

The United States - U.S. v. Nagarwala (2018)

Misjudged: Jurisdictional difficulties and constitutional confusion

FGM is a global human rights abuse that transcends borders, cultures, religions, and socioeconomic status, but is often presented solely as an “African problem.” This case study on U.S. v. Nagarwala and its aftermath aims to challenge unhelpful and reductionist stereotypes about FGM head-on by highlighting a case in which the litigants were US citizens and the offences took place on US soil.

Case origins

In 2017, a US-licensed doctor, Jumana Nagarwala, was charged with performing FGM on nine girls, aged six and eight years old, at a clinic in Detroit, Michigan. Under the federal Female Genital Mutilation Act of 1996, it was a felony in the United States to perform FGM on anyone under the age of 18, punishable by a maximum sentence of five years in prison.¹ At that time, the State of Michigan did not have state-level legislation against FGM, and it was thought that some of the girls were brought into Michigan from elsewhere in the US because of this. This was the first case tried under the federal anti-FGM law, despite the law being in place for over 20 years, and the first case in any US court that was brought against a medical professional for performing FGM.

The wider context

In 2016, the US Centers for Disease Control (CDC) estimated (based on 2012 data) that 513,000 women and girls in the US had undergone or were at risk of FGM, a figure three times higher than earlier estimates and likely still a significant underestimate of the true extent and prevalence of the problem of FGM in the US.² Additionally, a 2023 study found that an estimated 577,000 women and girls were potentially impacted by FGM in 2019.³ This figure is reduced to 421,000 if the estimate considers the impact of migration on the practice.

As part of its global strategy to tackle FGM, Equality Now was already active in the US before its involvement in the Nagarwala case, working to bring attention to the fact that women and girls were facing human rights abuses associated with FGM in the US. By working in the US and other countries, Equality Now aimed to galvanise governments and activists worldwide to work together to tackle FGM wherever it is practised.

In 2014, Equality Now worked with Jaha Dukureh, a survivor of FGM and a US-based anti-FGM activist, to support her efforts to launch a petition asking then-President Obama to commission a report on the current statistics of women

1 *Female Genital Mutilation Act of 1996*. <https://www.congress.gov/bill/104th-congress/house-bill/941>

2 Goldberg et. al., *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk*, 2012, 131(2) *Public Health Reports* 340 (2016), Available at: <https://www.ncbi.nlm.nih.gov/pubmed/26957669>

3 Sean Callaghan, *Female Genital Mutilation/Cutting (FGM/C) in the United States: A study of the prevalence, distribution, and impact of FGM/C in the U.S., 2015-2019* (2023), <https://doi.org/10.31219/osf.io/7a9c3>.

and girls in the US impacted by or at risk of FGM.⁴ The petition gathered over 200,000 signatures and was received by the White House, opening a dialogue between Jaha and her organisation, Safe Hands for Girls, Equality Now, and other anti-FGM activists, Congress, and the Departments of Justice, Education, and Health and Human Services through the creation of an interagency task force.

Two significant advancements in the fight against FGM occurred during this period. First, the Obama administration advocated for the inclusion of a global target to eliminate FGM in the UN Sustainable Development Goals, which was adopted (See SDG 5.3). Second, Equality Now, Safe Hands for Girls, the United States Institute of Peace, and the newly formed US End FGM/C Network, hosted the first-ever End Violence Against Girls: Summit on FGM/C in the US, which further spurred a global dialogue around ending the practice by 2030.⁵

Technical support

Due to Equality Now's prior work on FGM in the US, when the Department of Justice brought charges in the Nagarwala case, it was well-positioned to take action. Equality Now recognised that there would likely be significant gaps in knowledge about FGM, so it sought and was granted permission to intervene in the case and submit an amicus brief to inform the Court's analysis. The amicus was developed and submitted in partnership with three NGOs: Sahiyo, WeSpeakOut, and Safe Hands for Girls. Equality Now engaged global law firm Three Crowns to provide pro bono technical support on the US process, as well as a law firm in the UK to provide specialist support on international law and FGM/C. The participation of Sahiyo and WeSpeakOut was especially important as survivor-led organisations which focus specifically on ending the practice amongst the Dawoodi Bohra community, the community to which both the survivors and the defendants in this case belonged. The AHA Foundation, a not-for-profit organisation based in the US, also separately filed an amicus brief in this case to support the US government.

The amicus brief positioned FGM as a form of gender-based violence, child abuse, a global problem as well as a domestic one within the US, and as an illegal act that relies upon interstate commerce. It highlighted the US's responsibilities under international human rights law, particularly its obligations under the International Covenant on Civil and Political Rights, to protect its citizens from FGM. The brief also underscored the severity of the human rights violations suffered by those subjected to FGM in the US by centring survivor voices.

