
FEMALE GENITAL MUTILATION AND THE VIOLATION OF HUMAN RIGHTS

Ashish Kaushik, Vishav Kumar, Shipra & Jyoti Chauhan, Institute of Legal Studies, Ch.
Charan Singh University, Meerut, India.

ABSTRACT

Female Genital Mutilation (FGM) is one of the gravest human rights violations taking place silently within India today. It involves the partial or complete removal of the external female genitalia for non-medical reasons and is inflicted upon girls most often without their knowledge or consent in the name of religion and tradition. In India, the practice is found chiefly in the Dawoodi Bohra Muslim community, where it is called “Khatna” or “Khafz.” Despite being an act of serious bodily harm, India has no specific law that bans FGM.

This paper examines FGM as a direct violation of the fundamental rights guaranteed by the Constitution of India particularly Articles 14, 15, 19, and 21, which protect equality, non-discrimination, and the right to life and dignity. It analyses how existing Indian statutes including the Indian Penal Code (IPC), the Protection of Children from Sexual Offences (POCSO) Act 2012, and the Juvenile Justice (Care and Protection of Children) Act 2015 can be applied to prosecute those who carry out FGM. India’s binding obligations under international treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are also examined.

The paper argues that the absence of a dedicated anti-FGM law is a critical legislative gap that allows a painful, traumatic, and entirely unnecessary practice to continue with impunity. Cultural or religious justifications cannot override a woman’s constitutional rights. This paper calls for a specific anti-FGM law, mandatory reporting obligations, nationwide awareness programmes, and judicial action to protect every girl in India from this hidden harm.

Keywords: Female Genital Mutilation, FGM, Khatna, Human Rights, Indian Constitution, Article 21, POCSO, Bodily Autonomy, Dawoodi Bohra, Women’s Rights, Right to Dignity.

I. INTRODUCTION

Artificial intelligence, climate change, electoral reforms these are the issues that fill newspaper headlines in India. But tucked away in quiet homes, hidden from public view, a practice that causes permanent physical and psychological harm to young girls continues almost entirely unnoticed. This practice is Female Genital Mutilation (FGM). The World Health Organization (WHO) defines FGM as “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.”¹ The WHO estimates that more than 200 million girls and women alive today have been subjected to it across 30 countries.²

In India, FGM is practiced in the Dawoodi Bohra community a Shia Muslim sect found mainly in Gujarat, Maharashtra, Rajasthan, and Madhya Pradesh where it is called “Khatna” or “Khafz.” The procedure is typically performed on girls between the ages of six and eight, in homes, by untrained community members, without anaesthesia.³ Despite growing awareness among activists, India has no law that specifically bans FGM, and no police officer has ever been trained to recognise it as a crime. A petition seeking a ban on FGM was filed before the Supreme Court of India in 2017, and the case remains pending.⁴

This paper examines FGM through the lens of Indian constitutional law, criminal law, and international human rights obligations. It argues that FGM is not a protected religious practice but a punishable act of violence against children, and that India must treat it as such.

II. UNDERSTANDING FGM: WHAT IT IS AND WHY IT HAPPENS

A. Definition and Classification

FGM refers to all procedures that deliberately alter or injure the female genital organs for non-medical reasons.⁵ The WHO classifies FGM into four main types:⁶

1. **Type I – Clitoridectomy:** Partial or total removal of the clitoral glans, the external and

¹World Health Organization (WHO), 'Female Genital Mutilation Fact Sheet' (February 2023)

²WHO, 'Female Genital Mutilation Fact Sheet' (n 1); UNICEF, 'Female Genital Mutilation' (2022)

³Masooma Ranalvi and WeSpeakOut, 'Khatna: Survivor Testimonies from India' (2017)

⁴Sunita Tiwari v Union of India, Writ Petition (C) No 286 of 2017 (Supreme Court of India, pending before the Constitution Bench).

⁵WHO, 'Female Genital Mutilation Fact Sheet' (n 1).

⁶WHO, 'Classification of Female Genital Mutilation' (2008)

visible part of the clitoris.

2. **Type II – Excision:** Partial or total removal of the clitoral glans and inner folds of the vulva (labia minora), with or without removal of the labia majora.
3. **Type III – Infibulation:** Narrowing of the vaginal opening by cutting and repositioning the labia, sometimes with stitching. This is the most severe form.
4. **Type IV – Other:** All other harmful procedures, including pricking, piercing, incising, scraping, or cauterizing the genital area for non-medical purposes.

