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# RAMPANT GERMINATION OF FEMALE GENITAL MUTILATION: AN APPREHENSION ON HUMAN RIGHTS

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## ABSTRACT

The terms "female circumcision" (FC) and "female genital mutilation" (FGM) are used to refer to a number of distinct traditional practises that include the trimming of female genitalia, performed on girls between the ages of four and twelve as they move towards womanhood. It is generally carried out by a traditional practitioner—often an older woman—who has performed FC/FGM on several generations of women in her family. The practice as its own segmentation of healthy reproductive areas for non-medical uses—violates the right to bodily integrity of women and girls gravely, regardless of the level of segmentation or the difficulty of the obstacles that may or may not be surmounted.

The practice of circumcision breaches several acknowledged human rights, including those guaranteed by the Convention on the Rights of the Child, even when parents who choose to have their girls circumcised do not intend to harm them. The topic of FC/FGM is one that is being discussed increasingly frequently and within the framework of women's and girls' rights, ideally just as a medical and health concern.

*Keywords: Female genital mutilation, right to health, traditional practice, circumcision of body, reproductive rights.*

## **RESEARCH QUESTION**

While the position of law with regard to the human and reproductive rights of the female is well settled, the author would try to identify the status quo created by FGM where these rights fail to apply. The paper would address all the possible explanations that cause such a miscarriage of protection of rights in the Indian as well as international context. It would further try to ascertain the reasons for such malfunction and applicable laws over them. It addresses the controversy of FGM being unnoticed despite being practised at such a large scale.

### **1. INTRODUCTION: WHAT IS FC/FGM?**

The words "female circumcision" (FC) and "female genital mutilation" (FGM) are used to refer to a number of distinct traditional practices that include the trimming of female genitalia. The procedure is routinely performed on girls between the ages of four and twelve as they move towards womanhood. On the other hand, it can be done as late as shortly before marriage, after the first pregnancy, and as early as right after delivery in some civilizations. Girls might have their circumcision done on their own or with other neighbourhood girls. Most of the time, it will be carried out by a traditional practitioner—often an older woman—who has performed FC/FGM on several generations of women in her family. But, frequently, it has also been carried out by skilled medical professionals, such as doctors, nurses, and midwives, in various nations.

Originally, the tradition's main concern was the harm that FC/FGM might do to a person's physical and mental health. However, the practice as its own segmentation of healthy reproductive areas for non-medical uses—violates the right to bodily integrity of women and girls gravely, regardless of the level of segmentation or the difficulty of the obstacles that may or may not be surmounted. It's also crucial to remember that teenagers, who have no stake in this matter, are the process' main targets. The practice of circumcision breaches several acknowledged human rights, including those guaranteed by the Convention on the Rights of the Child, even when parents who choose to have their girls circumcised do not intend to harm them. The topic of FC/FGM is one that is being discussed increasingly frequently and within the framework of women's and girls' rights, ideally just as a medical and health concern<sup>1</sup>.

### **2. ARGUMENTS SUPPORTING SUCH SOCIAL EVILS**

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<sup>1</sup> Anne Firth Murray, *From outrage to courage* (1 ed. 2010).

In customs and traditions in many nations, circumcision is done as a ritual from infancy to maturity, teaching ladies the skills they ought to face with marriage, husbands, and children. The process of "growing into" a lady aids in maintaining custom and tradition by introducing the girl to the way of life and social roles of other women. FC/FGM is a form of cultural conditioning that encourages a sense of connection to one's family, community, and ancestors. Communities that practise FC/FGM maintain local customs and cultural identity while strengthening their links to historical concepts.

- Religion

It is critical to keep in mind that FC/FGM is a cultural, not a religious, practice<sup>2</sup>. Both Islam and Christianity have grown throughout Africa, yet neither one of them necessitates the ritual. In reality, Christians, Jews and Muslims all use FC/FGM, as do indigenous religious groups in Africa.

