

Female Genital Mutilation in Bohra Muslim Community: A Conundrum to Muslim Women and Child Rights

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Abstract:

The female body is worshipped around the world in several cultures given the power it holds when it comes to procreating a new life. With numerous conventions, statutes, legislation, and regulations, it is believed that society is thriving progressively, however, after digging deeper, humans stumble across certain norms and customs, that make us question if society has actually progressed as humans claim to. In this paper, the researchers have shed light on such a significant conundrum, which generally does not attract the deserving attention which is “Female Genital Mutilation” among Bohra Muslims. The government fails to acknowledge its existence despite 75% of the community practicing it discreetly. It is not only mentally brutal but the physical attributes associated with it can shake humans to their core since this mutilation practice is performed on young girls by untrained midwives subjecting the victims to life-long ailments. Several ground reports of the victims who have gone under the knife merely to satisfy the patriarchal mindset and the factors influencing and encouraging the same have been mentioned in the paper. Further, the researchers have widely discussed the response of international bodies such as WHO, and UNICEF against the brutal practice and the prevailing situation in India. The current status of FGM with regard to the legal system is disheartening since prime facie, the practice infringes the women’s rights such as the right to privacy, the right to equality, the right to attain the highest standard of health, the right to intercourse, as well as the right to motherhood. However, it does not halt here, FGM also infringes child rights by subjecting them to cruelty. The researchers have recommended certain aspects which could be incorporated into the Indian legal system to tackle the conundrums risen by female genital mutilation in Bohra Muslims.

Key Words: Female Genital Mutilation; Bohra Muslims; Women Rights; Child Rights.

I. INTRODUCTION

In several places and cultures, women are treated as goddesses, however, despite the divine perceptions of women, there are certain sections of women that are subjected to extreme brutality and cruelty. Atrocities are committed against women across the world and the most disheartening fact is that certain violence to which women are subjected is within the walls of their own homes. The term human rights refer to the fundamental rights that are guaranteed to everyone simply by virtue of their involvement in society.

Over the passage of years, it has been discovered, however, that women’s rights are infringed upon in every corner of society. Despite the fact, that the Indian constitution recognizes women and men as having the same rights and responsibilities. However, in a modern environment, it appears that there is a significant disconnect between principles and application. Women in India had traditionally been looked down upon and treated as second-class citizens. Indian society has a long history of discriminating against women and dishonoring them. In spite of the numerous initiatives that have been done, the fundamental goal of achieving gender equality is still a very long way from being realized in India. One such inhumane practice that violates the rights of several women and young children around the world is FGM. The practice of genital mutilation, also known as female genital cutting, is a form of circumcision that is performed on young girls and women for purposes that are not considered to be medically necessary. This practice is condemned in a global arena as an infringement of the human rights of women and children. It is perceived as oppressive gender standards, constitutes a form of torture, as well as an extreme version of exploitation against girls and women. The persistence of female genital

mutilation (FGM) contributes to the maintenance of huge gender inequities in communities where it is practiced. This is because it restricts the chances available to young women and girls to attain their full legal rights and capabilities.¹

Female Genital Mutilation is a barbaric practice that is exercised by certain Islamic sects in India. The treatment, which encompasses the entire or complete amputation of the clitoral hood, is typically carried out on Bohra female Muslims who are 6-7 years old and is standard practice. The risks associated with FGM might range from mild pain to life-threatening infection.² Around 1 million population of Indian Muslims belong to the Dawoodi Bohra community of Shia Islam, which is known for its tradition of female genital mutilation. The practice is conducted on girls aged 6-7 years old girls and includes the whole or complete excision of the skin surrounding which is clitoral hood, referred to as khatna, khafz, and khafd.³

It is pertinent to mention that Mufaddal Saifuddin, leader of the Bohra community, explained that even though religious books that were authored years ago and are now treated as ancient Islamic texts defined the prerequisites which are Khatna as deeds of religious pureness, the Bohras are required to abide by the laws of the land and abstain from performing Islamic female circumcision in nations where the practice is effectively banned.

There is not a single societal rationale that has ever been offered throughout history for FC that can be supported by scientific evidence. There is no evidence that FC has any positive health effects; on the opposite, it has been shown to have severe negative effects on the victim's physiological, mental, and social health in both the short and long term. The effect is devastating for both the safe sex and enjoyment of the individual.

Hoodectomy, on the contrary, which is yet another significant surgical intervention, can be characterized as a rare instance due to the fact that it can only very seldom be for the advantage of the lady. When we conduct an ethical analysis of FC, we find that it violates each and every one of the fundamental tenets that are considered to be of the utmost importance in the field of healthcare ethics. If we look at FC through the lens of Islam, we will notice that the Quran doesn't contain any passages that may be used to support or judge claims regarding FC. The hadith scholars came to the conclusion that the hadiths relating to the legitimacy of FC were lacking in credibility. It has not been recognized as credible fundamental legal material upon which a fatwa may be founded. The researchers are of the opinion, as are a significant number of modern Islamic academics, that FC ought to be discarded.⁴

A. Factors leading to the prevalence of Genital Mutilation in Today's Modern Era

The communities who engage in female genital mutilation frequently defend it by citing a variety of socio-cultural issues. Many individuals who live in areas where the practice is carried out assert that it has deep roots in the history, traditions, and culture of those communities and this custom has remained part of their culture ever since then. The maintenance of cultural traditions and the safeguarding of ethnic traditions are the driving forces behind the continuation of the practice.

