

Michigan FGM case could test bounds of religious liberty

## **Six people face charges for a procedure a clinic performed on Muslim girls.**

by [Trevor Bach](#) in the [August 30, 2017](#) issue

([The Christian Science Monitor](#)) This fall, a United States district judge will hear a landmark case: for the first time, the federal government is pursuing a case of female genital mutilation on American soil.

Defense lawyers have said their argument will be based on freedom of religion, setting the stage for an explosive test of religious rights that experts say could ultimately be settled by the Supreme Court.

The case began with charges related to two seven-year-old girls who were transported to Livonia, Michigan, by their parents to have FGM performed on them, according to the government. The clinic where the procedures were performed has been closed. The reach of the investigation has since expanded to other cities, including Los Angeles and Minneapolis. Assistant U.S. attorney Sara Woodward has said in court it's possible the doctor performed nearly 100 procedures between 2005 and 2017.

"Most religious freedoms don't really affect other people," said Frank Ravitch, an expert on law and religion who teaches at Michigan State University's law school. "There are exceptions, but not in this direct a way, where we have these young girls who are having their bodies affected. It raises some really powerful questions."

In the Michigan case, the courts will weigh a religious minority's rights against the federal government's interest in protecting children. Experts agree that if the government proves the procedure caused substantial harm to the girls, then convictions are virtually guaranteed.

"Religious freedom does not include the freedom to do things that we all consider harmful to children," said Robert Sedler, a constitutional law professor at Wayne State University in Detroit.



FGM is an umbrella term for a variety of cutting procedures intended to curb a girl's future sexuality. The practice is typically performed for religious or cultural beliefs, most commonly in parts of Africa and the Middle East. The extent varies greatly, but any form of FGM, the World Health Organization contends, amounts to a human rights violation. The United States has explicitly banned FGM since 1995.

Six people face charges: Jumana Nagarwala, the doctor who performed the procedure; Fakhruddin Attar, the owner of the clinic; his wife, Farida, who prosecutors allege assisted with the procedure; another assistant, Tahera Shafiq; and Farida Arif and Fatema Dahodwala, the mothers of two Detroit-area girls who prosecutors allege were victims. The accused and the alleged victims are all members of the Dawoodi Bohras, a sect of Shi'ite Islam concentrated in western India.

Among the Bohras, an ethnic Gujarati community of some 1.2 million, the cutting is known as *khatna* and has been practiced for centuries. After a Bohra girl turns seven, she's typically taken by her family to see an adult woman who has been appointed by religious clergy and is often a licensed medical practitioner. Beforehand, the girl is typically told she's going for a fun outing, like a movie or a party; afterward, she's told that what happened must be kept secret.

"It's based on deceit—you're never told the truth about what is going to happen to you," said Masooma Ranalvi, a Bohra woman who is an anti-FGM activist.

According to Ranalvi about 80 percent of Bohras still practice *khatna*, although recently the community has become sharply divided over the custom. In 2015, an Australian court found three Bohras, including one religious leader, guilty of cutting two girls; the same year, Ranalvi and other Bohra women started a campaign to end the practice. The campaign helped push the matter in the Indian legal system, where the Supreme Court is expected to take it up later this year.

After the Australian ruling, Bohra clergy circulated an edict that followers around the world should comply with local laws. But the Bohras' highest authority has urged followers to continue the practice.

A key argument for the defense is that the procedure that was done at the clinic was minor—a nick or scraping rather than an actual cutting.



“We know there is female genital mutilation,” Mary Chartier, a lawyer for Fakhruddin Attar, told the *Detroit Free Press* in May. “No one is saying it doesn’t exist. But what we’re saying is this procedure does not qualify as FGM.”

Chartier and Shannon Smith, Nagarwala’s attorney, did not respond to requests for interviews. An attorney for Farida Attar, Matt Newburg, declined to comment. The trial is set for October.

Ravitch said the case raises legal questions about the extent of parents’ control, based on religious motivations, over their children’s health. In other cases involving children and religious rights, he said, “a line has been drawn” establishing that parents’ religious rights may justify a defense against a minor harm to a child, but not when the child suffers significant bodily harm or death. The FGM accusations are different, though, because the adults are accused of perpetrating an injury rather than failing to give proper care.

“The religious defense is really unique in this context,” Ravitch said. “It was commission versus omission.”

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