However, despite the fact that FC/FGM is uncommon in many Muslim countries, it is directly related to Islam in a number of African nations, and a large majority of Muslims who identify as such accept the practice. Although the Qu'ran, the primary source of Islamic law, and none of the "hadith," or recordings of the Prophet Mohammed's sayings, do not explicitly condone FC/FGM, there is still debate over how to interpret some portions from one hadith. It was recently decided at the International Conference on Population and Reproductive Health in the Muslim World at the Al Azhar University in Egypt, a prominent centre of Islamic knowledge, that various detrimental practices, including FC/FGM, were the consequence of incorrect interpretations of Islamic law<sup>3</sup>.

- Women's sexuality

There are several reasons why female circumcision has indeed been promoted, including the need to control women's libidos. Being a social construct, sexuality's meaning can change depending on the circumstance. In many FC/FGM-affected societies, a girl's chastity or sexual restriction is necessary for the honour of a family or clan. FC/FGM is used to prevent premarital sex and preserve virginity in Sudan, Egypt and Somalia. In some circumstances, when maintaining sexual "sanctity" is not a top concern, such as in Uganda and Kenya, FC/FGM is carried out to reduce the demands the wife places on her husband in terms of sex, allowing him

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<sup>2</sup> Catherine Pearson, 5 New Things We Learned About COVID In February 2022, Huffpost (September 10<sup>th</sup> 2022, 17:00) [<https://www.huffpost.com>]

<sup>3</sup> Catherine Pearson, Id at 2.

to have more than one wife. Despite the different reasons for restricting the sexuality of women, FC/FGM is carried out to reduce women's sexual feelings in an effort to uphold virginity, maintain marital fidelity, and boost male libido.

Women who undergo FC/FGM experience reduced sexual fulfilment, which influences how we define women's sexuality.

- Social pressure

FC/FGM is frequently justified by social pressure. Circumcision becomes a symbol of social conformity in a community where the preponderance of women has had the procedure thanks to the environment fostered by family, acquaintances, and neighbours. Circumcision becomes less of a perceived need and more of a standard prerequisite for acceptance. In this case, it may not be feasible to avoid circumcision<sup>4</sup>. Men's reluctance to accept circumcised women due to concern about social rejection adds to this pressure. Due to the perception that circumcision is necessary for societal cohesion and ease, the significance of FC/FGM has increased.

### 3. HOW WIDESPREAD IS FC/FGM?

Globally, 130 million women and girls are estimated to have had FC/FGM. Approximately two million girls are at risk of receiving therapy in some form each year. According to history, several cultures, such as the Greeks and Romans, Egyptians, and ancient Egyptians, may have been the first to execute FC/FGM. It is said to have come from northern or southern Sudan or southern Egypt<sup>5</sup>.

Currently, FC/FGM is practised in 28 African countries, mostly in the sub-Saharan and northeastern regions. The majority of the twenty-eight African countries have generated national prevalence figures. Seven nations, including Cote d'Ivoire, the Central African Republic, Eritrea, Egypt, Mali, Tanzania and Sudan, have reliable statistics based on specific inquiries related to. However, the frequency varies widely from country to country. It is 90 per cent or more in Egypt, Eritrea, Mali, and Sudan, whereas it is less than 50 per cent in Cote d'Ivoire and the Central African Republic and less than 5 per cent in Uganda and the Democratic Republic of the Congo. The occurrence within countries also varies substantially. For instance, in the Mali provinces of Timbuctu and Gao, the prevalence rates are less than 10%, but in

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<sup>4</sup> Spicehead, Redacting Email Content, Spiceworks Community, (September 10<sup>th</sup> 2022, 17:00) [<https://community.spiceworks.com>]

<sup>5</sup> Transl Androl Urol, Female genital mutilation/cutting in Africa, Volume 6, National Library of Medicine, [138, (2017)]

Bamako and Koulikoro, they are ninety-five and hundred, respectively. Asia has seen instances of the practice among a few Muslim ethnic populations, including the Daudi Bohra Muslims in India and Sri Lanka. In Yemen and Oman in the Middle East, there have been allegations of the practice.