Various other factors that lead to the circumstances are intimately associated with fixed gender norms and preconceptions of women as the honor of the family. This perspective is strictly associated with strict assumptions in the context of women's sexual purity and control sexual desire. FGM is practiced in many countries, including developed nations like the US, where it is illegal.⁵ In some cultures, there is a widespread belief that young women's sexual appetites should be stifled as soon as possible in order to protect their virginity and guard against immorality. In some tribes, female genital mutilation is thought to be essential for maintaining heterosexual monogamy and warding off aberrant sexual behavior.

¹ Ihsan Karaman, *Female circumcision debate: A Muslim surgeon's perspective*, PubMed Central v.47(3) May 2021.

² P.T.I, 'khafz' is okay, it isn't female genital mutilation, says Dawoodi Bohra women's Group, THEPRINT (May 21, 2024, 15:11), <https://theprint.in/features/khafz-is-okay-it-isnt-female-genital-mutilation-says-dawoodi-bohra-womens-group/105244/>.

³ Hibo Warder, *Cut: One Woman's Fight Against FGM In Britain* (Simon and Schiston Limited, 2016).

⁴ Abdulrahim Rouzi, *Facts and controversies on female genital mutilation and Islam*, The European Journal of Contraception & Reproductive Health Care Vol 18 Issue 1 (2013).

⁵ What is female genital mutilation?, UNICEF (June 12, 2024, 17:31), <https://www.unicef.org/stories/what-you-need-know-about-female-genital-mutilation>.

Some people who are in favor of FGM further defend it on the basis of cleanliness and spiritual aesthetics. It is a preconceived judgment that if a woman has not been mutilated, then she is not in accordance with the determined beauty standards. If a woman has not gone under the knife, her prospects of being married are significantly lower in communities where these kinds of attitudes are common. Some people believe that female genital mutilation makes girls more appealing. For instance, infibulation is assumed to create smoothness, which is believed to be in alignment with beauty standards.⁶

B. Does a particular religion condone Female Genital Mutilation?

There are members of different communities such as Muslims, Christians, and Jewish who engage in FGM. It is interesting to know that at times, such heinous practices are associated with individual spirits and otherworldly powers. It has been wrongly associated with the religion despite the fact that it is not exclusively related to a particular religion and it transcends both Christianity and Islam. On the other hand, some followers of various religions hold the belief that the practice is obligatory for people who follow the religion. Due to the problematic nature of the link between female genital mutilation and many different religions, and in particular Islam, religious leaders possess an essential contribution to make in distancing FGM from religious practice.⁷

FGM is performed in Egypt, a country whose population is predominately Muslim; nevertheless, FGM is not performed in a great number of other nations with predominantly Muslim communities, including Saudi Arabia and Pakistan. The notion that female genital mutilation (FGM) is practiced in Islam has indeed been debunked by a large number of Muslim intellectuals and philosophers. These individuals assert that FGM is not mentioned in the Quran and runs counter to the tenets of Islam. If we bring India into the picture, the practice essentially prevails among Bohra Muslims, a section of Muslims that is majorly found in Mumbai.

II. WHAT IS FEMALE GENITAL MUTILATION?

The term FGM refers to a certain treatment that includes partial or entire amputation of the female external genitalia, so as to abstain them from having sexual pleasure and to curb their sexual needs during the age of puberty which is informally termed the age of running hormones. It is extremely unfortunate to know that so far around, 200 million children and women have been genitally mutilated in 31 countries around the globe, and it collectively representative statistics on the practice's occurrence. The most baffling fact here is that the precise figure of girls and women who have suffered FGM around the world is uncertain.⁸

Nevertheless, as per the records released by WHO, it is believed that FGM should be abolished, and a sharp decline in the preponderance of the practice over the course of 30 years has been found. Though it is pertinent to notice that not every country has been following the steps of a progressive approach when it comes to women's rights. World Health Organization segregates FGM into 4 different types, over the course of 1995 to 2007, which are mentioned below:

- i. Form I: Partial or complete removal of the clitoris from the female body.
- ii. Form II: Partial or complete removal of the clitoris, along with or without, the excision of Labia majora.
- iii. Form III: Thinning the vaginal passage by slicing and pulling altogether the labia minora or the labia majora to produce a kind of closure. This procedure can be performed with or without the removal of the clitoris. The process of stitching the cut margins of the labia back, which is known as "infibulation," is performed in the majority of cases.
- iv. Form IV: Needle prick, cutting, indentation, scrapping, and thermal ablation are some of the additional potentially damaging treatments that can be performed on a woman's genitalia for reasons other than medical treatment.⁹

Form I and Form II have highly practiced forms across the globe. It has been reported that 85% of all the cases fall into Category I and II.

⁶ Ruchi Kumar, *In India's Bohra Community, a Battle Over Genital Mutilation*, UNDARK.ORG (July 21, 2024, 12:18 PM), <https://undark.org/2021/03/10/india-battle-over-female-genital-mutilation/>.

⁷ Anjani Nanda, *The Prevalence of Female Genital Mutilation in India*, JISR Vol 11 No. 2 (2022).

