

# THE CONCEPT OF FEMALE GENITAL MUTILATION AND ITS RELATED LAWS IN INDIA

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**Abstract:** Where twenty four African countries have banned, and many western countries including US and UK have outlawed the practice of Female Genital Mutilation, India is still struck in a tussle between religious beliefs and human rights regarding a ban on Female Genital Mutilation. Where women are raising their voice against Female Genital Mutilation/ Cutting many girl child still shriek with the pain of an abuse that will haunt them for their entire life and this will continue till no law is introduced regarding it.

Female Genital Mutilation is also called “khatna or khafd” is a tradition in the Dawoodi Bohras of the Shia sect of the Muslim. This grave tradition leaves a psychological impact on the developing brains that in turn affects their personality as a whole for example they suffer post- traumatic stress disorder, sexual disorder, fear of sexual intimacy etc. This tradition has widely been labelled as a severe form of child abuse which is indeed hampering the child rights and thus it is punishable in India under various acts.

The researchers in this paper has discussed about the process of Female Genital Mutilation and its effects and impact on the sufferer. It also deals with the laws that has been established in India and even aims to establish grounds for declaration of Female Genital Mutilation/Cutting as a crime altogether and pave a way for establishment of a separate act.

**Index Terms:** Female Genital Mutilation, Laws, Traditions.

## I. INTRODUCTION

“We demand for equality now, for a just world for females.”

The 14<sup>th</sup> century old tradition of female genital mutilation (FGM), which is explicitly practised by the Dawoodi-Bohra community, especially the Shia Islamic sect, is an illegal, illicit and criminal offence and there is an urgent need for the community to stop and completely ban it by their own accord and if they don't do so there is the need of the government to bring and implement such law that will ban the practice of female genital mutilation, which is indeed a heinous crime on humanity. It is mostly practised in Middle East and African countries and most of these countries have taken the measures to ban the

practice of female genital mutilation. Talking about India, there is Union Ministry of Woman and Child Development that takes care of such illegal practices and implements laws accordingly. In India, there is no such act for Female genital mutilation in India but this criminal practice can be curbed by Protection of Children from Sexual Offences, 2012 and Indian Penal Code, 1860.

In a Joint Statement issued by the WHO, UNFPA and UNICEF in 1997, Female Genital Mutilation has been defined 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”<sup>1</sup> Female genital mutilation is frequently called khatna or khaf'd. This practice is generally supported out by mostly by midwives, the practice involves cutting off the clitoral head of the vagina of girls at an undeveloped age i.e., when they are in six or seven years old, it is the belief that it will restraint a woman's sexual drive and hence will not make them impure. This practice happens at such a tender age that the victim girls have mostly started to recognise their body parts and their functioning. Female genital mutilation comprises all the processes that involves partial or complete elimination of the external female genitalia, or other such removal to the female genital organs for non-medical reasons

Female genital mutilation, even known as female genital cutting and female circumcision, is an internationally acknowledged method which is an open violation of the human rights of small girls, teenage girls and womenfolk, henceforth reflecting the deep-seated inequalities between the two sexes. Since female genital mutilation is more or less always carried out on minors, it is therefore, also a violation of the rights of children. Female genital mutilation also varies from many other forms of violence against women in that, in practising group of people, it is done habitually on almost all girls, usually minors, and is encouraged as a highly valued cultural practice and social norm.

Some of the significant concerns and interrogations raised in the regard of Female Genital Mutilation pertain to the following:

- Female Genital Mutilation is accepted out behind closed doors;
- Female Genital Mutilation is a gender particular crime and the “victims” in most cases are minor girls;
- People involved in the decision making process for the procedure of this tradition, commonly includes elderly women of the family (mother, grandmother or aunts) of the girl child;
- Role of medical professionals, traditional practitioners and the spiritual/community leaders is an essential that needs to be examined;

<sup>1</sup>A Joint WHO/UNICEF/UNFPA Statement on FGM, 1997. Available at <http://apps.who.int/iris/bitstream/10665/41903/1/9241561866.pdf>

- Time limit within which the “aggrieved woman” may approach the legal system, bearing in mind that she might have gone through this procedure at a time when she would have been a child/minor;
- Specifications regarding the duty to report;
- Demerits for moderating the practice of Female Genital Mutilation as a part of “religious practice”;
- Addressing the vital need for alertness in the generation amongst the public, school and colleges vis-à-vis the practice of FGM/C; and
- Need for preventive strategies.