#### 4. WHAT ARE THE HEALTH CONSEQUENCES OF FC/FGM?

Before discussing the harmful health repercussions of FC/FGM, it is important to first briefly define the many types of the practice<sup>6</sup>. The WHO discovered that approaches may be roughly categorized into four types, regardless of the notion that they differ greatly based on factors like ethnicities and geographic places throughout the world.

- i. Category I (sometimes referred to as a "clitoridectomy" ): The prepuce may be removed in addition to or instead of the complete clitoris.
- ii. Category II, sometimes referred to as an "excision," entails the removal of the external genitalia, genitals, and all or a portion of the labia minora.
- iii. Category III, sometimes referred to as "infibulation," entails partial or total removal of the outer genitalia as well as stitching or limiting the vaginal opening.
- iv. Category IV (uncategorized): Many other medical procedures that damage the female genital system or amputate the female sexual organs entirely or partially for sociocultural or other non-curing reasons. The Type IV group includes a great deal more documented procedures such as jabbing, cutting, extending, or heating the genitals and/or adjacent tissues.

FC/FGM could have a negative impact on the health of women and girls. There might be significant psychological and physical negative effects, among others.

#### 5. PHYSICAL COMPLICATIONS<sup>7</sup>

- Instantaneous complications

Intense pain and haemorrhage are two potential early severe adverse effects of all FC/FGM operations. If the bleeding continues and results in anaemia, a child's development may be delayed, while her stamina could be irreparably scarred. Haemorrhage, as well as the agony or stress of the procedure, can cause shock. Uncontrolled, extremely severe bleeding can be fatal.

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<sup>6</sup> Center for Reproductive Rights, Female genital mutilation: A matter of Human Rights, [https://www.reproductiverights.org/sites/default/files/documents/FGM\\_final.pdf](https://www.reproductiverights.org/sites/default/files/documents/FGM_final.pdf) (Last visited October 1<sup>st</sup> 2022, 09:00)

<sup>7</sup> Berg RC, Underland V, Odgaard-Jensen J, Fretheim A, Vist GE. Effects of female genital cutting on physical health outcomes: a systematic review and meta-analysis. *BMJ Open*. 2014; 4(11):e006316 <https://bmjopen.bmj.com/content/4/11/e006316>.

The utilization of microorganisms cutting tools can result in infectious illness, which is a significant and frequent side effect of FC/FGM. If the vaginal region gets soiled with faeces and urine within a few days after starting treatment, an infestation might also develop. Septicaemia can result from infections if the pathogen enters the bloodstream.

- Durable complications

Any operation for FC/FGM has the chance to result in long-term problems. While Categories II and III often have the greatest detrimental effects. Common symptoms of infibulation include recurrent bladder infections, chronic neuropathic infections (which can permanently damage reproductive organs and cause fertility issues), boulders in the urinary tract as well as rectum, increased damaged tissue development, cysts at the location of the cutting, and fistulae (holes or tunnels) between the urethra or the vagina or inside of the rectum and vagina. Another common long-term effect is pain during sexual activity<sup>8</sup>.

Women who have had FC/FGM run the risk of experiencing obstetric problems. A woman who is firmly infibulated requires to be cut open during childbirth (defibrillated). Unless this is achieved, labour will be hampered, which might lead to difficulties that risk the mother's life as well as the life of the developing fetus. Although these findings have not been verified, some articles claim that infibulated women may experience increased discomfort during their periods. This discomfort could be caused by an infection, which worsens pelvic congestion. In addition, infibulation could make a woman feel more uncomfortable during her period by making her worry about the condition of her genitalia.