In India, the form practiced in the Dawoodi Bohra community is generally classified as Type I — a small cut to the clitoral hood or tip of the clitoris. Defenders often describe it as “mild” or “symbolic.” However, no level of FGM is medically justified or ethically acceptable.⁷ Survivors consistently report pain, trauma, and long-lasting consequences, regardless of the extent of the cutting.⁸

B. Why Does FGM Persist?

FGM is sustained by a complex web of social, religious, and patriarchal factors:

5. **Religious belief:** In the Dawoodi Bohra community, Khatna is presented as a religious duty commanded by the Syedna. Importantly, Islamic scholars worldwide disagree on whether any religious text mandates FGM there is no Quranic verse that requires it.⁹
6. **Social conformity:** Families fear that a girl who is “not cut” will be seen as impure or unmarriageable, and social exclusion compels even reluctant parents to comply.
7. **Patriarchal control:** The practice is explicitly linked in community discourse to “reducing sexual urges” in women a claim that has no medical basis and reflects a harmful ideology of female subjugation.¹⁰

⁷Nahid Toubia, 'Female Genital Mutilation: A Call for Global Action' (1993) Women Ink, New York.

⁸Ranalvi and WeSpeakOut (n 3).

⁹Sheikh Mohammad Sayyed Tantawi, Al-Azhar University, Egypt widely cited among Islamic scholars who have concluded that FGM has no Quranic basis; see also Sheik Ahmad Kutty, 'Female Circumcision: An Islamic Perspective' (Islamic Institute of Toronto, 2004).

¹⁰UNFPA, 'Female Genital Mutilation: A Call to Action' (2020).

8. **Secrecy and silence:** Girls are not told what will happen to them. Women who have undergone it are expected never to speak of it. This secrecy makes the practice nearly invisible to law enforcement and health authorities.

III. HEALTH CONSEQUENCES OF FGM

FGM has no health benefit. Every major medical institution in the world including the WHO and the Indian Medical Association (IMA) has condemned FGM as medically unjustifiable and harmful.¹¹

A. Immediate Effects

At the time of the procedure, girls experience intense pain (performed without anaesthesia in community settings), heavy bleeding, shock, infections from unsterilized instruments, urine retention, and in some cases, death.¹² For a child aged six or seven, the experience is one of extreme trauma inflicted by trusted family members, which deepens the psychological impact.

B. Long-term Health Effects

Survivors of FGM suffer from chronic complications throughout their lives, including recurring urinary tract infections, painful menstruation, cysts, nerve damage, sexual dysfunction, and serious complications during childbirth including obstructed labour and increased risk of maternal and infant mortality.¹³

C. Psychological Effects

Beyond the physical damage, FGM causes lasting psychological trauma. Survivors report post-traumatic stress disorder (PTSD), chronic anxiety, depression, flashbacks to the procedure, and a deep sense of betrayal.¹⁴ Many survivors describe the experience as a formative wound the moment they learned that their body did not belong to them. The fact that the harm is inflicted

¹¹WHO, 'Female Genital Mutilation Fact Sheet' (n 1); Indian Medical Association (IMA), 'Position Statement on Female Genital Mutilation' (2018).

¹²Bogale D, Markos D and Kaso M, 'Immediate Complications of Female Genital Mutilation and Factors Associated with Them' (2014) 6(1) International Journal of Women's Health 43–50.

¹³WHO, 'Female Genital Mutilation: Long-Term Health Consequences' (2020).

¹⁴Behrendt A and Moritz S, 'Posttraumatic Stress Disorder and Memory Problems After Female Genital Mutilation' (2005) 162(5) American Journal of Psychiatry 1000–1002.

by a mother or trusted female elder adds a dimension of intimate betrayal that makes psychological recovery particularly difficult.

