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High Court rules female genital mutilation illegal in all forms, NSW court erred in quashing convictions

Three people charged with female genital mutilation offences against two primary school-aged sisters could face further punishment after the High Court ruled the New South Wales Court of Criminal Appeal erred in quashing their convictions.

Warning: This story contains graphic details that may confront some readers.

By Elizabeth Byrne

ABC News (16.10.2019) - <https://ab.co/2VMHfCF> - In 2015, the girls' mother and a former nurse Kubra Magennis were found guilty of two counts each of breaching the ban on female genital mutilation in NSW.

Dawoodi Bohra community leader Shabbir Mohammedbhai Vaziri was convicted of being an accessory.

All were sentenced to 15 months in jail but, while the women were allowed to spend the sentence out of custody, Mr Vaziri was jailed.

It was Australia's first female genital mutilation prosecution.

But the charges were quashed by the NSW Court of Criminal Appeal last year, after the trio argued the ceremony was only ritualistic and new evidence showed there was no visible physical damage to either girl.

Today, in a divided ruling, the High Court found the law did cover the circumstances in the case and that it was meant to criminalise the practice in its various forms.

'Skin only sniffs the steel' in ceremony

The religious ceremony of Khatna is said to involve a girl's clitoris being nicked or cut in the presence of elders.

The girls were believed to be aged six or seven when the ceremony was carried out at their homes, one in Wollongong and the other in Sydney, between 2009 and 2012.

At the original trial the eldest child had given evidence describing Khatna, saying "they give a little cut ... in your private part" using a tool similar to a pair of scissors.

However, Ms Magennis said the ceremony had used forceps, not a blade, and the "symbolic" form of Khatna involved a "ceremony of touching the edge of the genital area ... allowing the skin to sniff the steel".

After the trio were convicted, a medical examination showed the tip of the clitoral head was visible in both girls, allowing them to argue successfully that the genitals were not mutilated.

The convictions were set aside but prosecutors sought an appeal to Australia's top court, arguing the actions of the three had still breached the NSW law.

Today the majority of the High Court bench found in the NSW prosecution's favour, deeming the trio's actions illegal.

Retrial may cause girls psychological harm: Chief Justice

The case has been referred back to the NSW Court of Criminal Appeal for further consideration about whether the jury's verdict was unreasonable.

In a joint judgement with Justice Patrick Keane, Chief Justice Susan Kiefel said normally a new trial would be ordered, but in this case that may not be appropriate.

"[The victims] C1 and C2 were children when they were interviewed by police and when they gave evidence at a trial which took place in 2015," she said.

"The trial judge, in considering whether C1 and C2 were compellable to give evidence against their mother, accepted that there was a likelihood that psychological harm might be caused to them.

"There could be little doubt that a second trial would compound that distress."

Justices Virginia Bell and Stephen Gageler differed from the rest of the court taking a narrower view of the offence and argued that the Court of Criminal Appeal made the correct decision.

"The Court of Appeal was right to hold that superficial tissue damage, which leaves not physical scarring and which on medical examination is not shown to have caused any damage to the skin or nerve tissue, is not in law capable of amounting to mutilation," they said.

The case has been listed for a call over in the NSW Court of Criminal Appeal next week.

Hospital hierarchies are fostering sexual harassment against young doctors

In a stressful workplace where life-and-death decisions are taken, blatant sexual offensiveness can be dismissed as letting off steam

By Louise Stone, Christine Phillips and Kirsty Douglas

The Guardian (10.09.2019) - <https://bit.ly/2IEN5YR> - As issues of sexual harassment and toxic workplace cultures are gaining more coverage in the media, it has surprised people to read such accounts by doctors and surgeons.

People may wonder if these accounts could possibly be true, and if so, why highly trained professionals put up with being demeaned and sexualised at work.

We are three doctors who have studied the phenomenon of sexual harassment and abuse of doctors and medical students, by doctors. As clinicians we have worked with survivors of sexual abuse by fellow medical professionals.

The experience of being demeaned and sexually harassed while performing their work is commonplace for female health professionals. Internationally, 59% of medical trainees experience bullying and harassment, with 33% experiencing sexual harassment. In a large survey by the Royal Australasian College of Surgeons, 30% of female surgeons reported experiencing sexual harassment, in most cases by a male surgical consultant. Junior doctors are over-represented among recipients of sexual harassment.

Surgery is a discipline which requires intensive training, feats of physical endurance and rapid and complex decision making. Neurosurgery is a particularly high-stakes profession where health and disability rely on millimetres of decision making and skill. In Australia, entry into this elite tribe is through an apprenticeship model that relies on senior staff selecting, training and mentoring junior staff. Training and mentoring can shade into "beneficial mistreatment", the idea that hierarchy, harsh feedback and feats of physical endurance (like brutal hours) will prepare their junior doctors for the difficult life ahead.