- Psychological effects

Despite the paucity of studies on the psychological effects of FC/FGM, the information that is at this time shows that it may have a significant effect on the growth of girls and women. Girls have reported having trouble eating, sleeping, feeling happy, or thinking clearly shortly after surgery. Many girls and women suffer from repressed sentiments, including fear, subjugation, or constraint, as well as fury, bitterness, or betrayal. As a result, studies from Sudan and Somalia demonstrate negative effects on self-identity and self-esteem.

Despite the dearth of research on the psychological impacts of FC/FGM, the evidence at this moment points to the possibility that it may significantly affect girls' and women's development. Following surgery, some girls have complained of having problems with their nutrition, resting,

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<sup>8</sup> Transl Androl Urol, Supra note 5, at 4

temperament, and cognition. Many girls and women struggle with repressed emotions like anger, bitterness, or betrayal as well as fear, subordination, or restriction. Studies conducted in Sudan and Somalia so show detrimental impacts on personality and consciousness.

## 6. INTERNATIONAL HUMAN RIGHTS LAW: A FRAMEWORK FOR SOCIAL JUSTICE<sup>9</sup>

The majority of current human rights are founded on agreements that nations made in the years following World War II. Human rights have already been incorporated into both international and local legal systems since the conclusion of World War II. These accords frequently aimed to promote shared values by recognizing the importance of human rights and demanding nations take measures to defend them<sup>10</sup>.

## 7. SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW ON FEMALE GENITAL MUTILATION

FGM is not specifically mentioned in the first statements of human rights<sup>11</sup>, but they set the foundation for equal liberation of women to be free from all forms of abuse, including FGM. An increasing body of evidence suggests that, in addition to the relevant human rights agreements enumerated in the section below, the procedure of FGM also breaches broader categories of specific rights, under which all the articles may fall<sup>12</sup>.

- i. The right to be free from all forms of discrimination against women: Discrimination against women is broadly defined in Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, as *"Any distinction, exclusion or restriction made on the basis of sex with the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on the basis of equality*

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<sup>9</sup> A Matter Of Human Rights - Centre for Reproductive Rights. [https://www.reproductiverights.org/sites/default/files/documents/FGM\\_final.pdf](https://www.reproductiverights.org/sites/default/files/documents/FGM_final.pdf) (last visited October 1<sup>st</sup>, 2022 10:30)

<sup>10</sup> The World Conference on Human Rights in Vienna, Vienna Declaration and Programme of Action, United Nations Human Rights (Last visited: October 2<sup>nd</sup> 12:00) <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>

<sup>11</sup> Admin, Sources of international human rights law on Female Genital Mutilation, Virtual knowledge Centre to end Violence against Women and Girls. (Last visited October 2<sup>nd</sup> 12:05) <https://www.endvawnow.org/en/articles/645-sources-of-international-human-rights-law-on-female-genital-mutilation.html>

<sup>12</sup> James J. Glazier, Amir Kaki, Theodore L. Schreiber, Successful Treatment of Occlusive Left Main Coronary, Hindawi, (Last visited: October 2<sup>nd</sup> 12:10) <https://www.hindawi.com/journals/cric/2018/5373625/>



*of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field.*"<sup>13</sup>.

