



UPROOTING FEMALE GENITAL MUTILATION: A COMPLEX INTERPLAY OF CULTURE, HUMAN RIGHTS, AND LEGAL IMPERATIVES

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ABSTRACT

Female Genital Mutilation (FGM), a practice deeply rooted in cultural beliefs and norms, persists despite global efforts to eradicate it. This paper delves into its historical origins, cultural significance, and the challenges in combating it. FGM, defined by the WHO as non-medical procedures involving the partial or total removal of female genitalia, is recognized as a violation of human rights. However, its continuation is fueled by factors such as patriarchy, religious myths, and cultural preservation. Efforts to address FGM require a multi-strategy approach involving legal frameworks, education, and cultural sensitivity. While international condemnation of FGM is widespread, local ownership of change is crucial for effective eradication. This paper emphasizes the need for cultural transformation to align with human rights values and highlights the importance of women's autonomy over their bodies. Legislative measures, like those in the Indian Penal Code, are essential to criminalize FGM and protect women from this harmful practice.

Key Words: Female Genital Mutilation; Human Rights; Global Efforts; Legislative Measures; Cultural preservation; Gender inequality; Education and awareness; Women's autonomy.

INTRODUCTION

At both national and international levels, Female Genital Mutilation (FGM) has recently attracted a lot of attention. The role that law should play in addressing a social practice that is deeply rooted in cultural ideas and norms, is one of the most wildly contested topics.¹ Throughout the centuries, Female Genital Mutilation has been propped up by the long-standing customs, cultural practices, and misconception and is in continuation due of the factors such as poverty, illiteracy, low status for women, and a lack of access to healthcare services.²

According to estimates, 3 million girls are at risk of receiving such treatments each year and around 140 million women and girls globally have undergone such procedures. Although FGM has reportedly occurred throughout the world, but it has been most commonly observed in specific immigrant groups in North America and Europe, some Asian countries and the western, eastern and north-eastern regions of Africa.³

Families, cultures and social groups where FGM is carried out, is often accompanied by variety of reasons. This practice is considered as an assuring factor that the girl meets with important societal norms, including those connected to sexual restraints, femininity, respectability and maturity. In contrast to the majority of instances of violence against girls and women, FGM involves both victims and perpetrators who are women. Usually, it is the girl's family member i.e., mother or any other relative of the victim who arranges this practice which is further conducted by traditional practitioner who's generally a woman belonging to a family where women have been a traditional practitioner from generations. In other cases, it can also be done by male or female healthcare practitioner.⁴ There are no reported health benefits of FGM. In contrast, it has been proven to be detrimental to

¹ *Female Genital Mutilation: A Matter of Human Rights: An Advocate's Guide to Action 5* (Centre for Reproductive Rights, New York, 2nd edn., 2006).

² Comfort Momoh (ed), *Female Genital Mutilation 1* (Radcliffe Publishing, United Kingdom 2005).

³ World Health Organization, *Eliminating Female Genital Mutilation: An interagency statement* (World Health Organization, Geneva, 2008).

⁴ Understanding and Addressing Violence Against Women: Female Genital Mutilation, available at: <https://www.who.int/publications/i/item/WHO-RHR-12.41> (last visited on April 16, 2023).

women and girls in variety of ways. It is quite a painful and disturbing procedure and interferes with the natural bodily processes resulting in number of short and long-term health

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effects like infections, severe bleeding and urinating problems. Comparatively, victims of FGM experiences high number of foetal deaths than normal women.⁵

We may see vivid examples of people's urge to modify their bodies throughout history and up to the present day for aesthetic reasons like beautification, cultural acceptance, adherence to societal norms and religious edicts.⁶ While citing examples of physical mutilation, such as body piercing and breast implantation, as accepted practices and integral part of group's or culture's identity in the Western countries, it has undoubtedly elicit a discussion has to whether these nations are guilty of double standards and intolerance. People who reject the practice contend that everyone has the right to autonomy and to the enjoyment of the all-human rights and freedoms while those who support the practice believe that minorities' rights must be upheld and there is a need to recognise and preserve each person's unique cultural identity.⁷

It is quite challenging for a person and his family to stop FGM since family honour and social expectations play a significant part in its continuation.⁸ Interest in the practice at first was mostly focused on the harm that FGM can do to one's body and mind but the act of cutting a healthy genital organ for non-medical reasons itself, infringes girls' and women's rights to physical integrity regardless of level of cutting or potential repercussions that may arise. The procedure is primarily performed on girls of four to twelve years of age as an initiation of rite to womanhood. Though, it may be performed as early as a few days after birth and as late as just before marriage or after bearing a first child depending upon the country, tribe and circumstances.⁹ The Ethiopian Falashas conduct FGM on infants as young as few days old, whereas Somali women typically have the process done on girls between the ages of four and nine.¹⁰ The *Adere* and *Oromo* ethnic groups in Eastern Ethiopia conduct FGM between the ages of four to puberty, whilst the *Amhara* do so on the eighth day following birth.¹¹ FGM is recognised as a harmful rite that affects girls and women in terms of culture, economy, politics and society. Furthermore, it is an aggressive representation of gender inequality and discrimination that is "related to the historical repression and subjugation of women".¹²

