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["The Court's role is to examine whether the measures advanced by the State in the form of legislative mandate, to augment the legitimate goal," the Supreme Court said in the case. "The denomination sect is likewise constrained by the constitutional goals and must follow the law; they are not above the law." The goal of law is to eliminate social defects and evils so that social peace, order, stability, and progress can be achieved in an egalitarian society. … Untouchability, for example, was thought to be a cornerstone of Hindu religious doctrine. However, it is condemned by human rights, and it was outlawed by Article 17 of the Indian Constitution, and its practice in any form is a constitutional crime punishable under the Civil Rights Protection Act. Article 15(2) and other related measures meet Article 17's goal." 11](#_Toc98436941)

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# **ABSTRACT**

The goal of this research was to highlight the importance of the role of the health professional when dealing with excised women. This research acknowledges that traumatic experiences that occur repeatedly in childhood necessitate a difficult sort of care in order to achieve a better birthing outcome. Most significantly, the safeguards of women who have been harmed due to a lack of education and their families have led them to believe that this practice is necessary for them and that if they do not follow it, they would be forced to leave their marriages. FGM is frequently viewed as a method of purging a girl of filthy ideas and aspirations. Girl’s and women's sexual desire is considered something to be ashamed of.

# **INTRODUCTION**

FGM has both short- and long-term negative consequences on the victims' physical and psychological well-being the severity of the slashing is proportional to the damage done. Because anesthetic is rarely used on the sufferer during the treatment, there is a lot of agonies.

***“Imagine being taken to a room in a dark worn outbuilding.***

***Imagine being pinned down on the floor.***

***Imagine your underwear being taken off.***

***Imagine seeing a knife being heated on the gas stove.***

***Imagine the same hot knife slicing your clitoris.***

***Imagine young girls shrieking in pain.”[[1]](#footnote-1)***

Female genital mutilation (FGM) is a horrific practice that occurs all across the world, not just in Africa. It's not only something that tribal societies do. In India, a young girl between the ages of six and seven is routinely cut. Unprofessional midwives exist in Mumbai, scaring young females from the Bohra tribe, a Shia subsect. For a long time, FGM, or khatna as it is known among the Bohras, was a well-guarded secret, a taboo, and a subject never to be spoken. Female genital mutilation (FGM) is a term used to describe treatments that involve the partial or complete removal of the external female genitalia or other injuries to the female genital organs for non-medical reasons. Adults are occasionally subjected to the procedure, which is usually performed on young girls between the ages of one and fifteen. FGM has also been practiced on women. The practice is most popular in 30 African countries, as well as certain Asian and Latin American countries, and among migrants from these areas.

This is a popular practice among the Bohra group in India, where the ceremony is known as "Khatna" or "Khafz/Khafd." Khatna is the practice of cutting the tip of a girl's clitoris when she is between the ages of 6 and 7. Mullanis, women with a semi-religious background, traditional cutters, or any woman with some experience perform it. According to an online survey conducted by Sahiyo, an NGO among Bohra women, 80 percent of the 400 respondents have gone through the khatna process.

**FEMALE GENITAL MUTILATION FROM AN INTERNATIONAL PERSPECTIVE**

FGM is a breach of women's and children's human rights because it violates their right to life and physical integrity, their right to health, and their right to be free from torture, cruel and unusual treatment, and abuse. FGM is a violation of rights entrenched in the United Nations Convention on the Rights of the Child, 1989 (UNCRC) and violates the promise of non-discrimination because it mostly affects girls under the age of 18.

Several international human rights accords provide the right to be free of gender discrimination. "Any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field," according to the Child Convention Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).

Unlike male circumcision, which has health benefits, FGM has negative health repercussions for women and is largely focused on regulating women's sexuality and subordinating their function in society. When a woman is subjected to FGM, she is subjected to sex discrimination, which jeopardizes her ability to be recognized and enjoy herself. The right to life is considered a fundamental human right and is protected by several international instruments, including Article 3 of the Universal Declaration of Human Rights, Article 6(1) of the International Covenant on Civil and Political Rights, and Article 6 of the United Nations Convention on the Rights of the Child. FGM can result in death or contribute to maternal and neonatal fatalities in extreme situations.

While typically connected with the right to be free of torture, the right to physical integrity incorporates several broader human rights values, including the inherent dignity of the person, the right to liberty and security, and the right to privacy. FGM and other acts of violence that endanger a person's safety also violate their right to physical integrity

**FGM'S IMPACT**

More than 20 African countries and 13 other countries have passed laws making FGM illegal. The extent and approach of legal rules that relate to FGM differ. It has been specifically inserted in penal code provisions or under particular Acts in nations such as Egypt, Ghana, Belgium, Austria, Cyprus, Denmark, Norway, Italy, Portugal, Sweden, and Spain. Existing penal code provisions have been used to FGM in the United States, Germany, France, the Netherlands, Mali, and Switzerland. Special laws have been implemented in some countries, such as the United Kingdom and Togo, to combat FGM.

