

## Not a Small Cut or Nick: Female Genital Mutilation

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### Introduction

Imagine been taken to a dark descriptive building , been pinned down on the floor, imagine your under linen been taken off, and in the dark a sharp object approaching towards you and the object slicing your clitoris .This torment practice is known as Female Genital Mutilation “FGM”. World Health Organization (“WHO”) defines “FGM as partial or complete removal of female genitalia or other injuries to the genital organ for non-medical reasons.”<sup>1</sup> As this practice is done without any professional medical guidance, it causes gynec problems like severe bleeding problems in urinating and later cysts infections, as well as complications in childbirth and increased risk of newborn deaths.

Nearly 200 million women and girls today have been mutilated in approximately 30 countries like Africa, the Middle East, and Asia.<sup>2</sup> WHO is against all forms of FGM and is opposed to health care providers practice FGM. It has been internationally recognized as a practice violative of human rights, which continues to be practiced in today’s modern world of empowering women. This inhuman treatment not only leads to degradation in human values but also results in death.<sup>3</sup>

The WHO/United Nation Children’s Fund/United Nation Population Fund on FGM has done several pieces of research in which they have classified it into four types.<sup>4</sup>

**-Type 1:** a total removal of the clitoral glans, and the prepuce clitoral hood.

**-Type 2:** this is partial removal or total removal of the clitoral glans and labia minora.

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<sup>1</sup> WHO, *Female Genital Mutilation* (Nov 02, 2020, 11:26), <https://www.who.int/news-room/fact-sheet/detail/female-genital-mutilation>.

<sup>2</sup> UNICEF Office, *Female Genital Mutilation/Cutting: A Global Concern UNICEF* ,Nov 2016,[https://www.unicef.org/media/files/FGMCZ\\_2016\\_brochure\\_final\\_UNICEF\\_SPREAD.pdf](https://www.unicef.org/media/files/FGMCZ_2016_brochure_final_UNICEF_SPREAD.pdf)

<sup>3</sup> WHO, *Female Genital Mutilation*, (February 02, 2020), <https://www.who.int/news-room/fact-sheets/detail/female-genitalmutilation#:~:text=Female%20genital%20mutilation%20is%20classified,skin%20surrounding%20the%20clitoral%20glans>).

<sup>4</sup> *Id.* At 2.

-**Type 3:** also known as infibulations, removal of part or all labia minora / majora, and stitching the vaginal opening.

-**Type 4:** consists of all non-professional medical procedures like stretching of the clitoris, scraping and use of corrosive substance into the vagina, pricking and piercing of the clitoris.

### **Risk and One Affected the Most**

FGM according to record, it has been conducted on young girls or who have attained adolescence, and occasionally on the adult women.<sup>5</sup> UNICEF records say that nearly 3 million women are at the risk of getting mutilated and there are more than 200 million girls and women on whom this brutal practice of FGM is been conducted.<sup>6</sup> Hence, it makes this practice a global concern because it has not only led to persistent medical conditions but also caused the death of women. FGM thus affects the health and social development of girl unlike male circumcision does not have beneficial health effect. Hence, there comes the need for a strict law against the community or the religious group practicing this mutilation over living human beings without their consent.

### **Cultural and Social Reason**

There are several cultural and social reasons, which lead to the practice of this barbaric conduct, underlying the real reason is the deep rooted discrimination against women and these forms of practice make a person realize that we are still living in the world of misogyny and patriarchy, it is rooted down in a tight web. Many justifications on behalf of religious scholars have come as a surprise as they say FGM acts as a tool to control or reduce female sexuality. There is a wide sustained perception that her respect and reputation of her family lives in the vagina of a woman and is something, which needs to be ‘protected’.

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<sup>5</sup> M Ellaithin, T Nilsson, *Female genital mutilation of a karyptic male presenting as a female with delayed puberty*, PMID:PMC1440851 , March 29,2006 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1440851/>

<sup>6</sup> UNFPA, IMPLEMENTATION OF THE INTERNATIONAL AND REGIONAL HUMAN RIGHTS FRAMEWORK FOR THE ELIMINATION OF FEMALE GENITAL MUTILATION, 56 (November 2014), <https://www.unfpa.org/publications/implementation-international-and-regional-human-rights-framework-elimination-female>.

In many places, the belief that the clitoral head is ‘unwanted skin’ or that it is a ‘source of sin’, and further it has been seen that the clitoral hood is also referred to as ‘immoral lump of flesh’.<sup>7</sup>

### **Indian scenario and condition of FGM-**

In India, this is practiced in the Bohra community of Muslims, majority of whom belong to the Shia sect, found notably in the north-west and central part of India and have a global presence in many western and Islamic countries. This ritual is referred to as “Khatna”.<sup>8</sup> FGM is often linked with the ritual and religious sentiment in this community, and they say that it is a religious requirement to curb the sexuality of women, although there is no such mention of mutilation in “Quran” itself.