⁸ World Health Organization, *Female genital mutilation* (Jan 21, 2022).

⁹ *Ibid* 6.

A. Difference between Female Genital Mutilation, Female Genital Cutting, and Female Circumcision

- Female Genital Mutilation stands for cutting and removing the clitoris from a female body to contain her sexual drive and to deprive her of sexual pleasure as it is perceived as a sin in certain communities. It is a terminology that is referred to by various groups that work for fundamental rights and health to underline the physiological, economic, and psychological impacts that are connected with this treatment. This word refers to the practice as a breach of human rights because of the brutality that is typically connected with the process, as well as the fact that it is almost always performed on young females.¹⁰
- Female Genital Cutting is a term that is actively used by health advocates and activists as an example to depict how dangerous and irrelevant the practice is since it does not have any physical benefit. However, in certain contexts, it is synonymously used with Female Genital Mutilation.
- The term female circumcision refers to a practice that fails to take into account the potential risks involved with the procedure. It is deceptive since it makes an implied comparison between the practice and male genital mutilation, despite the fact that FGM is a significantly more experimental drug and is not performed for therapeutic purposes.¹¹

B. Consequences of Female Genital Mutilation on the Female Body

The instant and protracted repercussions of female genital mutilation on a person include sexual, physical, and mental health that keeps on deteriorating as it challenges the entire individuality of a woman.¹² It includes:

- Physical Health Implications: It includes excessive bleeding or hemorrhaging, nervous shock that could be triggered due to the unsupervised process, risk of infectious diseases since a single blade is used on several girls, and unsterilized cutting could be a carrier of infection. Furthermore, it involves the possibility of hysteria from cutting which can lead to Anemia, cysts, bruising, difficulties in passing urine, menstruation abnormalities, recurring UTIs, anal fissures, protracted labor, and infertility are some of the long-term consequences that might occur. New research has shown that a woman's likelihood of experiencing problems throughout childbirth is increased if she has undergone any form of female genital mutilation including clitoridectomy. Women who are pregnant have a higher chance of requiring a cesarean section or an invasive procedure, and they are also more likely to develop postpartum hemorrhage.
- Sexual and Psychosexual Health Implications: It ranges from painful sexual intimacy to hypersensitivity in the genital area. It is also at times linked to infertility and birthing complications leading to ultimate disapproval of the woman and eventual abandonment.¹³ In a community with a conventional mindset, if a woman fails to produce children, the guilt is placed squarely on the shoulders of the woman, even if they are unable to conceive or bear children. The discomfort that is involved with the treatment, unpleasant menstrual cycle, or sexual problems which may take place as a consequence of the treatment can all contribute to the development of psychosexual issues. Repeated occurrences of a loss of sexual drive and satisfaction during sexual activity may potentially cause problems for psycho-sexual health.
- Emotional and Mental Trauma: It can lead to depression, anxiety, stress, psychosexual problems, PTSD, etc.

¹⁰ Neha Tripathi, *Female Genital Mutilation: A Humanistic Approach*, International Journal of Human Rights Vol 8 Issue 2 (2022).

¹¹ Kirti Bhargava, *Does India Need a Law To Curb Female Genital Mutilation? What Has FGM To Do With Religion?*, OUTLOOK (July 12, 2024, 11:07 AM) <https://www.outlookindia.com/national/does-india-need-a-law-to-curb-female-genital-mutilation-what-has-fgm-to-do-with-religion--news-238125>.

¹² Elliot Klein, *Female Genital Mutilation: Health Consequences and Complications—A Short Literature Review*, Pubmed Central Vol. 2018 (2018).

¹³ NAHID TOUBIA, *FEMALE GENITAL MUTILATION: A GUIDE TO LAWS AND POLICIES WORLDWIDE* (Zed Books, 2000).

III. PREVALENCE OF FEMALE GENITAL MUTILATION ON A GLOBAL SCALE AND THE INTERVENTION OF INTERNATIONAL BODIES

The accessible information that has been obtained from large-scale national samples indicates that the practice of FGM is densely packed in large communities of the countries extending from various regions of the East coast to the Horn of Africa, in certain regions of the Middle East including such Iraq and Yemen, and in certain countries in Asia such as Indonesia, with large differences in the pervasiveness of the practice.¹⁴ There is scientific proof that female genital mutilation occurs in a variety of countries, which include Colombia, India, Malaysia, Oman, Saudi Arabia, and the United Arab Emirates; however, there is a significant amount of diversity in the specific category of FGM executed, the conditions surrounding the practice, and the dimensions of the demographic groups that are influenced.¹⁵ In these circumstances, unfortunately, the information that is accessible originates from either subjective or research studies that are occasionally out of date, and there isn't any data that is reflective of the population's occurrence currently available.

In addition, the practice can be observed in certain regions of Europe, Australia, and the USA in the last few years which is quite the safest place for migrants who practice such customs and rituals. The practice of FGM is prohibited by a variety of conventions and treaties operating on a global scale, in addition to national laws in a great variety of states across the world, thereby protecting the rights of women. The way in which females feel about female genital mutilation varies greatly from country to country. Almost 50% population of the country in Mali, Sierra Leone, Guinea, the Gambia, Somalia, and Egypt believe that the practice shall continue since it is in accordance with the basic principle of Islam. These countries have the greatest percentages of acceptance of female genital mutilation. On the other hand, the majority of girls and women in the largest number of nations in Africa and the Middle East with representative statistics on attitudes, believe that it ought to come to an end.