It is important to highlight that, although FGM has a clear negative impact on health, male circumcision has none, and can even be claimed to have a good influence on health by preventing certain infections. As a result, FGM is a blatant infringement of not just the right to life and dignity, but also the right to non-discrimination based on sex. The goal, object, and impact of male and female circumcision are all distinct, resulting in gender discrimination.

**India's judicial system**

The Indian Penal Code, 1860, addresses many forms of violence against women in India (IPC). Excessive bleeding (hemorrhage), genital tissue swelling, wound healing problems, injury to surrounding genital tissue, shock, and death are all immediate complications of FGM, according to the WHO, while long-term consequences include urinary problems, vaginal problems, menstrual problems, sexual problems, and so on. Persons who engage in FGM may be prosecuted under the IPC. IPC sections 319 to 326 deal with various degrees of harm including serious harm.

Sections 324 and 326 of the IPC, in particular, provide for imprisonment and fines for "voluntarily causing pain" and "voluntarily causing grave hurt." R.K. Raghavan, the former Director of the Central Bureau of Investigation (CBI), has stated despite the fact that FGM is not expressly prohibited by the IPC, the police are required to register a case under Section 326 of the IPC in response to a complaint.

Section 3 of the Protection of Children from Sexual Offenses Act of 2012 (POCSO Act), deals with penetrative sexual assault by anyone on any kid, among other things. Defines it as the insertion of any object into the vagina of the girl.[[2]](#footnote-2) It is established precedence that penetration in sexual offenses need not be complete penetration. Explanation 1 of Section 375, IPC categorically states that the term vagina includes labia majora. FGM, which requires insertion of a sharp object into the vagina of a child, maybe covered under Section 3, POCSO Act read with Explanation 1 of section 375 IPC.

The State is committed to taking affirmative measures – legislative, policy, or otherwise – to promote and safeguard the right of all children to live and grow with equity, dignity, security, and freedom, especially those who are marginalized or disadvantaged; to ensure that all children have equal opportunities; and that no custom, tradition, cultural, or religious practice is allowed to violate, restrict, or prevent children’s right to live and grow with equity, dignity, security, and freedom, especially those who are marginalized or The NPC recognizes and prioritizes children's inalienable rights to health, survival, growth, and protection. In terms of protection, the NPC acknowledges that "a safe, secure, and protective environment is a precondition for the fulfilment of all other children's rights." It pledges to build "a loving community." The Ministry of Women and Child Development developed the centrally supported Integrated Child Protection Scheme (ICPS) in 2009 with the goal of creating and establishing an effective protective system for vulnerable children. Its goals include institutionalizing and integrating essential services and structures for emergency outreach, institutional care, family and community-based care, counselling and support services, and child protection at the family and community level, as well as promoting preventive measures to protect children from situations of vulnerability, risk, and abuse. Through an interface with several sectors, such as health, education, judiciary, police, and labor, the project intends to integrate service provision into a range of existing services to cater to the numerous requirements of children in difficult circumstances. The ICPS promotes the right to privacy through its systems.

While FGM may be considered a form of "hurt or grievous hurt" under the IPC and a crime under Section 3 of the POCSO Act because it is performed with a cutting instrument and can be prosecuted under existing laws such as sexual assault, child sexual abuse, and domestic violence, addressing the practice requires a more comprehensive approach. Other aspects of FGM that need to be addressed include abetting or supporting the practice, spreading the practice, prevention of FGM, laws on medical/health professionals who perform the procedure, the need to report, support, and rehabilitative provisions, and raising awareness.

As mentioned earlier, khatna is either carried out by Mullanis, women who have a semi religious standing, or by traditional cutters or by doctors. According to a 2008 UNFPA report titled ‘A Qualitative Study on FGM among the Dawoodi Bohra Community’, it was observed that religious beliefs regarding FGM were not changing in the community but very minor changes in approach regarding the appropriate age of the girls (when they should be operated upon), increasing dependence on private doctors and nurses instead of traditional FGM performers, was silently creeping in the society.[[3]](#footnote-3) This report suggests that those who perform or abet the performance of and propagate FGM should all be held guilty of the offense.