This form of mutilation may or may not preserve a woman’s piousness but surely, her life is not given priority between this hustle.

### **International Standards for FGM**

The United Nations have marked 16 NOVEMBER the International Day of Zero Tolerance for the FGM.<sup>9</sup> Law can do what years of pleading cannot. Salma Ismail, a representative for the United Nations Children's Fund said, “The law will help protect girls from this barbaric practice and enable them to live in dignity... And it will help mothers who didn’t want to cut their girls, but felt they had no choice, but to let it happen’.<sup>10</sup>

The nature and consequences of FGM it is violative of human rights for women and children.<sup>11</sup> There are several international instruments like the United Nations Convention on the Rights of the Child, 1989<sup>12</sup>, which work for the basic rights of children around the world. UDHR, Universal Declaration for Human Rights, 1948 has granted human right to life and physical

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<sup>7</sup> Harinder Baweja, *Indian Dark Secret*, HT (March 21, 2020), <https://www.hindustantime.com/static/fgm-indians-dark-secret/>.

<sup>8</sup> Explained Desk, *What is FGM and why is it practiced*, TIE , February 7 , 2020 , 7:51am , [https://indianexpress.com/article/explained/explained-what-is-female-genital-mutilation-6254573/lite/#aoh=16067480359845&referrer=https%3A%2F%2Fwww.google.com&\\_tf=From%20%251%24s](https://indianexpress.com/article/explained/explained-what-is-female-genital-mutilation-6254573/lite/#aoh=16067480359845&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s)

<sup>9</sup> United nation, <https://www.un.org/en/observances/tolernace-day>

<sup>10</sup> Masooma Ranalvi , *If Sudan can ban female genital mutilation , why can't India?*, SCROLL., (May 21, 2020) , <https://amp.scroll.in/article/962307/if-sudan-can-ban-female-genital-mutilation-why-cant-india#aoh=16049450582641&referrer=https://www.google.com/>

<sup>11</sup> Amnesty International Office, *Female Genital Mutilation and International Human Right Standard*, ACT (Sept 30, 1997), <https://www.amnesty.org/en/document/act77/014/1997/en>.

<sup>12</sup> UHCRC, OHCHR, (Nov 27, 2020, 3:30) <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

integrity<sup>13</sup>. International Convention on Economic, Social, and Cultural Rights (ICESCR) works for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to be free from all form of discrimination is guaranteed in these numerous international human right instruments.

A recent development in Sudan against the FGM has occurred in May. When the whole world was fighting against the pandemic, they set up an example for female empowerment by enacting a law criminalizing the FGM in Sudan.<sup>14</sup> Decade back FGM was widely accepted in Sudan regardless of education level, finding showed the large majority of men and women approved of the procedure<sup>15</sup> and decade later here we are standing with revolutionary law for women and epitome for whole world.

As seen in the past, many countries had taken steps for the integrity of women and their wellbeing by criminalizing FGM .In United Kingdom, as per [Sec. 1 of the United Kingdom's Female Genital Mutilation Act, 2003]. In Australia, a law emphasizing FGM [Sec, 3 of Australia's Crime (FGM) Act, 1996] states that a person found guilty of the offence will be strictly punished.

### **India Legal Step for Boycotting FGM**

As mentioned above that the prevalence of FGM in India is seen in Dagwood Bohra and some Sunni Muslim sect community, even then there is no specific law dealing with FGM in India. Nearly 25 representatives from the global anti – FGM movement and UN agency met in India and discussed the action needed to eliminate the harmful practice by 2030, in the line with Sustainable Development Goals, at a roundtable organized by WeSpeakOut and Equality Now.<sup>16</sup>

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<sup>13</sup> UDHR art. 3: Everyone has the right to life and liberty and security of the person, (Nov 27, 2020, 3:30), <http://www.ohchr.org/EH/UDR/pages/Language.apex?LangID=eng>.

<sup>14</sup> *Id.* At 10.