IV. FGM IN INDIA: THE DAWOODI BOHRA COMMUNITY AND “KHATNA”

The Dawoodi Bohra are a sub-sect of Ismaili Shia Muslims, with an estimated population of one million in India, highly organized and led by the Syedna, whose rulings are treated as binding by most community members.¹⁵

Khatna is performed on girls between the ages of six and eight, in homes, by a “dai” (traditional midwife) or any woman designated by the family, without anaesthesia and without medical supervision.¹⁶ The instruments used are rarely sterile. Girls are told little or nothing in advance about what will be done to them. The procedure involves cutting a part of the clitoris or clitoral hood.¹⁷

In 2017, the advocacy campaign “Speak Out on FGM” brought this hidden practice into public view for the first time in India, led by survivors including Masooma Ranalvi and the organization WeSpeakOut. A petition was simultaneously filed before the Supreme Court of India, marking the first time the Indian judiciary was asked to confront FGM directly.¹⁸

The community’s official position has consistently been that Khatna is a protected religious practice and a “sunnat” (prophetic tradition).¹⁹ Progressive members within the community and a significant number of Islamic scholars globally have challenged this interpretation, affirming that there is no Quranic obligation to perform FGM.²⁰

V. FGM AND THE INDIAN CONSTITUTION: A FUNDAMENTAL RIGHTS ANALYSIS

The Indian Constitution is the supreme law of the land. Any practice regardless of whether it

¹⁵Asghar Ali Engineer, 'Dawoodi Bohras: Reform and Resistance' (Institute of Islamic Studies, 1993).

¹⁶Ranalvi and WeSpeakOut (n 3); Priya Thangarajah, 'The Cut: Female Genital Mutilation in India' *The Wire* (New Delhi, 7 February 2018).

¹⁷Priya Thangarajah (n 16); Sahiyo, 'Understanding Female Genital Cutting in the Dawoodi Bohra Community' (2017).

¹⁸Ranalvi and WeSpeakOut (n 3); Sunita Tiwari v Union of India (n 4).

¹⁹Syedna Mufaddal Saifuddin, 'Statement on Khatna' (2016), as reported in various media; see Masooma Ranalvi, 'FGM Has No Place in Islam' *The Hindu* (Chennai, 22 October 2016).

²⁰Sheikh Ahmad Kutty (n 9); Organisation of Islamic Cooperation (OIC), 'Resolution on Female Genital Mutilation' (2016).

is religious, cultural, or traditional that violates fundamental rights guaranteed under Part III is unconstitutional. FGM violates at least four fundamental rights.

A. Article 21 — The Right to Life, Dignity, and Bodily Integrity

Article 21 of the Constitution states: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”²¹ The Supreme Court of India has, over decades, expanded the meaning of Article 21 to encompass the right to live with dignity, the right to health, and the right to bodily integrity.²²

In Justice K.S. Puttaswamy v. Union of India (2018), a nine-judge Constitution Bench of the Supreme Court unanimously held that the right to privacy is a fundamental right under Article 21 and that bodily autonomy the right to make decisions about one’s own body is a core component of this right.²³ The Court observed that “the right to make one’s own choices about one’s body is an intrinsic aspect of human dignity.”²⁴ FGM is a direct violation of these rights: a young girl who is taken for Khatna has made no choice, cannot consent, and has a part of her anatomy permanently removed. This is forced, non-consensual, permanent bodily harm inflicted on a minor.

In Selvi v. State of Karnataka (2010), the Supreme Court held that even investigative procedures like narco-analysis cannot be compulsorily applied to a person without their consent, because it violates bodily autonomy under Article 21.²⁵ If the state cannot compel even an adult accused person to undergo an involuntary procedure, it is impossible to argue that a seven-year-old girl can lawfully be subjected to genital cutting without her consent.²⁶

B. Article 14 — The Right to Equality

Article 14 guarantees to every person the right to equality before the law and equal protection of the laws.²⁷ FGM is a practice that targets only females there is no equivalent procedure

²¹Constitution of India 1950, art 21.

²²Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608; Maneka Gandhi v Union of India (1978) 1 SCC 248.

²³Justice K S Puttaswamy (Retd) v Union of India (2018) 10 SCC 1 ('Puttaswamy II — Privacy Judgment').

²⁴Puttaswamy (n 23) [309]–[310] per Chandrachud J.

²⁵Selvi v State of Karnataka (2010) 7 SCC 263, [190]–[196].

²⁶Ibid [192]; see also State of Maharashtra v Madhkar Narayan (1991) 1 SCC 57 (right of every woman to her bodily integrity).