## II. CONCEPT AND ORIGIN OF FEMALE GENITAL MUTILATION

The accurate source of origin of female genital mutilation is not known, however Ancient Egypt (which is the present-day Egypt and Sudan) is proposed, by some scholars, to be the site of origin, owing to the unearthing of circumcised mummies from around the fifth century BC. Another common theory regarding the origin of this practice is that it had spread because of the increasing slave trade and this is how it spread over the areas of Middle Africa and western Africa western shore of Red Sea. Its implementation has been seen on the female slaves in Ancient Rome.

Many reasons were available in the justification of the practice of Female Genital Mutilation. The very common and popular reason was to protect a girl/woman’s sexual purity, virginity and morality demonstrating obedience and respect which are considered to be the prime requirements on the part of a girl for marriageability. Another reason finds its traces in Kenya where pre-marital sexual intercourse is permitted and Circumcision was an indicator of cultural identity and transition of being an Adult member in their group. In fact, their name the “Kipsigis” of Kenya means “the circumcised”, as after this procedure one is considered to be reborn. The third reason was to protect health of the women and their foetus. It was believed that physical contact between the toxic clitoris and the new born could be lethal for it.

FGM has been reported in the European nations dating back to 1860s, when the founder of the London Surgical Home for Women, Isaac Baker Brown, found that the female patients of epilepsy in his hospital tended to masturbate, which has concluded by him led to hysteria, followed by epilepsy and then insanity and eventually death. Hence, they believed that the only cure for it was clitoridectomy.

The apologue behind this lethal practice of Female Genital Mutilation is that Muslim men of Bohra community are mostly trader and they need to travel a lot, so due to this irrational and bizarre notion that wives of these men must not feel sexual urges when they are away from their husbands and thereby

subjected the females of this community to the practice of khatna so that their wives remain chaste. Also the practice is followed blindly despite the fact that Quran has no mention of it.

In the 1960s, one Sarah Rodriguez said these practices were more focused on taming women's sexuality and making them to conform the prejudice of Wifely Duties. Such practices played a great role at objectifying a woman's body and making her a slave to marital commitments.

FGM has, according to the 2012 report of UNICEF, has affected approximately 125 million girls and women in 29 countries in Africa and Middle East. However, the report did not provide any evidence for the prevalence of FGM in India; this will not make us be ignorant towards its existence at all.

According to World Health Organisation the Female Genital Mutilation has four types of it. They are discussed as follows<sup>2</sup>: -

- TYPE 1- partial or total Clitoridectomy; or the removal of only the preputium in very rare cases.
- TYPE 2- Removal of the Clitoris with the labia minors.
- TYPE 3- complete removal of the clitoris, labia minors and majors as well: closing the external genitalia as a narrowing allowing only drainage of the urine and menstrual blood.
- TYPE 4- Any type of non-medical intrusion harming external genitalia including piercing, puncture, tattoo, scratching, etc., .

FGM is carried out by midwives or an elderly woman using special knives, scissors, razors, or pieces of glass. On rare occasions even, sharp stones were used and there is a possibility of the instrument being reused without being cleansed. Another deadly aspect of this practice is that it is done without Anaesthesia and the girl is held down by many women often belonging to her own family. It is a procedure that takes around 10 to 20 minutes depending upon the experience of the lady who carries it out, and the wound is covered with either Alcohol, ashes, lemon juice, herb mixtures, cow dung etc. In India the process is mainly carried out on infant girls, aged 6 – 14. These girls are lured to the room where FGM is conducted and then go through this painful process, on the word of the lady who takes them, who is often their mother, grandmother, or aunt. And above all in a process that involves tampering their natural body, these young girls have no say at all.

<sup>2</sup> [https://www.researchgate.net/publication/262010771\\_Female\\_Circumcision](https://www.researchgate.net/publication/262010771_Female_Circumcision)

Worldwide this practice is practiced by followers of different religions namely- Christians and Muslims (especially the Bohra- Dawoodi community) and also atheists as well. But here it is important to note that neither the Koran nor the bible provide for this practice.

With not only causing suffering and torment and agonising small girls, FGM is globally accepted as a violation of Human Rights. Female Genital Mutilation is prevalent in India among a small ethno-religious marginal group of the Ismailia Shia sect of Islam, called the Dawoodi Bohras. The whole inhabitants concerned are concentrated in Bombay and are about in half a million population approximately. Not only in Mumbai but they are inhabitants of Telangana, Kerala, Gujarat, Rajasthan and National Capital Territory.