Most countries target health professionals, social workers, and teachers when it comes to reporting incidents of FGM. Section 19 of the Protection of Children from Sexual Offenses Act of 2012 makes it mandatory for anybody with information about the crime to disclose it to the authorities. Young girls are frequently taken for the Khatna by a female relative and are often unaware of what is occurring to them. In such a circumstance, it is recommended that anybody who comes across any information about the occurrence of such an offense, including teachers, doctors, and others, tell the authorities so that required action can be taken.

# Is it possible to justify FGM as a religious practice?

FGM is frequently tied to a ceremony marking the coming of age and entry into womanhood in many cultures. Religious requirements, tradition, custom, and a desire to limit the girl's libido were determined to be the main reasons for the practice in a survey done among women of the Dawoodi Bohra community.

The Indian Constitution guarantees the right to freedom of religion and the freedom to govern religious issues under Articles 25 and 26. Article 25 protects an individual's right to religious liberty. However, such liberty is limited by the provisions of Part III of the Indian Constitution, which protect fundamental rights, including the right to equality and non-discrimination based on gender, as provided by Articles 14 and 15 of the Indian Constitution. FGM is a form of female genital mutilation that is used to suppress girls' and women's sexual impulses and has negative health consequences. Women and girls are viewed as objects with sexual appetites that must be stifled in order to keep them from being abused by other men. Such behavior is unconstitutional because it reinforces gender stereotypes about women and girls, infringing on their fundamental rights as guaranteed by Articles 14 and 15 of the Indian Constitution. In the name of religion and in the name of protecting girls and women, such practices victimize women and violate their rights to physical autonomy, control over their bodies, and protection from physical violence and mental trauma, and thus violate their right to physical autonomy, control over their bodies, and protection from physical violence and mental trauma, and thus violate their right to physical autonomy, control over their bodies, and protection from physical violence and mental trauma, and thus violate their right to physical autonomy, control over their bodies, and thus violate their right to physical autonomy, control over

In Anuj Garg v. Hotel Association, the Supreme Court rejected gender-stereotypical arguments that Section 30 of the Punjab Excise Act, which prohibited the employment of any man under the age of 25, and any woman, in any part of an establishment where liquor or another intoxicating drug was being consumed, was necessary to ensure the "security" of women.

"The current law ends up victimizing its subject in the name of protection," the Court said. In this regard, the state's interference in achieving the ends of protection should be appropriate to the legitimate objectives... Gender equality is now acknowledged by the European Court of Justice as one of the fundamental values underlying the European Union. A convention and a goal for the Council of Europe's member states to attain... The court must determine whether or whether majoritarian tendencies rooted in moralistic tradition infringe on individual sovereignty. This is set against a backdrop of increased judicial examination of such legislation around the world... As a result, one issue of immediate relevance in such circumstances is the impact of conventional cultural standards as well as the general ambiance in society on women who choose jobs that are otherwise perfectly benign for their male counterparts.

# "The Court's role is to examine whether the measures advanced by the State in the form of legislative mandate, to augment the legitimate goal," the Supreme Court said in the case. "The denomination sect is likewise constrained by the constitutional goals and must follow the law; they are not above the law." The goal of law is to eliminate social defects and evils so that social peace, order, stability, and progress can be achieved in an egalitarian society. … Untouchability, for example, was thought to be a cornerstone of Hindu religious doctrine. However, it is condemned by human rights, and it was outlawed by Article 17 of the Indian Constitution, and its practice in any form is a constitutional crime punishable under the Civil Rights Protection Act. Article 15(2) and other related measures meet Article 17's goal."

# FGM, whether or not it is a religious practice of the Bohra community, is subject to constitutional morality.

# **Conclusion**

While it has been shown that Indian law contains provisions for criminal action against any sort of harm, there is no particular mention of FGM in our legislation, and the practice is mostly undetected. It has also been observed on a global scale that has a specialized law dealing with the matter, which includes not just prosecution but also prevention, education, and research, which has proven to be vital Building awareness, providing relief, and rehabilitating people are all things that need to be done. As a result of this conversation, it is clear that a separate law on female genital mutilation (FGM) is required for identical reasons, namely, to highlight the problem and address it as a damaging criminal behavior rather than an acceptable religious practice.

1. https://www.hindustantimes.com/static/fgm-indias-dark-secret/ [↑](#footnote-ref-1)
2. Section 3(b) of POCSO: “Penetrative sexual assault.- A person is said to commit “penetrative sexual assault” if- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person [↑](#footnote-ref-2)
3. Dr. Farida Shah, ‘A Qualitative study on FGM/FGC among Dawoodi Bohra Community’, at p. 19 [↑](#footnote-ref-3)