A. Principles of International Conventions against Barbaric Practice of Genital Mutilation in Females

- Article 25 of the UDHR: It is widely debated that FGM violates several basic rights available to humans followed by certain international conventions which include the right to health and bodily integrity. The claim has been vehemently supported by Article 25 of the UDHR which states that every individual possesses the right to a basic standard of living that is sufficient enough to ensure health and well-being.¹⁶
- Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: Given that FGM is often seen as a type of violence perpetrated against women, the CEDAW is potentially applicable. On a similar note, if it is considered a type of torture, then it is within the scope of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. In addition, FGM breaches the Convention on the Rights of the Child because it is considered to be an ancient practice that is dangerous to the well-being and safety of children and because it is almost often carried out on children who are still minors.¹⁷ In 2008, ten different United Nations organizations came together to produce a joint statement against female genital mutilation (FGM).
- Article 3 and Article 24(3) of the United Convention on Child Rights: In 2012, the General Assembly of the United Nations passed a resolution that called for increased worldwide efforts to end FGM and cutting. In addition to being a breach of various international legal documents, female genital mutilation and cutting also violated the principles of the United Nations Convention on the Rights of the Child, to which India is a signatory party.¹⁸ In accordance with Article 24(3) of the CRC, the state is obligated to take any and all steps that are both efficient and necessary in order to put an end to customary practices that are harmful to the well-being of children. In contrast, FGM and cutting are both violations of Article 3 of CRC, which, among many other articles, upholds the idea recognized as in the best interest of children around the globe.
- The World Health Assembly in 2008 came up with a resolution (WHA61.16) thereby restricting genital mutilation among Bohra Muslims all around the globe.¹⁹ The resolution encourages various governing sectors such as

¹⁴ *Supra* note 1 at 6.

¹⁵ Rishika Radhakrishnan, *Constitutionality of Female Genital Mutilation in India*, IJLMH Vol IV Issue I 2021.

¹⁶ Universal Declaration of Human Rights, Article 25.

¹⁷ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Principle 3 and Principle 4.

¹⁸ United Convention on Child Rights, Article 3 and Article 24(3).

¹⁹ World Health Assembly, (WHA61.16).

finance, health, education, and women's affairs to condemn it and refrain from practicing or encouraging it since it is a grave violation of the Right to Health. Further in 2012, the United Nations General Assembly embraces a resolution restricting FGM and declaring it to be against the principles of Human Rights.²⁰ The WHO intends to eliminate FGM and medicalization by emphasizing on:

- Increasing the capacity of the health industry to respond, including the development and implementation of guidance, techniques, mentoring, and implementing policy in order to guarantee that working healthcare professionals are capable of providing medical services and consultations to girls and women who have undergone FGM, as well as usually attempt for the purpose of preventing the practice.
- Developing information entails the generation of required knowledge regarding the reasons, repercussions, and consequences. It also includes determining the reasons which lead to the involvement of health care practitioners in genital mutilation, how and where to refrain from further engaging in so, and the steps to look after individuals that have been subjected to mutilation.
- Steadily rising activism includes the development of credible research and organization standing up against such inhumane practices along with regional and local support. These tools include government leaders and human rights activists to evaluate the health hazard that encompasses FGM and thereby reducing the cost of public health.

The sustainable development goals of 2015 consist of a goal that is intended to eradicate any evil practices such as child marriage, forced marriage, or genital mutilation by the year 2030.²¹ Abiding by the spirit of SDG 5 which promotes gender equality, the UN is thriving hard for the full eradication of female genital mutilation. UNFPA joining hands with UNICEF is accelerating the elimination of certain customs and rituals that violate gender equality such as child marriage, menstruation taboo, FGM, etc. The objective is to utilize the "Community for development" approach of UNICEF to incite active participation and social awareness regarding child rights. The United Nations is paving the path toward attaining gender equality and advancing sustainability by developing programs that aim to put an end to the practice of FGM. These awareness programs inspire and encourage young women to come out and speak against it.²²

B. Monumental Milestones to Eradicate Female genital mutilation

With the passage of time, several milestones have been achieved by international bodies in order to eradicate female genital mutilation and protect the interest of young women and children against the patriarchal mindset which believes that engaging in such barbaric exercises will keep a woman pure for her marriage.

- i. Relying on the previous reports and research, eventually in 1997, the WHO joined hands with UNICEF and UNFPA, and issued a statement challenging the prevalence of genital mutilation in young girls. Since then, there has been a significant amount of work done to combat female genital mutilation (FGM), including research, creating awareness among the communities, and reforms in public policy and administration.
- ii. UNICEF and UNFPA collaboratively initiated a program in 2007 which encouraged certain communities to abandon the mutilation and cutting of young children.²³
- iii. In 2008, WHO partnered with nine other bodies of the United Nations, and issued a document titled "Eliminating female genital mutilation: an interagency statement", which supported advocacy against the practice and the document acted as evidence that despite being a secret practice, female genital mutilation is widely practiced. Further in 2010, WHO came forward and requested that the healthcare service providers shall not indulge in female mutilation.