"We told stories of survivors who were speaking out, sharing their stories. We talked about how it really...does affect interstate commerce... And the biggest piece was that this was a requirement under our US treaty law that we had signed and ratified (one of the very few international treaties that we have ratified) the ICCPR, and saying, yes, this applies here." - **Shelby Quast, Lawyer and former Equality Now staff member**

4 [Change.org, End Female Genital Mutilation in the US: Commission a Prevalence Report on Women Impacted and Girls at Risk](https://www.change.org/p/end-fgm-now-protect-girls-from-getting-cut-and-support-victims-of-female-genital-mutilation-in-the-usa), <https://www.change.org/p/end-fgm-now-protect-girls-from-getting-cut-and-support-victims-of-female-genital-mutilation-in-the-usa>

5 Equality Now, Safe Hands for Girls, The United States Institute of Peace, US End FGM/C, 2016 Violence Against Girls: Summit on FGM/C Report, <https://equalitynow.org/resource/2016-violence-against-girls-summit-on-fgm-c-report/>

Jurisdictional concerns

Despite Equality Now's intervention, *U.S. v. Nagarwala* was never tried on the merits. In November 2018, district court Judge Bernard A. Friedman dismissed six of the eight charges on the grounds that the Female Genital Mutilation Act of 1996 was unconstitutional because of a technicality: Congress did not enact the law under any enumerated constitutional power.⁶ Although Judge Friedman described the practice of FGM as “despicable,” he emphasised that the issue should be “prosecuted under state law”.

Disappointingly, the Department of Justice (DoJ), then under the 2020 President Trump administration, after initially appealing the decision, made a sharp turn and decided to withdraw the appeal, instead concurring with Judge Friedman's ruling that federal prosecution of FGM under the Female Genital Mutilation Act, 1996, was unconstitutional. This decision meant that the DoJ had to write to Congress informing them of concerns and leaving it with Congress to either defend or address the perceived flaws in how the Female Genital Mutilation Act 1996 was passed.⁷ Though the US House of Representatives tried to intervene in the appeal, the Sixth Circuit Court of Appeals granted the DoJ's motion to withdraw the appeal, meaning that the District Court's judgment avoided appellate review.⁸

“So it wasn't a favourable judgement. It did not land the way that we hoped it would. But it was also decided on technical terms. It had nothing to do with the merits of the case. It didn't have anything to do with whether or not FGM/C was good or bad. The judge called it an abhorrent practice. But it was [decided] before all of that got into play...” - **Shelby Quast, Lawyer and former Equality Now staff member**

The aftermath - The negative

Although *U.S. v. Nagarwala* was dismissed on a constitutional technicality, rather than on the merits of the case, it was positioned as a win by the Dawoodi Bohra community and other supporters of FGM and was therefore damaging to the anti-FGM movement in the US. There were attempts to use the ruling to strengthen the idea that FGM is a religious and cultural practice and that those advocating for its elimination are motivated by anti-muslim sentiments. The outcome of the case was also very damaging to the girls involved in the case and to other survivors of FGM across the US, who received the message that the human rights violations committed against them were not crimes in the eyes of the court.

6 *United States v. Nagarwala*, 350 F.Supp.3d 613 (E.D. Mich. 2018). Judgment available here: <https://www.state.gov/wp-content/uploads/2020/09/14.-DOJ-letter-to-Congress-regarding-Nagarwala-and-amendments-to-statute-criminalizing-FGM.pdf>.

7 See Department of Justice Letter to Congress *Re United States v. Jumana Nagarwala et al.*, No. 17-cr-20274 (E.D. Mich. Nov. 20, 2018), 10 April 2019, <https://www.state.gov/wp-content/uploads/2020/09/14.-DOJ-letter-to-Congress-regarding-Nagarwala-and-amendments-to-statute-criminalizing-FGM.pdf>

8 Daniel Rice, *Female Genital Mutilation and The Treaty Power: What Can Congress Do?*, Just Security, 29 October 2019, <https://www.justsecurity.org/66757/female-genital-mutilation-and-the-treaty-power-what-congress-can-do/>

“When the initial ruling came out that the law was unconstitutional...it almost gave permission to be able to say, we can and we should do it, it’s okay. So there was this misinterpretation.” - **Mariya Taher, co-founder and US Executive Director, Sahiyo**

The dismissal of the case also coincided with a change in government. One of the regrettable shifts that occurred as a consequence of this was the co-opting of anti-FGM sentiments into debates around immigration in the US, reframing the issue away from human rights and into a toxic anti-immigration space. FGM was weaponised to attack immigrant communities, and the suffering that survivors of FGM faced was recognised only to denigrate immigrants, if it was recognised at all. However, there was also a lot of pushback from the US Congress, media and CSOs who continued to highlight the need for intersectional, anti-racist approaches towards implementing the anti-FGM law.⁹

“One thing that came out of the survivor listening sessions [that The US Network organized] is this case was specifically mentioned, with survivors mentioning witnessing the case and feeling discouraged and hopeless about the criminal justice system as FGM/C survivors, and saying, well, I’m not going to bother reporting my FGM/C to law enforcement because it is not going to do anything.” - **Caitlin LeMay, Executive Director, The U.S. End FGM/C Network**