²⁷Constitution of India 1950, art 14.

inflicted on male members of the Dawoodi Bohra community. A practice that singles out girls for painful, irreversible bodily harm solely because of their sex constitutes gender-based discrimination, violating Article 14.²⁸ The CEDAW Committee has explicitly held that such gender-based violence is a form of discrimination within the meaning of international law.²⁹

C. Article 15 — Prohibition of Discrimination on Grounds of Sex

Article 15(1) prohibits the state from discriminating against any citizen on grounds including sex. Article 15(3) permits the state to make special provisions for women and children.³⁰ The Supreme Court has interpreted Article 15 as casting a positive obligation on the state to eliminate gender-based discrimination. A practice performed exclusively on girls, causing them irreversible harm, and serving no purpose other than controlling their bodies and sexuality is precisely the kind of sex-based discrimination that Article 15 was designed to prohibit.³¹

D. Article 25 — Freedom of Religion and Its Limits

The primary defence offered by the Dawoodi Bohra community is that Khatna is a protected religious practice under Article 25.³² This argument does not withstand constitutional scrutiny. Article 25 is expressly subject to public order, morality, health, and the other provisions of Part III of the Constitution. A religious practice that causes serious physical harm to a child, performed without consent, violates public health and the child's fundamental rights and cannot claim protection under Article 25.

Under the “essential religious practices” test established in *Commissioner, Hindu Religious Endowments v. Sri Shirur Mutt* (1954), only practices that are “integral” to a religion are constitutionally protected.³³ FGM is not integral to Islam the overwhelming majority of the world's 1.8 billion Muslims do not practice it. It is a cultural practice with a religious label, not an essential religious practice.

²⁸*Air India v Nargesh Meerza* (1981) 4 SCC 335; *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

²⁹CEDAW Committee, General Recommendation No 19 on Violence Against Women (1992) UN Doc A/47/38, [1] (‘gender-based violence is a form of discrimination within the meaning of art 1 CEDAW’).

³⁰Constitution of India 1950, art 15(1), 15(3).

³¹*Government of Andhra Pradesh v P B Vijayakumar* (1995) 4 SCC 520; *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

³²Constitution of India 1950, art 25.

³³*Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) SCR 1005 (‘Shirur Mutt Case’) the foundational case establishing the ‘essential religious practices’ test.

In *Indian Young Lawyers Association v. State of Kerala (Sabarimala Case)* (2018), the Supreme Court held that religious practices which discriminate against women on physiological grounds violate Articles 14 and 15.³⁴ Justice D.Y. Chandrachud's concurring opinion held that "constitutional morality must prevail over social morality" and that the rights of individuals cannot be subordinated to community-mandated religious custom.³⁵ The *Shirur Mutt* test further confirms that peripheral or cultural customs attached to a religion do not receive constitutional protection.³⁶

VI. EXISTING INDIAN CRIMINAL LAW APPLICABLE TO FGM

Although India lacks a specific anti-FGM statute, several existing laws can be applied to prosecute those who perform FGM or arrange for it to be performed on a child.

A. Bharatiya Nyaya Sanhita (BNS), 2023

9. **Sections 114 and 116 – Hurt and Grievous Hurt:** FGM involves cutting a part of the body causing undeniable bodily pain and permanent physical injury. Section 319 defines "hurt" and Section 320 defines "grievous hurt" to include permanent disfigurement of the body and hurt which causes severe bodily pain for twenty days or more. The removal of any part of the female genitalia qualifies as grievous hurt.³⁷
10. **Section 117 – Punishment for Voluntarily Causing Grievous Hurt:** A person who voluntarily causes grievous hurt is punishable with imprisonment up to seven years and a fine. This provision applies directly to anyone who performs FGM on a girl.³⁸
11. **Section 119 – Grievous Hurt by Dangerous Weapons:** Since FGM is performed using a sharp instrument, it additionally falls under Section 326, which prescribes punishment of imprisonment for life or up to ten years.³⁹

³⁴*Indian Young Lawyers Association v State of Kerala (Sabarimala Case)* (2018) 8 SCC 1.

³⁵*Sabarimala* (n 34) per Chandrachud J, [88]–[96]: 'Constitutional morality must prevail over social morality. The individual's dignity and rights cannot be subordinated to the diktat of the community.'