²⁰ Somya Abrol, *Yes, Female Genital Mutilation happens in India; here's everything you need to know*, India Today (July 07, 2024, 17:16) [Indiatoday.in/lifestyle/people/story/female-genital-mutilation-india-clitoris-pleasure-Muslim-Bohra-community-1162510-2018-02-06](https://indiatoday.in/lifestyle/people/story/female-genital-mutilation-india-clitoris-pleasure-Muslim-Bohra-community-1162510-2018-02-06).

²¹ Alisha Mahajan, *Diseases and Female Genital Mutilation*, NHPGOV (June 12, 2024, 16:12) <https://www.nhp.gov.in/disease/female-genital-mutilation>.

²² *Female Genital Mutilation*, UNICEF (May 16, 2024, 12:08 PM), <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>.

²³ Jacinta K Muteshi, *The ongoing violence against women: Female Genital Mutilation/Cutting*, Journal of Physical and mental health (Apr 18, 2016).

- iv. In 2012, a resolution was adopted by the World Health Assembly designed to eliminate FGM. In 2016, the WHO along with the United Nations Population Fund and the United Nations Children's Fund issued the very first proof-based recommendations on health management and complications resulting from female genital mutilation and cutting. The development of the principles was based on a comprehensive examination of the women who have gone through blades and scissors when they were young.
- v. In 2018, a clinical guide was launched by WHO with the purpose of knowledge enhancement of healthcare providers in managing and tackling the complications of genital mutilation. In 2021, a research agenda was prepared by UNICEF in collaboration with different bodies, and the WHO issued ethical guidelines for conducting research associated with Female genital mutilation.
- vi. In 2022, WHO issues a training guide to conduct person-to-person communication while researching FGM. It has been actively suggested by WHO over the course of time, that the healthcare providers and researchers shall build connections with the victims thereby implementing a counseling approach.

IV. FEMALE GENITAL MUTILATION IN INDIA AMONG BOHRA COMMUNITY

The brutal practice is carried out in the Dawoodi Bohra community on girls aged 6-7 years and the circumstances leading to the same is because the clitoral hood is regarded as a morally reprehensible nodule of flesh that prevents the accomplishment of Taharat, which is Arabic for pureness.²⁴ Because the procedure is almost always performed on young girls, female genital mutilation and cutting is not simply a problem that affects women's rights as well as children's rights. The stated take of the administration on the matter has been contradictory on one hand when the Women and Child Development Minister originally called for the Dawoodi Bohra community to willingly eliminate the practice, or risk the possibility that it would be considered a crime, later the administration quickly overturned its position on the grounds that no official data existed suggesting that the practice was existing in the society.²⁵

Notably, a large number of Islamic experts all around the globe have condemned the practice and don't approve of it. Furthermore, the practice is not specified in the Quran, which is considered to be the holiest book in Islam. It is also essential to point out that the practice has been outlawed in a number of nations where the majority of the population is Islamic or Muslim.

In addition, authorities from inside the Dawoodi Bohra community have spoken out against the practice as well. On the other hand, the Dawoodi Bohra group adheres to a holy document known as Daim al-Islam, and this text does approve of the practice. As per the studies, it is revealed that more than 75% of Bohra Muslims still indulge in female genital mutilation, however, the cases go unreported in the name of essential religious practices. The study has been conducted by 3 women researchers in collaboration with FGM survivors from the Bohra Muslim Community, and it is found that this heinous practice against young girls is secretly practiced in a number of states that include states of Gujarat, Rajasthan, Maharashtra, Kerela, and Madhya Pradesh.

A. On-Ground Reports and Experiences of Female Genital Mutilation in India

- A 26-Year-old Law student who had been mutilated at the age of 7 was a participant in the survey conducted to determine the magnitude of this practice existing in India and she accounted for her personal experience wherein she recalled that she was held tightly by her grandmother while an untrained midwife who was an unprofessional woman removed some extra skin from down there to curb her sexual desires in the future. She called the pain which was so severe in nature that could not even sit properly for days.
- Another woman, 41 years of age accepted subjecting her daughter to Khatna and later sought medical help since the bleeding was heavy that three sheets had been soaked from the blood.²⁶

²⁴ Angela Dawson, *Addressing female genital mutilation in the Asia Pacific: the neglected sustainable development target*, Journal of the Public Health and Austria Vol II Issue 1 (2021).

²⁵ Agnes Chandra, *Women and Law in India* 78-109 (Oxford University Press, 2021).

²⁶ 'Khafz' is okay, it isn't female genital mutilation, says Dawoodi Bohra women's group, THE PRINT (May 17, 2024, 18:09), <https://theprint.in/features/khafz-is-okay-it-isnt-female-genital-mutilation-says-dawoodi-bohra-womens-group/105244/>.