Hierarchical hospital cultures which support high-profile specialists make it difficult to protest offensive behaviour, particularly when the progression of one's career relies upon the support of one's supervisor. In a stressful workplace where life-and-death decisions are taken, blatant sexual offensiveness can be dismissed as letting off steam, a professional coping strategy. For juniors that do choose to report there are confusing, unconnected and at times conflicting pathways via their employer, their training bodies and/or the legal systems.

Holding doctors to account for their behaviour has proven extremely difficult. Although some surgeons are remarkably reflective about their humanness and vulnerability, many are not. Senior doctors can see themselves as invulnerable, and recent high-profile cases suggest they are correct. John Kearsley, a senior radiation oncologist convicted of drugging and indecently assaulting his registrar, pleaded guilty to this crime but his sentence was reduced to nine months imprisonment on appeal due to his "outstanding medical work". Chris Xenos, a senior neurosurgeon, was required to pay damages to his registrar when the Victorian civil and administrative tribunal found he sexually harassed her. Despite this, he was promoted to acting head of department and continued to work at Monash Medical Centre because of his "exemplary record as an employee". The complainant, Dr Caroline Tan, has not worked in the public sector again.

Clinicians who call out the behaviours of doctors at the peak of their profession are rarely embraced by their colleagues. Whistleblowers experience personal cost and risk their careers, even if they are senior in the hierarchy. For junior doctors who are victims of toxic behaviours, the risk of losing their careers after reporting harassment and bullying is high. In our research, we also found that doctors are also silenced by long-standing beliefs around professionalism. "Being professional" is equated by their colleagues – and sometimes by themselves – as keeping knowledge of the behaviours within the tight circle of the ward, the operating suite, the emergency room or the clinic.

Those who do report often suffer the indignity or being cast as villains themselves. Despite winning her case, some sectors of the media treated Dr Caroline Tan as the whipping girl for victim feminism. "Clearly, the surgical training system which has served Australians so well must be destroyed to advance the causes of gender feminism," Miranda Devine wrote in the Daily Telegraph. "Just pray you don't get a brain tumour."

If we are to manage the complexity of the dilemma of toxic cultures in our workplaces, we must grapple with some difficult realities. Hierarchical workplaces sometimes exist in places where hierarchy is necessary. There is no time for democracy when surgical dilemmas unfold rapidly in an operating theatre. Sexism and sexist power structures are not unique to surgery. The groundbreaking Operating with Respect program by the Royal Australasian College of Surgeons offers one model for other professions on a coordinated long-term approach to countering entrenched culture, but progress is slow.

These initiatives will not succeed without changes in hospitals. Unsustainable overtime and profoundly unhealthy working hours are encouraged by institutions, not just professions. Exhaustion makes doctors vulnerable, and we cannot expect the junior doctors to manage the complexity of entrenched bullying and harassment alone. Whistleblowers need to be protected, not by written policies, but by enacted processes that prevent harm to them and their families. And finally, we cannot expect our heroes to work in unsustainable jobs with little input from life outside of the artificial glare of the surgical lights. Their patients and colleagues deserve better, and so do they.

Queensland mum convicted over female genital mutilation procedure

By Warren Barnsley

The Sydney Morning Herald (13.02.2019) - <https://goo.gl/VB78Yu> - A Queensland woman has been found guilty of arranging for her two daughters to have their genitals mutilated in Somalia.

The woman, who cannot be named for legal reasons, denied she had taken the girls, then aged 12 and nine, to her birth nation in April 2015 to undergo the procedure.

She was convicted by a Brisbane District Court jury on Wednesday of two counts of removing a child from the state for female genital mutilation (FGM).

The jury deliberated for about 90 minutes before reaching their verdict.

The trial heard the woman, who had undergone a similar procedure as a girl, had her daughters endure FGM a few days after arriving in Somalia.

One of the girls was called inside from playing outside her grandmother's house and had no idea what was about to happen when she had the painful procedure.

She was conscious throughout and it caused pain for days. Her sister was also subjected to the procedure, also with their mother by her side.

"(Their mother) had them in her care for the entire time. She was there when they were mutilated not long after they arrived in Somalia," crown prosecutor Dejana Kovac said.

"She extended the trip to give them time to heal before returning to Australia."

The family returned to their home seven months later. Then the girls' stepsister tipped off child safety services.

The girls told Queensland police about their experiences, leading to the charges against their mother.

Pediatrician Ryan Mills, who examined the girls, told the court the flattening of their clitoral hoods and discolouration of associated skin was "abnormal" and unlikely to be a "natural variation".

"(The abnormalities) could be explained or are consistent with, in medical terms, genital mutilation," he testified.

He said there was no therapeutic reason for the procedure.

Defence barrister Patrick Wilson said key medical evidence could have been interpreted differently by doctors not familiar with the case.

In a police interview, the woman said their trip had been to visit her mother and she'd done "nothing" in relation to a genital mutilation procedure.

Whatever had happened to the girls was "from God", she said.

Asked by Justice Leanne Clare if there was any reason why sentencing should not be passed down, the woman, through an interpreter, said she had cancer and back problems.

She was granted bail and will be sentenced at a later date.