³⁶*Shirur Mutt* (n 33); *Durgah Committee, Ajmer v Syed Hussain Ali* (1961) 3 SCR 383 — only practices 'integral' to the religion are protected; peripheral or cultural customs are not.

³⁷Indian Penal Code 1860 (IPC), ss 319, 320.

³⁸IPC 1860, s 325; see also s 320(viii) — 'any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.'

³⁹IPC 1860, s 326.

12. **Sections 45 and 49 – Abetment:** A parent, guardian, or community leader who arranges for a girl to undergo FGM, or encourages or facilitates the procedure, is guilty of abetment under these provisions and is equally liable to punishment.⁴⁰

B. The Protection of Children from Sexual Offences (POCSO) Act, 2012

The POCSO Act protects children from sexual abuse and exploitation. Section 7 defines “sexual assault” as touching the vagina of a child “with sexual intent” or “any other act with sexual intent which involves physical contact without penetration.”⁴¹ FGM involves the deliberate physical touching and cutting of a child’s genitalia. Legal advocates have argued that the application of POCSO to FGM should be tested before an Indian court.⁴²

The mandatory reporting provisions of POCSO are particularly significant: any person who has knowledge that FGM has been or is about to be performed on a child is legally required to report it to the police (Section 19). Failure to report is itself an offense under Section 21, punishable with imprisonment up to six months and a fine.⁴³

C. Juvenile Justice (Care and Protection of Children) Act, 2015

Section 75 of the Juvenile Justice Act punishes any person who assaults, abuses, or willfully exposes a child in a manner likely to cause unnecessary mental or physical suffering, with imprisonment up to three years and a fine. The deliberate infliction of genital cutting on a child falls clearly within this provision.⁴⁴

D. The Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 — A Legislative Analogy

The PC-PNDT Act bans sex-selective practices that had been justified in some communities as cultural or religious preference. The legislature and the Supreme Court rejected the argument that communal preference could override a woman’s fundamental rights. The same reasoning

⁴⁰IPC 1860, ss 107, 109; see *Shri Ram v State of UP* (1975) 3 SCC 262.

⁴¹Protection of Children from Sexual Offences Act 2012 (POCSO), ss 3, 7.

⁴²POCSO 2012, s 7: ‘Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.’

⁴³POCSO 2012, s 19 (mandatory reporting) and s 21 (penalty for failure to report — imprisonment up to 6 months and fine).

⁴⁴Juvenile Justice (Care and Protection of Children) Act 2015, s 75: punishment of imprisonment up to 3 years and/or fine for cruelty to a child.

applies to FGM: a communal or religious preference for a practice that permanently harms girls cannot justify its continuation.⁴⁵

VII. INDIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

India ratified CEDAW in 1993.⁴⁶ Articles 2(f) and 5(a) of CEDAW require state parties to eliminate laws, customs, and practices which constitute discrimination against women and to abolish practices based on the idea of the inferiority of women. The CEDAW Committee has explicitly stated that FGM constitutes gender-based violence and discrimination, and that state parties must prohibit it by law. India's failure to enact such a law is a direct breach of its CEDAW obligations.⁴⁷

B. Convention on the Rights of the Child (CRC), 1989

India ratified the CRC in 1992.⁴⁸ Article 24(3) specifically requires state parties to abolish traditional practices prejudicial to the health of children. The CRC Committee has repeatedly called on India to enact legislation criminalizing FGM and to implement awareness and education programmes. India's failure to respond constitutes a breach of its CRC obligations.⁴⁹

C. United Nations General Assembly Resolution 67/146 (2012)

In December 2012, the United Nations General Assembly adopted Resolution 67/146 calling on all member states to enact and enforce legislation to prohibit FGM, and to invest in education and community outreach to change harmful social norms. India voted in favour of

⁴⁵Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994; Centre for Enquiry into Health and Allied Themes (CEHAT) v Union of India (2003) 8 SCC 398.

⁴⁶Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18 December 1979, 1249 UNTS 13; ratified by India 9 July 1993.

⁴⁷CEDAW, arts 2(f), 5(a); CEDAW Committee, General Recommendation No 14 on Female Circumcision (1990); General Recommendation No 31 on Harmful Practices (2014, jointly with the CRC Committee).

⁴⁸Convention on the Rights of the Child (CRC), adopted 20 November 1989, 1577 UNTS 3; ratified by India 11 December 1992.