- ii. "Article 2 of the Universal Declaration of Human Rights states that "everyone is entitled to all the rights and freedoms guaranteed in this Declaration, without distinction of any kind, including that based on race, colour, or sex."<sup>14</sup>.
- iii. The right to life and physical integrity<sup>15</sup>: The right to bodily integrity, which also includes the absence of violence, today encompasses the intrinsic dignity of the individual, the rights to liberty and protection of the individual, as well as the right to privacy. This group of rights is upheld by several human rights documents, including the Preamble and Article 9(1) of the International Covenant on Civil and Political Rights<sup>16</sup>, Articles 1 and 3 of the International Covenant on Economic, Social, and Cultural Rights, and the Convention on the Rights of the Child (CRC) (Article 19) FGM causes severe<sup>17</sup>, frequently fatal physical and psychological suffering. It thus infringes on a right of a woman to physical integrity, privacy, and safety from harm.
- iv. The right to health: FGM is seen as a breach of one's right to health since it entails an intrusive procedure on otherwise living tissue without a valid medical need and because it can cause substantial physical and mental harm. The International Covenant on Economic, Social, and Cultural Rights states that everyone is entitled to the "highest feasible standard of physical and mental health." According to the World Health Organization, the concept of health involves physical, intellectual, and cultural well-being in addition to "not merely the absence of disease or disability"<sup>18</sup>." In the 1994 Cairo, Egypt International Conference on Population and Development's Programme of Action, the issue of reproductive health includes sexual health, "the purpose of which is the enhancement of life and personal connections." Furthermore, the Committee on the Elimination of Discrimination Against Women (CEDAW General ) 's Recommendation No. 24 from its 20th Session makes it clear that governments should create

<sup>13</sup> Toubia N. Female genital mutilation. Women's rights, human rights: international feminist perspectives; 1995. p. 224–37.

<sup>14</sup> Art 2, Universal Declaration of Human Rights, 1948.

<sup>15</sup> UNICEF Regional Office for South Asia November 2017, Gender equality: Glossary Of Terms And Concepts, UNICEF (Last visited October 2<sup>nd</sup> 12:30) <https://www.unicef.org/rosa/media/1761/file/Gender%20glossary%20of%20terms%20and%20concepts%20.pdf>

<sup>16</sup> Admin, Arbitrary detention, Front Line Defenders, (Last visited October 2<sup>nd</sup> 12:30) <https://www.frontlinedefenders.org/en/violation/arbitrary-detention>

<sup>17</sup> Ukraine : Ukraine Will Participate in the 67th Session of the UN Committee on Economic, Social and Cultural Rights, MENA Report, Albawaba (London) Ltd., Feb. 2020.

<sup>18</sup> UNFPA, Implementation of the international and regional human rights framework for the elimination of female genital mutilation. 2014 UNFPA (Last visited October 2<sup>nd</sup> 12:45) <https://unfpa.org/sites/default/files/pub-pdf/FGMC-humanrights.pdf>



policy frameworks that consider the needs of women and youth who may be at risk for traditional practices like FGM.

- v. The rights of the child: Safeguarding the right of children is at the heart of the issue since FGM affects females under the age of 18 directly. The government is responsible for ensuring that children's rights are protected<sup>19</sup>, even if the 1989 Convention on the Rights of the Child (CRC) acknowledges the value of parents and families in supporting children's decision-making. Five Articles) The CRC also established the "child's best interests" standard in order to address children's rights<sup>20</sup>.

FGM is regarded to be against children's rights and that standard of better interest (Article 3). The CRC mandates that governments stop "traditional practises injurious to children's health." Concluding Remarks of the Committee on the Rights of the Child (CRC) (Art. 24(3)) Togo (1997) advises nations to enact laws that will do the practice of FGM illegal since it infringes on children's rights<sup>21</sup>.

- vi. Numerous legislative texts point out that in addition to acknowledging that FGM violates these fundamental rights, authorities have a duty to criminalize the practice and protect women and children who are vulnerable to it. Passing legislation and implementing additional cultural and social education programmes fulfil this commitment. In order to guarantee both fundamental human rights and administrative duties, legislation that forbids FGM must be passed. The responsibility to protect children from harmful practices, the duty to end practices that is discriminatory towards women, the duty to preserve a social order that allows for the realization of rights, the duty to guarantee access to health care and health information, and more...