- One of the 17 women, who filed the petition before the Supreme Court requesting the ban, is Masoona, who was subjected to Khatna as a young child and recalled that she was accompanied by her mother when she was into a dark decrepit building where she was cut while she was shrieking in pain.
- Aarefa Johari, who is now a journalist and an activist against Khatna, was mutilated by one of the old midwives since the custom prevailed in her family, and instead of slaying an evil tradition, it was easier to slay a young girl. Essentially, the belief that Clitoris is a mere unwanted skin and a source and sin is what predates Bohra Muslims to continue this gut-wrenching process on young girls. The ultimate purpose is to curb their sexual desires and to keep them loyal to their marriages and not to go stray in search of intimate pleasures.
- Zehra Patwa, a US-based Technology Project Manager, shared that her private organs have been tampered with when she was young. To overcome her childhood trauma, she sought psychological help which is turning common with each passing day. She stated, that the mutilation goes against everything which is considered modern or progressive. One more account from her family is disheartening as the procedure left a 7-year-old bleeding for six straight days, which is extremely traumatic for a child to experience. We as humans are incapable of comprehending the contradiction that exists between a group which is in certain cases progressive and retrograde practices.
- Another survivor, Shaheeda Kirtane, protected by her mother, asserted that families who do not follow in their footsteps generally face social outcasts and are generally shunned by society.
- Insania Dariwala, a filmmaker and a child activist by profession, remembers her elder sister going through Khatna and her loud screams which made her mother put her foot down when it came to her younger daughter. However, Insania was not cut down there but was further cut off from family functions and other Joyous occasions.
- Mariya Tehar, a Boston-based social worker, states that being cut as a child leaves them emotionally, sexually, and psychologically challenged which is difficult to overcome. The mutilation not only damages the woman physically but also ruins her marriage which comes with sexual pleasures which cannot be enjoyed given the mutilation.
- A famous name in this fight against FGM is Nushrat Bharucha, who has established herself as a successful Bollywood actress. Her mother was subjected to Khatna and sadly, it was plotted by her own mother and father since her father was given an ultimatum by the community hence there was a huge emotional price associated with it.

B. Female Genital Mutilation: A Challenge to Fundamental Rights

Fundamental Rights are the basic rights that are available to both citizens and non-citizens as per the Constitution of India, which are enshrined ranging from Article 14 to Article 32. The evil practice of FGM violates certain human rights that can be availed in the form of fundamental rights in India.

- Article 14 and Article 15: The Indian Constitution guarantees the right to equality to every citizen irrespective of their caste, color, creed, race, religion, or place of birth. Female Genital Mutilation is a big threat to the right to equality since it subjects young Muslim girls to Khatna which is not only physically damaging²⁷ but also emotionally as well as psychologically thereby discriminating young women against religion and sex. It reflects deep-rooted patriarchal ideologies and inequality among both the sex in its worst form.²⁸
- Article 19: Freedom of speech and expression is guaranteed under the Constitution of India, which empowers every Indian citizen to speak their mind out and loud. However, mutilation of a child does not give much of a choice to a young child to express their consent to wants, which is in line with a clear violation of Article 19 of the Indian Constitution.²⁹
- Article 21: The ambit of the Right to life and personal liberty is quite wide and it consists of various rights such as the right to health, the right to motherhood, the right to sex, etc. The consequences of genital mutilation are never ending when it comes to health, motherhood, and sex since it endorses no physical benefits but only negative impacts. The short-term consequences or the immediate output of genital mutilation in females include death, hemorrhage, excessive pain and bleeding, tissue swelling, shock, urinary problems, etc. However, long-term

²⁷ INDIA CONST. art. 15, cl.1.

²⁸ INDIA CONST. art. 14.

²⁹ INDIA CONST. art. 19.

complications of the same can be listed as painful urination, UTIs, bacterial vaginosis, menstrual problems, sexual problems such as painful intercourse, and birth complications thereby risking motherhood, psychological issues, and surgical issues projected under form III of the Genital Mutilation. It violates the human right to attain the highest standard of health, security, and physical integrity.³⁰

- Article 22: Right to freedom from torture and inhumane treatment is clearly violated when a child is maimed for satisfying ancient norms and ideologies that were a reflection of a deep stemmed male dominating society that encourage the curbing of sexual desire of a woman by subjecting her to inhumane practices and torture.³¹

Eradication of genital mutilation of female Bohra Muslims at a young age is an utmost need of a progressive society since it signifies that even to this day, people are treated differently to satisfy the fragile egos of men and women who are of the opinion that a woman shall not enjoy her sexual rights and she shall only be perceived as child-vending machine and nothing else. This evil is still in practice due to the preconceived notions and judgments that if given liberty, a woman shall start roaming around to satisfy her sexual needs, thereby infringing her pureness, to which only her husband is entitled.

C. Social Factors Leading to the Performance of Female Genital Mutilation in India

The circumstances leading to subjecting young girls of 6-7 years old of age to such inhumane procedures vary from place to place. The evolution of time and societal dynamics also play an essential role when it comes to genital mutilation and the cutting of young girls. The intercultural and mixed socio-cultural factors within the families and communities shall also be considered important factors influencing the genital mutilation of young Muslim girls in the Bohra Community.