⁴⁹CRC, art 24(3); CRC Committee, General Comment No 13 on the Right of the Child to Freedom from All Forms of Violence (2011) UN Doc CRC/C/GC/13.

this resolution.⁵⁰ Nearly twelve years later, it has not fulfilled the commitments it made.

D. Sustainable Development Goals (SDGs), 2015

SDG Goal 5 (Gender Equality), Target 5.3 explicitly requires states to “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation” by 2030.⁵¹ With fewer than five years remaining until the 2030 deadline, India has taken no legislative steps to meet this specific target.

VIII. KEY CHALLENGES IN ADDRESSING FGM IN INDIA

Despite the clear constitutional and international legal framework, addressing FGM in India faces several serious obstacles:

1. **Deep community secrecy:** FGM is enforced by an almost impenetrable wall of silence. Women who have spoken out publicly have faced ostracism, harassment, and threats. This secrecy makes it nearly impossible for survivors to report the crime or for law enforcement to investigate it.
2. **Centralized religious authority:** The endorsement of Khatna by the Syedna means that families who might individually want to discontinue the practice feel they cannot do so without incurring religious consequences. Addressing FGM in this community requires engaging with this institutional religious position.
3. **Absence of a specific law:** Without a dedicated anti-FGM statute, police officers have no clear basis for action, prosecutors have no established charge to bring, and survivors have no clear legal remedy.
4. **Political sensitivity:** Successive Indian governments have been reluctant to legislate on matters perceived as interfering with the religious practices of minority communities. This political caution has allowed harmful practices to continue. A law against FGM is not an attack on religion it is the protection of children.

⁵⁰United Nations General Assembly Resolution 67/146, 'Intensifying global efforts for the elimination of female genital mutilations' (20 December 2012) UN Doc A/RES/67/146.

⁵¹United Nations, 'Transforming our World: The 2030 Agenda for Sustainable Development' (2015) UN Doc A/RES/70/1, Goal 5, Target 5.3.

5. **Complete absence of data:** No Indian government agency has ever measured the prevalence of FGM in India. No national health survey includes questions about FGM. This absence of data allows the government to treat FGM as a marginal issue.
6. **Trauma and distrust among survivors:** Many survivors have complicated feelings about the practice. Building trust with survivors requires a sensitive, non-judgmental approach from government agencies, civil society, and healthcare providers.

IX. THE SUNITA TIWARI CASE: INDIA'S SUPREME COURT AND FGM

In 2017, advocate Sunita Tiwari filed Writ Petition (C) No. 286 of 2017 before the Supreme Court of India, seeking a ban on FGM. The petition argued that FGM (Khatna) violates Articles 14, 15, 19, and 21 of the Constitution, amounts to child abuse, and that India's failure to ban it violates its obligations under CEDAW and the CRC.⁵²

The Dawoodi Bohra community filed a counter-petition arguing that Khatna is a protected religious practice under Articles 25 and 26 and an "essential religious practice" of the community. In 2018, the Supreme Court referred the matter to a five-judge Constitution Bench, recognising the constitutional significance of the issues raised.

The questions referred to the Constitution Bench include: (i) whether FGM is an "essential religious practice" protected under Articles 25 and 26; (ii) whether it violates fundamental rights under Articles 14, 15, and 21; and (iii) the larger question of how to balance religious freedom against the fundamental rights of individuals within a religious community.⁵³ As of 2025, the case remains pending. Every year without a judgment is another year in which thousands of Dawoodi Bohra girls are subjected to Khatna without any legal protection.

X. GLOBAL BEST PRACTICES: LESSONS FOR INDIA

A. United Kingdom

The United Kingdom enacted the Female Genital Mutilation Act 2003 and strengthened it with the Serious Crime Act 2015, which introduced FGM Protection Orders civil court orders issued

⁵²Sunita Tiwari v Union of India (n 4); see also 'SC Refers FGM Petition to Constitution Bench' The Hindu (New Delhi, 30 April 2018).

⁵³Ibid; see Sabarimala (n 34) for the Court's approach to essential religious practices in the context of gender discrimination.

to protect a girl at risk of FGM, even before the procedure has taken place. The 2015 Act also introduced mandatory reporting: all healthcare professionals and teachers are legally required to report known cases of FGM involving girls under 18 to the police. Failure to report is a criminal offense.⁵⁴

B. Australia

All Australian states and territories have criminalised FGM. Significantly, Australian law makes it an offense to take a child abroad for the purpose of having FGM performed addressing the problem of “vacation cutting.” A similar extraterritorial provision in Indian law would close this loophole.