## 8. LEGAL METHODS

FGM is governed (and generally criminalized) in different ways in different countries. Some countries' constitutions directly forbid FGM, while other countries' laws specifically outlaw it. FGM is also banned by laws that cover child welfare, abuse towards women, sexual assault, and physical assault. In contrast to general criminal law provisions, criminalizing FGM specifically is becoming more prevalent among EU member states; by 2013, 10 of the 28 (including Croatia and the UK) have done so. Due to the fact that Estonia, Germany, Malta,

<sup>19</sup> Ministry of Social and Family Development, Optional Protocol Involvement of Child in Armed Conflicts. (Last Visited October 3<sup>rd</sup> 17:00). [https://www.msf.gov.sg/policies/Children-and-Youth/Documents/OPAC\\_A2%20Poster%20For%20Web.pdf](https://www.msf.gov.sg/policies/Children-and-Youth/Documents/OPAC_A2%20Poster%20For%20Web.pdf)

<sup>20</sup> The Global Malnutrition Epidemic: A Human Rights Agenda. <https://globalejournal.org/global-e/december-2016/global-malnutrition-epidemic-human-rights-agenda>

<sup>21</sup> UNICEF Regional Office for South Asia November 2017, Supra note 15.

and Portugal had previously passed laws explicitly criminalizing FGM, 14 of the current 27 EU Member States had special anti-FGM legislation by March 2020<sup>22</sup>.

A separate law to specifically criminalize FGM was not necessary, according to Maneka Gandhi, India's Minister for Women and Child Development, who stated in 2017 that Genital mutilation occurrences could be put on trial under the 1860 Indian Penal Code, the 1973 Criminal Procedure Code, and the 2012 Protection of Children from Sexual Offenses Act (POCSO Act)<sup>23</sup>.

## 9. CROSS-BORDER FGM AND EXTRATERRITORIALITY

FGM is occasionally carried out across the border in a country where it is legally legal in order to avoid penalties in one's native country (for example, Burkinabe individuals doing the procedure in Mali or Kenyan citizens executing the procedure in Somalia). As of September 2018, the only countries in Africa with laws criminalizing and punishing cross-border FGM were Guinea Bissau, Kenya, and Uganda. Under the legal doctrine of extraterritoriality, girls residing in the EU who have also had FGM or who are in danger of undergoing FGM in their birthplace or the country of their fathers while on holiday or abroad are prosecuted for the crime<sup>24</sup>.

## 10. IF SUDAN CAN BAN FEMALE GENITAL MUTILATION, WHY CAN'T INDIA?

In Sudan, 87 per cent of females have had their private parts removed<sup>25</sup>. This kind of FGM, which involves cutting off every external, is by far the most severe type 3. The newly enacted law, which became effective on May 1, now makes FGM unlawful. A three-year jail sentence is possible for violators.

## 11. INDIA'S BOHRA COMMUNITY<sup>26</sup>

About two million individuals make up the Bohra group in India and its diaspora. Between

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<sup>22</sup> Leye E, Mergaert L, Arnaut C, Green SO. Towards a better estimation of prevalence of female genital mutilation in the European Union: interpreting existing evidence in all EU Member States. *Genus*. 2014;70:99–121

<sup>23</sup> Moshumi Das Gupta, Govt will end female genital mutilation if Bohras don't: Maneka Gandhi, *Hindustantimes* (Last visited: 4<sup>th</sup> October 2022, 19:00) <https://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should-be-banned-in-india-maneka-gandhi/story-kQhNA4rFYOLQTurkN5zAAM.html>

<sup>24</sup> UNICEF, UNICEF'S Data Work On FGM/C (Last visited 4<sup>th</sup> October 2022, 20:00) [https://www.unicef.org/sites/default/files/press-releases/glo-media-FGMC\\_2016\\_brochure\\_final\\_UNICEF\\_SPREAD.pdf](https://www.unicef.org/sites/default/files/press-releases/glo-media-FGMC_2016_brochure_final_UNICEF_SPREAD.pdf)

<sup>25</sup> Admin, Sudan criminalises female genital mutilation (FGM), *BBC* (Last visited 4<sup>th</sup> 2022, 20:30) <https://www.bbc.com/news/world-africa-52502489>

<sup>26</sup> Harinder Baweja, India's Dark Secret, *Hindustantimes*, (Last visited 4<sup>th</sup> 2022, 20:45) <https://www.hindustantimes.com/static/fgm-indias-dark-secret/>

75% and 80% of Bohra women have had FGM. FGM, which affects girls as early as seven, is known informally as Chavez. The practice is kept secret and hidden from the public's view. A strong, well-oiled communal network that ensures that girls are cut every year and every decade is led by the mother and grandmother.