The aftermath - The positive

When *US v. Nagarwala* was heard, only 21 of the 50 states in the US had state-level legislation that protected girls and women against FGM (to varying degrees). One of the immediate effects of both the case and the ruling was a push by many states to rectify this. Today, a total of 41 US states and the District of Columbia have laws against FGM.¹⁰ State-level laws against FGM are crucial because they govern the activities of state-run institutions such as law enforcement, courts, healthcare, and social services, creating many more opportunities to reach at-risk girls and to provide protection and support before harm is caused. State laws vary greatly in their ability to adequately protect those at risk and provide comprehensive services to survivors. In some cases, existing state laws use harmful language that targets and stigmatises vulnerable communities. However, the shift towards increased coverage of state-level protection after *U.S. v. Nagarwala* remains a valuable and important outcome of this case.

Publicity around the case also helped to highlight the fact that FGM is a global problem and that it happens in the US. This meant that the US Government had to acknowledge the issue of FGM within its borders publicly. With the new federal law, the STOP FGM Act of 2020, passed to amend the 1996 law, the government is now required to track and report to Congress on efforts to address FGM in the US.

⁹ See Sahiyo, *Examining Intersections between Female Genital Mutilation/Cutting and Social Oppressions: A Mixed Methods Study* (2024) https://sahiyo.org/wp-content/uploads/2025/09/Mixed_Methods_Study.pdf

¹⁰ Equality Now and The U.S. End FGM/C Network, *US Laws Against FGM: State by State Map*, <https://equalitynow.org/us-laws-against-fgm-state-by-state-map/>

Additional outcomes resulting from the case and the newly elevated advocacy platforms include increased government funding to eliminate FGM and services for survivors, and better data on those affected by FGM. FGM is officially recognised as a form of violence against women and girls in the US Violence Against Women Act (VAWA), with VAWA-funded services and legal aid and explicitly including FGM.

“It really challenged a lot of misconceptions around FGM/C in the US. It showed that FGM/C is happening here, that it is not just happening in immigrant communities. It showed that it’s happening in healthcare clinics. It was really helpful at breaking through that stigma, particularly for the survivors in these practising communities to be able to come forward. And there have been incredible survivors who have come forward and have shared their stories that have challenged some of these stereotypes.” - **Caitlin LeMay, Executive Director, The U.S. End FGM/C Network**

Equality Now’s involvement in the case, along with other CSOs, such as Sahiyo and the US End FGM/C Network, meant it was able to work with officials at the federal and state levels to increase their understanding of FGM as a form of gender-based violence and a human rights abuse, helping to strengthen individual, federal, and state-level responses to FGM.

The case also challenged stereotypical beliefs about who practices and who is at risk of FGM. The facilitators and practitioners of FGM charged in U.S. v. Nagarwala included doctors and other highly educated people from the Dawoodi Bohra community. Such a high-profile case illustrated the diversity of those who practice and are at risk of FGM and helped to reposition FGM in the minds of legislators and the general public alike as something that happens across a range of cultures, communities, and socioeconomic groups.

“It just elevated the conversation in a way that it was secret before or more hush hush, and it allowed individuals, so many survivors started speaking up...You started seeing it in the media...more articles about it, more TV shows that have a storyline related to it...It helped with breaking the silence for many different levels of breaking the silence.” - **Mariya Taher, co-founder and US Executive Director, Sahiyo**

The situation now

The remarkable effort of the US House of Representatives, which filed a motion to intervene in the appeal, demonstrated the strong will of the US Congress to defend the federal anti-FGM law, which it had passed over 20 years ago. The House argued before the Sixth Circuit Court of Appeals that it should be able to advocate for the constitutionality of its own statute.¹¹ Although the appeal was dropped due to the withdrawal by the DoJ, in response, the federal STOP FGM Act of 2020 was signed into law the following year. The amended law reenacts the majority of the previous law, while clarifying Congressional authority under the US Constitution to pass the law. Specifically, it clarifies that only acts of FGM related to interstate or foreign commerce are covered under the federal legislation, effectively prohibiting all FGM occurring on US soil. It also increases the maximum prison sentence for performing FGM/C from five to ten years. It requires government agencies to track and report to Congress on the estimated numbers of women and girls at risk of harm from FGM. As such, girls in the US are now protected by a federal law against FGM, and state-level anti-FGM laws also protect girls (and some women in a handful of states) in 41 US states.

“Some of the biggest takeaways are just how big and multisectoral the strategy should be, and that the litigation is just a piece of a much bigger picture if you really want to have impact...you don’t have to win to be strategic...even if the decision is not favourable, oftentimes it moves the ball forward in positive ways...I can’t tell you the number of people who now know what FGM is, across Government agencies, Congress, human rights organisations, and the public, they see it as something real and happening in the US.” - Shelby Quast, Lawyer and former Equality Now staff member

¹¹ <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2019/04/Nagarwala-Motion-to-Intervene.pdf>



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Read the full report, “Towards justice: Global challenges and opportunities in litigating cases of female genital mutilation”