- In a society, where genital mutilation is perceived as an essential norm, cultural and community pressure compels the people of that particular community to indulge in such activities, and the failure of which could lead to societal outcasts is one of the major factors that influence to continue the practice of female genital mutilation in communities where it is a social convention.
- It is a common notion to consider female genital mutilation an essential component of bringing up a girl and a method of preparing her for adolescence and marriage. Beliefs regarding what constitutes appropriate sexual conduct are frequently the impetus for female genital mutilation (FGM). Its purpose is to guarantee both premarital virginity and loyalty in marriage.³²
- In places where people feel that female genital mutilation improves a woman's chances of finding a husband, the practice is highly preferred as it helps the family to get rid of her girl as she is seen as a burden that needs to be married off.
- Female genital mutilation is generally intertwined with cultural values of femininity and humility. It further endorses the belief that girls whose sinful body parts are removed, become pure and suitable for marriage since she is pious and holy. Some people hold the belief that the practice has backing from religious texts, despite the fact that no religion canons mandate such mutilation or cutting.
- Regarding female genital mutilation, religious authorities hold a variety of viewpoints: some advocate for it, others dismiss it as being unrelated to their faith, while yet others work for eradicating it.
- It is possible for local institutions that possess power and have influence over the general population such as local activists, religious leaders, midwives, and healthcare professionals to play a role in restricting genital mutilation and creating awareness regarding the same in society. In the same vein, once educated, girls have the potential to raise their voices against this barbaric practice.
- In the majority of nations in which female genital mutilation is performed, it is seen as a cultural practice, which is frequently cited as a justification for its existing operation.

V. GOVERNING LAWS IN INDIA

Currently, no legislation in India exists that prohibits the practice of FGM or cutting anywhere in the nation. In 2017, an NGO named Sahiyo, which is fighting toward the eradication of female genital mutilation and cutting issued a report that

³⁰ INDIA CONST. art. 21.

³¹ INDIA CONST. art. 22.

³² Beth D. Williams-Breault, *Eradicating Female Genital Mutilation/Cutting*, Vol 20 (18) 2018 Dec; 20(2): 223–233.

highlighted the frequency of the practice in India. As was shown, FGM and cutting gravely violates the human rights of women and children. It is of the utmost importance to draw attention to this practice to be made illegal but also to interact with the local community in order to raise awareness of the issue and educate the population about the consequences of engaging in it. The complacent approach that the Indian government has been taking toward the problem needs to be replaced with more proactive measures if the country is ever going to be free of FGM and cutting.³³

In 2017, a petition appeared before the apex court requesting a complete ban on the practice of female genital mutilation quoting that it violates the fundamental rights enshrined in the constitution of India. The case was referred to a larger bench for a more intense discussion, and the matter is still pending before the court.

The Dawoodi Bohra community, including the Dawoodi Bohra Women's Association for Religious Freedom (DBWRF), contested the petition stating the practice shall be continued as a legal restriction on FGM is a violation of the fundamental right to freedom of religion as enshrined in the Constitution of India. The right to freedom of religion is guaranteed by the Constitution of India in Articles 25³⁴ and 26,³⁵ however, it is not an absolute right and is restricted by specific exceptions related to public order, morals, and healthcare. Female genital mutilation poses a significant risk to the health of women and girls and has the potential to result in major health problems.

The practice of female genital mutilation (FGM) not only causes physical harm, but it also has a significant negative impact on the individual's mental and emotional health and well-being, and as a result, it has a direct impact on bodily autonomy and integrity of the young child subjected to mutilation. In addition, female genital mutilation violates a slew of fundamental rights, among them the right to equality, protected under Article 14; the prohibition of discrimination on various grounds, including sex, religion, race, and others, protected under Article 15; and the right to life and personal liberty, protected Article 21. The notion regarded as the essential religious practices test which was developed by the Supreme Court is also pertinent to this discussion because it is a test that is used to evaluate those aspects and practices of a religion that are basic to the religion itself.³⁶

The Dawoodi Bohra community has contended that female genital mutilation (FGM) is a vital religious practice, and as such, it should be protected from outside interference. However, the claim that FGM is necessary for the religious practice of the Dawoodi Bohra community is highly unlikely to prevail. In its decision from 2017, the Supreme Court established that the fundamental principles upon which a religion is based are an indispensable component of religious practice. As a result, the term essential practice refers to those rituals or observances that are necessary to adhere to religious beliefs. As it was mentioned earlier, a large number of countries with a majority Muslim population have already made the practice illegal. This unequivocally demonstrates that the practice of female genital mutilation and cutting is not an essential component of the practice of Islam; consequently, FGM cannot be considered an essential component of the religion.³⁷

In summary, the practice shall not be defended by arguing that the community's customs and traditions shouldn't be tampered with, as this is a form of cultural realism, and female genital mutilation is a practice that is fundamentally harmful, discriminating, and violent toward women. In India, the practice is especially penalized, however, no specific provisions are mentioned in the Indian Penal Code, 1860, Criminal Procedure Code, 1873, and Prevention of Sexual Offences against Children, 2012.

A. Status of other countries in regard to criminalizing Female Genital Mutilation

The notion of Justice is embedded in the fundamental laws of the nation that govern it, and it implies all sorts of justice ranging from social, and political to economic. In every sphere of life, women are subjected to hostility and crimes that are grave in nature. One such hostile form of evil is Female genital Mutilation and cutting which is criminalized in certain

³³ Leen Faroqui, *The global prevalence of female genital mutilation/cutting: A systematic review and meta-analysis of national, regional, facility, and school-based studies*, <https://doi.org/10.1371/journal.pmed.1004061> (Sep, 2022).

³⁴ INDIA CONST. art. 25.

³⁵ INDIA CONST. art. 26.

³⁶ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 98-234 (Oxford University Press, 2001).