Bohra makes up about two million of India's population, including their diaspora. FGM has been performed on between 75 and 80 per cent of Bohra women. FGM, which begins to impact girls as young as seven, is colloquially known as khafz. The practice is maintained a secret and out of sight of the general population. The mother and grandmother are in charge of a powerful, well-oiled social network that makes sure that girls get cut each year and every decade.

## 12. SUPREME COURT'S ACTION<sup>27</sup>

In May 2017, the Supreme Court of India heard a PIL case<sup>28</sup>, In the case filed by Delhi-based advocate Sunita Tiwari, FGM was demanded to be made illegal in India. When the petition reached the Supreme Court, state assemblies and four federal departments were requested to respond. The petition's proponent claimed that the practise infringed upon children's rights under Articles 14 (Right to Equality) and 21 (Right to Life) of the Indian Constitution<sup>29</sup>, while the petition's opponent claimed that khafz is a crucial aspect of the public's religious practice and that their right to start practising that religion is protected by Articles 25 and 26. "No official data or research proves the presence of FGM in India," the Ministry of Women and Child Development claimed in December 2017. The government would criminalize FGM if the practice did not come to an end on its own initiative, according to Maneka Gandhi, the minister for issues affecting women and children.

In April 2018, K. K. Venugopal, the Indian attorney general, requested that a Supreme Court panel provide instructions on the matter. According to the law in effect at the time, he claimed that FGM was already prohibited. The court postponed the issue and handed letters to Kerala and Telangana, in addition to having already alerted Delhi, Gujarat, Rajasthan, Maharashtra, and Gujarat.

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<sup>27</sup> Sunita Tiwari v Union of India, WP(C)No.286/17

<sup>28</sup> 04.08.14 Press Release, Philippine Supreme Court Upholds Historic Reproductive Health Law, Centre for Reproductive Rights, (last visited: 4<sup>th</sup> October 2022, 21:00) <https://reproductiverights.org/Philippine-Supreme-Court-Upholds-Historic-Reproductive-Health-Law/>

<sup>29</sup> Prachi Kaur and Madhunika Iyer, As Maharashtra govt pushes for stricter rape law, a look at constitutionality and legality of Shakti Bill, Firstpost, (Last visited 5<sup>th</sup> October 2022, 09:20) <https://www.firstpost.com/india/as-maharashtra-govt-pushes-for-stricter-rape-law-a-look-at-constitutionality-and-legality-of-shakti-bill-9221701.html>

In September 2018, the apex court forwarded the PIL to a five-jury constitutional bench at Venugopal and the Dawoodi Bohras' request. In November 2019, the Supreme Court decided to bring the FGM topic before a larger seven-judge jury so that it may be examined with several other equality issues. The court deemed it to be a "seminal question" whether the court has the jurisdiction to assess if a practice is essential to religion.

### **13. EXISTING PROVISIONS IN THE CRIMINAL LAW**

FGM is not specifically prohibited by law in India; however, some broad elements in the current criminal legislation may aid in protecting the rights of women. Some of them are therefore included below and may be pertinent in the scope of this exercise.

Various levels of Hurt and Grievous Hurt, as defined by IPC sections 319 to 326: The Indian Penal Code (IPC) contains provisions for inflicting harm and serious harm on an individual in Sections 319 to 326. "Hurt" must include the components of causing another person's physical suffering, ailment, or disease. There are seven distinct categories of "grievous injury," such as:

"Any injury that endangers life or renders the victim unable to carry out his usual activities for a period of twenty days after the injury," according to the law.