C. Kenya and the UN Programme

Kenya enacted the Prohibition of Female Genital Mutilation Act in 2011, accompanied by community education campaigns, alternative rite-of-passage ceremonies, and survivor support services. The United Nations Population Fund (UNFPA) and UNICEF jointly run the world’s largest programme to accelerate the elimination of FGM, emphasising legislative reform, community engagement, and survivor support.⁵⁵

XI. RECOMMENDATIONS

Based on the constitutional analysis, existing laws, international obligations, and comparative experience, this paper makes the following recommendations:

1. **Enact a Dedicated Anti-FGM Law:** Parliament must pass a specific statute criminalizing FGM, defining it using the WHO classification, criminalizing both performers and arrangers, providing for FGM Protection Orders, and criminalizing taking a girl abroad for FGM.
2. **Expedite the Sunita Tiwari Case:** The Constitution Bench should be given priority hearing dates. A clear ruling that FGM violates Articles 14, 15, and 21 and does not

⁵⁴Female Genital Mutilation Act 2003 (UK), as amended by the Serious Crime Act 2015, s 74 (FGM Protection Orders) and s 75 (mandatory reporting).

⁵⁵Prohibition of Female Genital Mutilation Act 2011 (Kenya); UNFPA-UNICEF Joint Programme on FGM: Accelerating Change, Annual Report 2023 (2024).

qualify as an essential religious practice under Article 25 will provide the constitutional foundation for legislation and enforcement.

3. **Mandatory Reporting:** Doctors, nurses, teachers, and social workers should be legally required to report suspected or confirmed cases of FGM in girls under 18. The POCSO Act's reporting provisions should be explicitly amended to include FGM.
4. **National Data Collection:** The Ministry of Health must direct the next National Family Health Survey (NFHS) to include questions about FGM, enabling the government to understand the scale of the problem and track progress.
5. **Training for Law Enforcement and Judiciary:** Police officers, prosecutors, and judges require training to recognise FGM, understand the applicable law, and handle cases involving child survivors with sensitivity.
6. **Community Engagement:** Legislation must be paired with sensitive outreach working with progressive members within the Dawoodi Bohra community, engaging Islamic scholars to challenge the religious justification for FGM, and developing alternative non-harmful ceremonies.
7. **Survivor Support Services:** Government and civil society must develop dedicated services for FGM survivors including medical care, psychological counselling, legal aid, and safe spaces for women who wish to speak out.
8. **Public Awareness Campaigns:** A sustained, sensitive public awareness campaign is a prerequisite for effective enforcement. Most people in India including healthcare providers, law enforcement officials, and judges do not know that FGM is practiced in India.

XII. CONCLUSION

FGM is happening in India today, in ordinary homes, to ordinary girls, at the hands of ordinary families who believe, sincerely but incorrectly, that they are fulfilling a religious obligation. The girls who undergo Khatna do not choose it. They do not understand what is being done to them. They carry its physical and psychological consequences for life. And they carry it in silence.

This cannot continue in a constitutional democracy. The Indian Constitution guarantees every person regardless of religion, caste, sex, or community the right to live with dignity, the right to bodily integrity, the right to equality, and the right to be free from discrimination. These are not negotiable. A religious community does not have the right to waive these guarantees on behalf of its children.

The constitutional framework is clear: FGM violates Articles 14, 15, and 21 of the Constitution. The international framework is equally clear: India is in breach of its obligations under CEDAW, the CRC, the SDGs, and the UN's 2012 resolution on FGM. Existing Indian law the BNS, POCSO, and the Juvenile Justice Act provides partial remedies applicable today, even before a specific law is enacted. But partial remedies are not enough.

What India needs is a clear, dedicated anti-FGM law that sends an unambiguous message: cutting a girl's genitals, whatever the justification, is a crime. Such a law, paired with community engagement, mandatory reporting, survivor support, and judicial education, can bring to an end a practice that has no place in a society committed to the equal dignity of every human being.

The silent wound must be acknowledged. The law must speak. And the state must act.