³⁷ Emmanuel Kabengele, *Female genital mutilation: a systematic review of research on its economic and social impacts across four decades*, *Global Health Action* Vol 9, Issue I (2016).

states now such as Kenya, where the practice has been penalized under the Female Genital Mutilation Act, of 2011. Moreover, it also punishes the offenders with life imprisonment who take out or bring in a person to perform genital mutilation.

The majority of the countries such as Australia, Austria, Belgium, Burkina Faso, Cannada, Croatia, Denmark, Czech Republic have special provisions for regulating and penalizing Female Genital Mutilation all around the state. On the other hand, Liberia is one such country that earlier had a law preventing this evil, nevertheless, the act was withdrawn and does not exist anymore. In addition to that, there are certain countries that have no law at all that govern and penalize the practice of female genital mutilation such as Israel, Jordan, Libya, Kuwait, etc. The model of the United States shall be perceived as a standard model as the federal has anti-FGM law which has banished the practice in 40 states.

However, it is not only disheartening but also extremely discouraging to see that despite abiding by the charters that promote human rights, the majority of the states are failing to acknowledge such a grave crime that exploits the basic right to health and protection against cruel practices of young children.

VI. CONCLUSION AND SUGGESTION

A. Conclusion

In India, FGM is a common practice and is just one of the many atrocities that contribute to India being an unsafe place for women to live. The persistence of cultural traditions such as female genital mutilation despite being carried out by small minorities is suggestive of a more widespread issue that lies that are deeply rooted in the culture of certain communities that still are living under the assumption that women are nothing but merely a chattel. In India, a common belief exists that once a female body has attained puberty, it starts craving sexual desires thereby making it impure, and in some cultures even sinful. This belief exists regardless of the society or religion that a person belongs to. It is possible to establish connections between different cultural conceptions of contamination and purity. For example, in many Indian communities, a woman who menstruates is thought to be "impure." However, the question is when is this going to stop? When are we going to see a woman as an equal in society? The barbarous practice of FGM is linked to significant risks to one's health. In the immediate aftermath of the procedure, a person may have severe discomfort, profuse bleeding, infections, convulsions, or even death. In the long-term implications, there is a possibility of experiencing urinary or vaginal issues, in addition to complications after labor. Surgical intervention can be required to repair the injury. Hence, if no health benefits are associated with it, then why is this practice still in continuance? Only because being mutilated will curb the sexual needs of a woman thereby keeping her pure for marriage. This is nothing but an extreme show of how deeply patriarchy is stemmed from the cultural system all around the globe.

Even if it is asserted that this practice is protected under Article 25 and Article 26 of the Constitution in the name of religion, what makes it an essential practice that is keeping the court from penalizing it? Genital Mutilation is a grave violation of women's and child's rights across the world, and the magnitude of the same shall be realized by the legal authorities and the rights of the women shall be defended, thereby upholding the literal and textualist meaning of Justice and equality. No practice that violates the fundamental rights of a woman or a child shall be perceived as a custom or a religious belief. To keep up with the dynamics of society, it is essential to change and eliminate those customs that no longer serve society.

B. Suggestions

- **Implementation of Strict legislation:** The Government of India shall realize the magnitude of this evil prevailing in the society that ultimately leads to lifelong traumas among women. The parliament shall come up with legislation specifically dedicated to protecting the rights of women and young children against female genital mutilation.
- **Non-Profit Organizations to protect child and women's rights:** The NGOs across the country dealing in child rights and women's rights shall be given counseling and training on how to cope with the victims of genital mutilation, thereby, encouraging the victims to come out and raise their voice against this heinous practice.
- **Health care provides to create awareness:** In order to assist in putting an end to this detrimental practice, the medical profession plays an essential role. It is the major obligation of those working in health care to spread correct information on the health repercussions of the practice, and as a result, they should be well informed of

the ramifications of FGM. They must also be competent to manage any difficulties that arise as a result of female genital mutilation. The state in compliance with “The Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children, prepared in 1994 by the second UN Regional Seminar”, shall evolve an action plan to acknowledge the harmful implications of Female Genital Mutilation and it shall necessarily consist of:

The inclusion of information on the detrimental effects of such practices in educational programs pertaining to health and sexuality. Literacy initiatives should be expanded to include discussions of themes related to ancient practices that are harmful to the health of both children and women. Creating audio-visual programs and looking for stories in the news about traditional practices that have an adverse effect.

- **Role of Government in curbing Female Genital Mutilation:** Efforts to eliminate female genital mutilation should be directed by administrations and conducted at the global, national, and local levels. These initiatives should include the following:

Demonstrating a clear political determination to putting a stop to female genital mutilation. Establishing a legal and policy foundation to abolish female genital mutilation including a statute that would criminalize the practice for women or young girls whose approval has not been sought. Integrating initiatives to avoid female genital mutilation into policies and practices that address issues of women's health, schooling, and the growth of knowledge. Knowledge and training regarding female genital mutilation that is both truthful and easily available. Facilitating the formation of community-led plans for the elimination of female genital mutilation.

- **Influential Community Leaders shall be educated about the harmful impact of FGM:** Awareness shall be created among the community leaders who hold an influence among those who practice such heinous procedures on young girls. They shall be made aware of all the harmful impact of genital mutilation on the female health, thereby eliminating this custom from the society.