women 18 years and under.

III. ISSUES

The proposed bill raises two major questions. First, it is not clear whether the bill would actually be effective in deterring the practice of FGM despite the fact that it contains education and outreach programs. These programs inform communities about the health risks and possible emotional trauma involved.

Second, it is unclear whether the United States should prohibit a ritual practiced by cultural minorities within its borders. Certainly, many arguments seem to justify this ban. FGM is not only medically harmful for women but is deemed by many to be a human rights violation and an attempt to control female sexuality.

On the other hand, the United States would punish African immigrants for engaging in a practice that is part of their heritage and culture. The question arises whether Congress is justified in prohibiting people from engaging in practices that are part of their cultural beliefs, even if basic human rights are involved. Also, while feminists contend that they oppose FGM in the name of women’s health and human rights, they run the risk of imposing their ethnocentric beliefs on women of color from other cultures.

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6 Female Genital Mutilation Fact Sheet, Office of Congresswoman Patricia Schroeder (D-Colo.) (hereinafter FGM Fact Sheet).
7 Note, supra note 5, at 1947.
8 Id.
9 FGM Fact Sheet, supra note 6.
11 In Nigeria, for example, older generations believe that young girls must go through this ritual in order to belong to their community. Females often feel ostracized and bring shame and humiliation to their families if they have not gone through the ritual of FGM. According to one legend, if a baby does come into contact with the clitoris of his or her mother during child birth, the child will die. A similar belief is that if the baby’s head does come into contact with the clitoris, the child will experience spiritual injury. Note, supra note 5, at 1949-52.