The FGM carries with it sever complications and problem which can very easily result in the death of these young girls who are the victim of it. And with that we do not say that “there is a possibility of death” but we say that it is their luck these minor girls survive the trauma of it. Before moving forward, we need to keep in mind that this practice is carried on without the use of Anaesthesia. In a medical scenario, the effect of Anaesthesia is difficult, the clitoris being a highly vascular organ with its nerve ending being densely concentrated. Hence many painful injections are required to anaesthetize the organ completely. Such practices even have the possibility of sterility. Another complication attached to this practice is of Haemorrhage which can result from excision of the clitoris which involves the circumcising of the clitoral artery which has a high pressure and also strong blood flow where stitching to stop bleeding may eventually not be effective and thus may result in haemorrhage. Haemorrhage not only being life threatening but is also the MOST COMMON complication of FGM. Other Important Complications that these girls are too young to know and go through are-

Shock is something which can result immediately after the procedure and may also suffer trauma which is fatal.

The swelling or inflammation around the wound, or girl’s fear of pain while passing of urine on the raw wound or injury to the urethra can result in Acute Urine Retention. This condition often causes infection in the Urinary tract.

Infection is a very common outcome of the use of unclean instruments, application of cow dung, ashes, herbs, and other such substances can support bacteria growth. This may either delay or prevent the wound from healing. Situation where same unsterilized instruments are used on each girl in case of group mutilations, there will be an increase in the risk of spread of blood borne diseases like HIV or Hepatitis B or C.



The practise also has psychosocial effects as well. Like Shock, trauma, trust issues, feeling of betrayal, loss of self-confidence, many report sleeplessness, nightmare, panic attacks, difficulties in concentration and post-traumatic stress. Depression, psychotic disorder, anxiety, feeling of incompleteness and phobias are also the uncured effects.

### III. THE LAW AGAINST FEMALE GENITAL MUTILATION IN INDIA

Female Genital Mutilation has in the recent times been an eye opener for the Ministry of Women and Child Development and reforms are coming up to ban this criminal offence and violator of human rights and the governance system is in constant motion to curb this illegal act. Though the practice of Female Genital Mutilation is extensively found in India and from centuries this topic has been a spark of light till this day, that a human rights activist raised this issue by filing a Public Interest Litigation in the Supreme Court for issuing the writ of Mandamus or any other suitable way for the prohibition of the practice of Female Genital Mutilation in India.

The Apex Court looked into this severe matter and had put forward its concerns regarding the inhumane traditional practice of Female Genital Mutilation which poses a serious threat to human life and our young girls are still being put through this painful trauma.

Though this practice is an offence under section 320 ( grievous hurt ), section 322 ( voluntarily causing grievous hurt ), section 334 ( voluntarily causing hurt on provocation ), section 335 ( voluntarily causing grievous hurt on provocation ), section 336 ( act endangering life or personal safety of others ), section 337 ( causing hurt by act endangering life or personal safety of others ), section 338 ( causing grievous hurt by act endangering life or personal safety of others ), section 340 ( wrongful confinement ), section 351 ( assault ), of Indian Penal Code, which is a general law, the fact that there is no specific law on this subject further aggravates the problem. Former Director of the Central Bureau of Investigation (CBI), R.K. Raghavan, has noted that though FGM/C is not explicitly an offence under the IPC, on a complaint, the police are obligated to register a case under Section 326 of the IPC.<sup>3</sup>

Above all, this practice is against the fundamental right given in Part III of the Constitution of India especially Article 14, Article 15 and Article 21 on the basis of the right to equality and right to life and personal dignity as the girl child who undergoes this practice is deprived of the equality prominence and suffers the differential system of practice of Female Genital Mutilation upon them and even it is a discrimination on grounds of religion, race, caste, sex or place of birth and is thus in a way, she is also

<sup>3</sup> Rasheeda Bhagat, 'Ban this barbarous practice!', Hindu Business Line, July 29, 2014. Available at: <http://www.stopfgmmideast.org/india---ban---this---barbarous---practice>

denied her very own life and personal liberty. These are the basic fundamental rights which every citizen of India, and non-citizens as well, is entitled to enjoy.

Across the sphere the practice of Female Genital Mutilation is banned by many countries. People started raising their voices against this inhuman practice and for its ban in India. Considering the seriousness, the Supreme Court has accepted the PIL filed by Delhi based lawyer Sunita Tiwari and a five judge bench sat on this matter, including Chief Justice Dipak Misra, Justice A M Khanwilkar and Justice D Y Chandrachud amongst them. Senior advocate A M Singhvi appeared from the Muslim community putting forward the contention that bodily integrity of an individual is a part of Muslim community and their traditions are not to be hampered.

