

### **MOOT PROPOSITION**

1. Sendia is the largest democracy in the world with a population of over 125 crores. Located in the Asian sub-continent, it gained independence from Camaelot in 1940. It is a sovereign republic governed under a Parliamentary system of government and consists of 38 provinces and 6 Union Territories. Today, it is considered as one of the most powerful economy and has been a Member of the United Nations since its inception.
2. The country has always been socialist and secular in its outlook with special features and safeguard for religious and linguistic minorities. Constitution of Sendia provides for several Fundamental Rights to its citizens with special focus on women and children. It is also a signatory/member of several International Declarations and Conventions like UDHR, ICCPR, ICESCR, CEDAW, UN Convention on Rights of Child, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005.
3. Safdar and Sakina Bharucha is a happily married couple, living in Kujaral State of Sendia. They both belong to *WaheeGohra* community, which is a peace loving community. The community is a religious minority in Sendia, and lives in several Asian countries and has a worldwide population of more than ten million. Both men and women in the community are highly educated. The community's culture is outward-looking and progressive in matters pertaining to equality.
4. On 10<sup>th</sup> April 2012, Sakina gave birth to a baby girl. The couple named the girl, Nysa. This year, when the baby Nysa turned 6, her grandparents suggested that her external genitalia be removed. This was suggested following their religious custom in the community called as *Female Genital Mutilation* or *Female Circumcision* or *Khafz*- a deeply entrenched social and cultural practice in which external genitalia of the female is deliberately cut, injured or changed with blades or knives and removed. The ritual is

mostly performed on young girls between infancy and the age of 15 by untrained midwives or older women or sometimes by older men of the community. The process is not life threatening but leaves a permanent physical, emotional and mental scarring on the girl.

5. Sakina raised protest against the family, but they continued to insist that it is a joyous occasion to perform this ritual and if they don't perform it, she might have a difficult time finding a marriage partner. Being from the same community, she recalled how she was forced to female circumcision when she was just 7 years old. She still suffers from nightmares about that horrifying incident. She did not want her daughter to go through the same throughout her childhood. She talked about this to her husband, Safdar. Safdar sided with his parents and emphasized on the need to follow the religious custom.
6. Remembering her ordeal and to save her daughter from female circumcision, she decided to leave her matrimonial home and move to the National Capital - Indrasthan. She met her college friend there who suggested her to take this issue to the media. Taking note of her friend's advice, she contacted *Kahaani News*, which is a National level news channel. The channel decided to telecast an hour long interview to show the ordeal faced by the women of this community.
7. In the live telecasted interview, Sakina narrated the horrendous incident of female circumcision that happened with her during her childhood without her consent and without too much thought. She informed that she had to leave her matrimonial home to save her daughter from going through this cruel practice. She even made an appeal to all the women of *WaheeGohra* community to wake up and save their daughters from this barbaric practice.
8. This interview goes viral and became a worldwide hit. The women of *WaheeGohra* community started protesting against the practice of female circumcision in and out of the country. Facing repressive measures of the Government, thousands of women from

nearby countries like Seylon, Khatar, Tunistan, Manglades, etc. started fleeing their countries and moved to Sendia for a refuge.

9. This prompted a strong response from many women and child rights activists in Sendia. They urged that efforts should be made to prosecute those individuals who perform this practice and demanded that Central Government should take necessary steps to ban this regressive practice by making a law on it. They also contended that female circumcision is the most inhumane practice and the abuse leaves women physically, psychologically and sexually devastated. It may even lead to certain problems in giving birth to a child, sometimes even causing the death of the woman. However, since elections were near the corner, the Government decided to remain silent over their demands of a law.
10. Seeing widespread protest against their religious practice of Khafz, the religious leaders of *WaheeGohra* community came forward and opposed the idea of banning it. They contended that practicing female circumcision is an essential and integral part of their religion and it is protected under right to practice and propagate religion in the Constitution of Sendia. They further contended that it is their age old religious custom being performed continuously since 10<sup>th</sup> century. They also asserted that it is a voluntary practice and banning it would be denial of freedom to practice one's own religion.
11. Meanwhile, Sakina filed a PIL before Supreme Court of Sendia against the practice of Female Genital Mutilation prevalent in *WaheeGohra* Community and prayed for declaring it unconstitutional and illegal, and further contended that it is an offence punishable under various penal laws of Sendia. Many other women and child rights activist and NGOs also filed a similar PIL before the Supreme Court, praying that the practice be declared unconstitutional and all the women who were subjected to such inhumane practice be given the status of "Persons with Disability" under the newly enacted disability laws of Sendia and be given compensation. The religious leaders of

*WaheeGohra* Community also moved to Supreme Court opposing all the petitions and praying that their age-old religious practice be saved.

12. All the petitions were clubbed together with Sakina's petition. The teams are required to prepare and argue on the following issues:

- a. Whether the practice of Female Genital Mutilation in *WaheeGohra* Community is violative of Fundamental Rights guaranteed under the Constitution of Sendia ?
- b. Whether the practice of Female Genital Mutilation is an offence punishable under the various Penal Laws of Sendia ?
- c. Whether the victims of Female Genital Mutilation can be given the status of "Persons with Disability" under the newly enacted Rights of Persons with Disability Act, 2017 of Sendia and are entitled to be compensated ?

The students are at liberty to add any other issues too.

**Note:-**

- (i) All laws in force in the Republic of Sendia are *parimateria* with the Republic of India.
- (ii) Participants can also rely on arguments composed from the Common Law principles from other Common Law jurisdictions.

**Disclaimer: All names, characters, places, and any other material used in the above proposition are fictitious. It neither hurts, nor intends to hurt any religious sentiments, or feelings of any community, caste, or person.**