<sup>15</sup> A Hassan , *Sudanese women struggle to eliminate harmful practices* , 10 July2008 , 22:04 , [https://www.aljazeera.com/amp/news/2020/4/30/sudan-criminalises-fgm-makes-it-punishable-by-3-years-in-prison#aoh=16067498976595&referrer=https%3A%2F%2Fwww.google.com&\\_tf=From%20%251%24s](https://www.aljazeera.com/amp/news/2020/4/30/sudan-criminalises-fgm-makes-it-punishable-by-3-years-in-prison#aoh=16067498976595&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s)

<sup>16</sup> The Wire Staff, *Separate Law necessary to Eliminate Practice of FGM: Activists*, The WIRE (September 20, 2018), <https://thewire.in/women/separate-law-necessary-to-eliminate-female-genital-mutilation-activists>.

In 2017, the lawyer Sunita Tiwari filed the PIL against FGM,<sup>17</sup> for calling a ban on the practice. She argues that the practice is discriminatory against women, violating Dawood Bohra women's right to equality<sup>18</sup>, right to privacy and right to personal liberty<sup>19</sup> until now, no end judgment has come in favor of or against the PIL.

Although there are many legislation prevalent in India from centuries but there is no specific legislation guiding the women against FGM, the following law penalizes the various forms of violence against women.

**-The National Policy for Children, 2003(NPC)** - It recognizes and gives the right to health, survival, and protection for the right of children to provide a safe, secure, and protective environment.

- **Protection of Children from Sexual Offences Act, 2012-** It takes criminal action against the assaulter if they performed sexual assault, inter alia defines it as the insertion of any object into the vagina of the girl.<sup>20</sup>
- **Indian Penal Code 1860 (IPC)** -Focuses on penalizing the accused and will be punished in Sec 324 -326<sup>21,22,23</sup>.Former Director of the Central Bureau of Investigation R.K Raghvan has noted that though FGM is not explicitly an offence under IPC, on a complaint the police are obligated to register a case under sec. 326 of IPC<sup>24</sup>.
- **The Goa Children's Act, 2003 (NPC)** - The state is provided with the responsibility to take all measures to promote and safeguard the right of all children to live and grow with equality, dignity, security, and freedom.
- **Integrated Child Protection Scheme (ICPS)** came into existence in 2009, launched by the Ministry of women and child development, aimed at securing a measure to protect children from risk, abuse, and vulnerability.

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<sup>17</sup> Sunita Tiwari v. Union of India, (2017) WP (C) 289/ 2017 (India).

<sup>18</sup> Article 14 of Indian Constitution

<sup>19</sup> Article 21 of Indian Constitution

<sup>20</sup> POCSO Act, 2012, Act No. 32 of 2012, § 3(b), Acts of Parliament (Nov 14, 2012).

<sup>21</sup> India Penal Code, 1860, Act No. 45 of 1860, § 324, Indian Code (Oct 6, 1860).

<sup>22</sup> India Penal Code, 1860, Act No. 45 of 1860, § 325, Indian Code (Oct 6, 1860).

<sup>23</sup> India Penal Code, 1860, Act No. 45 of 1860, § 326, Indian Code (Oct 6, 1860).

<sup>24</sup> Rasheeda Bhagat, *India: Ban this barbarous practice!*, Hindu Business Line, (July 29, 2014), <http://www.stopfgmmideast.org/india-ban-this-barbarous-practice/>.

Though practice of carrying FGM may qualify as form of ‘hurt or grievous hurt’ under IPC and POCSO Act but addressing this practice requires more holistic approach. Such as we need to address the various aspect of FGM including abetting or adding the practice, propagating the practice , regulations on medical professional who carry out this practice , rehabilitative provisions and awareness generation.

## **Conclusion**

FGM is a practice, which not only violates the basic human rights of women,<sup>25</sup> but also makes them stand at the edge of life and death. As stated above in both the International and India books of legislation, there is zero tolerance towards FGM .This practice has neither religious justification nor medical and in both the way, it is life threatening. In the Ongoing PIL in Indian court, it was stated that “why should anybody else have any control over the genitals of an individual”.<sup>26</sup> In addition, this question need to be address by every person who is engage in the act pain and misery.

Though many concerns surround this evil practice, if we look around, there are hundreds of solutions lined up for those girls who have suffered or who might suffer this sin. As mentioned above, we do have already existent provisions in Indian legislation, but it seems important that separate legislation governing FGM should be enacted as Indian law criminal action against any form of hurt, there is no specific mention of FGM and by this the practice largely goes unnoticed and for this Awareness and generation camps need to be put in the educational institutes, in public places, to the frontline professionals tasked in handling such complaints like police officers, medical professionals, counselors. If any girl is in crisis or an adult on her behalf should be able to call the Childline emergency number by which she can be rescued. Thus, the discussion here is conclusive that problem need to be addressed as a harmful criminal practice and not as an acceptable religious practice.

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<sup>25</sup> *Supra* note 7.

<sup>26</sup> *Supra* note 12.