The plea filed has the intention to make Female Genital Mutilation an offence that too non compoundable and non bailable, with severe punishments. The parties to the plea included major Union ministries like Ministry of Law and Justice, Ministry of Ministry of Social Justice and Empowerment and Ministry of Women and Child Development. All of them put forth the contention of India being the signatory of United Nations Convention i.e., United Nations Convention of Rights of Child and Universal Declaration of Human Rights; where both of these conventions put a ban to Female Genital Mutilation. The plea also claimed that FGM is a crime in United States of America under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and recently Australia has also banned this heinous crime. Therefore, the Supreme Court had passed the judgement in favour of banning Female Genital Mutilation and also gave the direction to the Government to make a law especially related to this subject matter and henceforth declared Female Genital Mutilation a serious criminal offence with strict punishments.

Apart from all of the above, we still, in India, do not have any such law especially made for this crime however it is being dealt with under the Indian Penal Code and the POSCO Act.

Section 3 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) that talks about penetrative sexual assault by any person on any child, inter alia defines it as inclusion of any object into the vagina of the girl. It is recognised precedency that permeation in sexual offences need not be complete penetration. In fact, Explanation 1 of Section 375, Indian Penal Code categorically states that the term vagina includes labia majora. Female Genital Mutilation, which requires insertion of a sharp object into the vagina of a child, may be covered under Section 3, POCSO Act which must be read with Explanation 1 of section 375 of Indian Penal Code.

Under the Goa Children's Act, 2003 (GC Act) Section 2(y)(i) defines 'Sexual assault' as "different types of intercourse; vaginal or oral or anal, use of objects with children", and "deliberately causing injury to

the sexual organs of children”. Thus, Female Genital Mutilation/Cutting is totally dependent on the facts and the conditions that may fall for prosecution underneath any one of these provisions.

The National Policy for Children, 2013 asserts that: “the State is committed to taking affirmative measures - legislative, policy or otherwise - to promote and safeguard the right of all children to live and develop with equity, dignity, safety and freedom, especially those marginalised or disadvantaged; to ensure that all children have equal opportunities; and that no custom, tradition, cultural or religious practice is allowed to violate or restrict or prevent children from enjoying their rights.” The NPC identifies and prioritises the right to health, survival, development and protection as absolute rights of children. With regard to these safeguards, the NPC distinguishes that “a safe, secure and protective environment is a precondition for the realisation of all other rights of children.” It commits to creating “a caring, protective and safe environment for all children, to lessen their defencelessness in all circumstances and to keep them harmless at all places, especially public spaces”, and protecting children from all the practices of violence, abuse, exploitation and discrimination, or any activity that harms their personhood or hampers their development. Further, the NPC summarises that it is the obligation of the State to take exceptional protection measures to secure the rights of children in need of special protection, as characterised by “their specific social, economic and geo---political situations, including their need for rehabilitation and re-integration”. The Policy also states that the State must “enact progressive legislation, build a preventive and responsive child protection system, containing emergency outreach services, and encouraging effective enforcement of punitive legislative and administrative measures countering all forms of child abuse.”

The centrally sponsored Integrated Child Protection Scheme (ICPS), which was launched in 2009 by the Ministry of Women and Child Development, sets its goal to form and establish an effective defensive system for the endangered children. Its aims included institutionalising and integrating indispensable services and reinforcing structures for emergency outreach, institutional care, family and community based care, counselling and support services; strengthening child protection at family and community level, and encouraging preventive measures to safeguard the children from situations of vulnerability, danger and exploitation. The structure’s object is to integrate service provision into a range of existing services for providing for the numerous needs of children in problematic circumstances, through a channel with various sectors, including health, education, judiciary, police, and labour, among other things. Systems under ICPS encourages right to privacy and confidentiality of the child and institutionalisation of the child is seen as an extent of last remedy.



#### IV. CONCLUSION

No aspect of her life remains unaffected, from the very moment a girl child gets circumcised. But the one that haunts her forever is the Psychological trauma that gets engraved in her mind and heart. With “Beti Bachao, Beti Padhao” becoming a battle cry for the nation, every day a young girl weeps due to this devastating tradition that is practised on her. And this will continue till we uphold the virtues of a nonsensical tradition above the happiness, safety, dignity and morality of every girl belonging to the Bohra Community. When a girl just starts to understand, accept and adjust with her changing body, her self-confidence gets shattered when her very own mother or grandmother or any female kin hold her down and says, “ shh.. it is very necessary, even we went through it and God will bless you and us for it. Don’t cry, it is for your safety and dignity, shh.. don’t cry... it will just take minutes for the pain to vanish, and then I will buy you whatever you want, ...promise!!” Perhaps, a promise that sets to change her life completely. We need to understand, and it is high time that we understand, that girls and women are not property, that men related to us and the society and community that we belong to, own nor do they owe us any duty of protection that they believe is the only way to keep a girl virtuous. Henceforth through this paper we call out to all the authorities and citizens as well to stand for these girls and free them from the chains of such centuries old traditions.