FGM can make sexual intercourse unpleasant and hinder a person from performing fundamental physiological processes like urinating. As FGM may be viewed as a type of injury or grave hurt, it may result in up to seven years in jail, with or without a fine.

Section 4 of the Protection of Children from Sexual Offences Act: The Protection of Children from Sexual Offences Act (POCSO), 2012, prohibits penetrating sexual assault on children under the age of 18<sup>30</sup>. In accordance with Section 3, penetration includes any amount of introducing an item into the child's vagina. In light of this, it is possible to classify the insertion of a sharp object into a child's external genitalia during FGM as a form of penetrative sexual assault.

### **14. NEED FOR SPECIFIC AND COMPREHENSIVE LEGISLATION ON FGM<sup>31</sup>**

The frequency of FGM-related offences hasn't significantly decreased despite the passage of legislation like POCSO and several related sections in the IPC. Highlighting the shortcomings

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<sup>30</sup> The Protection Of Children From Sexual Offences Act, 2012, Section 4, Act No. 32 of 2012, India.

<sup>31</sup> Perna Murarka, It's Time to Ban Female Genital Mutilation in India: Here's Why, *Academike*, (Last visited: 5<sup>th</sup> 2022, 10:00) <https://www.lawctopus.com/academike/ban-fgm-in-india/>

of the current criminal legislation in dealing with this offence. Despite being unlawful and a challenging sociocultural problem, FGM has not yet been declared a crime<sup>32</sup>.

Since more than 500 years ago, FGM has been a widespread custom among Dawoodi Bohras and is now recognized as a form of devotion. This can be compared to the Sati ritual, in which a wife would commit suicide on her husband's funeral pyre in to safeguard the purity of the marriage. Both of these traditions limit women's autonomy and freedom regarding their own bodies since they are antiquated and adhere to societal standards. Regardless of the fact that all these actions are disguised under the guise of tradition as just being acceptable or even beneficial, it is crucial to understand this. They ultimately amount to murderous or malicious conduct on the part of the offenders.

Criminal action infringes in some manner on societal norms. However, when society as a whole does not consider such activities to be wrong according to cultural logic, the laws intended to govern these crimes are required to be more stringent. Consequently, the only method for resolving these challenges is through enacting comprehensive, in-depth legislation.

Also commonly emphasized by feminist legal arguments is how women's issues are kept inside the home realm of existence in their civic conversation. The decision to conduct FGM is typically made by the older women in the household, and it is always done in secrecy. The issue of FGM would've been tackled and brought out in society if laws against this process were to pass. It would be the first step towards establishing the democratic rights of the women in the Dawoodi Bohra group<sup>33</sup>.

Not to mention, governments must enact laws that forbid abuse against women and younger girls in compliance with international accords like the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As a result, governmental organizations were compelled to enact security precautions to protect their well-being. India's ratification of each of these accords makes it much more important for India to keep its commitment.

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<sup>32</sup> Harinder Baweja, *Supra* note 26 at 11.

<sup>33</sup> Asbarez, Mexican lawmakers visit Artsakh, Armenia Media, (last visited: 6<sup>th</sup> October 2022, 12:00) <https://www.armenia.com.au/news/Armenia-News/English/60236/Mexican-lawmakers-visit-Artsakh>

## **15. CONCLUSION**

In spite of the fact that it takes place in secrecy, this research aimed to emphasize how frequent female genital mutilation is in India, notably among the Dawoodi Bohras. The right to freedom of religion and the free exercise of religious activities do not protect against the violation of other fundamental rights protected by section III of the Indian Constitution.

It is past time to end such practices that oppress women for the benefit of a more equitable society. It is disappointing that women still have to fight and fight for their rights even though it appears evident that they share this equal status and privileges as males. Social change can be sparked by legal reform when outdated social customs and practices limit people's freedom.