Definition and Terminology

Female Genital Mutilation, also known as "Female Genital Cutting" or "Female Genital Circumcision", is the term used to describe all practices that include the partial or complete removal of the external female genitalia or other injuries to female genital organs for non-medical purposes.

Definition by WHO

According to World Health Organisation (WHO) Female Genital Mutilation/Cutting has been defined as follows:

"Female Genital Mutilation comprises all procedures that involve partial or total removal of the female external genitalia and/or injury to the female genital organs for cultural or any other non-therapeutic reasons"¹³

Female genital mutilation is a practice involving altering or injuring the female genitalia for non-medical reasons. It is a form of child abuse and an abuse of female adults which is usually categorised under honourbased violence and causes long lasting physical and psychological damage. United Nations Population Fund (UNFPA) estimates 68 million girls are at risk of being mutilated between 2015 and 2030. A more recent study estimates an additional two

⁵ *Supra* note 3.

⁶ S K. Hellsten, "Rationalising circumcision: from traditional to fashion, from public health to individual freedom-critical notes on cultural persistence of the practice of genital mutilation" 30 *Journal of Medical Ethics* 249(2004).

⁷ Comfort Momoh (ed.), *Female Genital Mutilation 2* (Radcliffe Publishing, United Kingdom 2005).

⁸ The Dynamics of Social Change: Towards the abandonment of FGM/C in Five African Countries, retrieved from: <https://www.unicef.org/publications/618-the-dynamics-of-social-change-towards-the-abandonment-of-fgm-c-in-five-african-countries.html> (last visited on April 17, 2023).

⁹ Anika Rahman and Nahid Toubia (eds.), *Female Genital Mutilation: A Guide to Laws and Policies Worldwide 3* (Zed Books, New York, 2000).

¹⁰ F Ng., "Female Genital Mutilation; its implications for reproductive health. An overview" 26 *British Journal of Family Planning* 47(2000).

¹¹ K Missailidis and M Gebre-Medhin, "Female Genital Mutilation in eastern Ethiopia" 356 *The Lancet* 137(2000).

¹² Limor Ezioni, "Contemporary Aspects of Female Genital Mutilation Prohibitions in the United States" 28 *American University Journal of Gender, Social Policy & the Law* 3 (2019).

¹³ World Health Organisation, *Female Genital Mutilation: An Overview* (WHO, Geneva, 1998).

million girls to be at risk of this harmful practice due to COVID-19.¹⁴ The United Nations Population Fund, the United Nations Children's Fund, the International Confederation of Midwives and the International Federation of Gynecology and Obstetrics in their joint statement stipulated that health practitioners in any environment, including hospitals or other health establishments, should not perform FGM in any form.¹⁵

Various Terminologies

Indigenous populations use a variety of terms in local dialects to describe the practice. These are often synonymous with purification or cleansing, such as the terms *tahara* in Egypt, *tahur* in Sudan and *bolokoli* in Mali. Local terminology for types of FGM also varies widely among countries. In literature from Sudan, for example, clitoridectomy is referred to as *sunna*, and infibulation is referred to as *pharaonic*. In literature associated with French-speaking Africa, FGM is commonly referred to as "excision" while in English-speaking Africa, the term "circumcision" is predominant.

Within the international community, the term "female circumcision" was used for many years to describe the practice. Other expressions, such as "female genital cutting," "female genital surgery," "ritual genital surgery" and "sexual mutilation," have also been used. However, in the past decade, the term "female genital mutilation" has been adopted by a wide range of women's health and human rights activists because it clearly indicates the harm caused by the practice. The World Health Organization (WHO) also adopted the term "female genital mutilation." Similarly, in 1990, at a meeting in Addis Ababa, Ethiopia, the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children formally adopted this term. Subsequently, the international community has used this expression in several United Nations conference documents, including those relating to the 1994 International Conference on Population and Development in Cairo (Cairo Conference), the 1995 World Summit for Social Development in Copenhagen (Copenhagen Summit) and the 1995 Fourth World Conference on Women in Beijing (Beijing Conference).

In 1999, UNICEF and other UN agencies reviewed the use of "mutilation" and subsequently introduced the hybrid term "female genital mutilation/cutting". In its 2013 report, UNICEF explained the background of its adoption of this hybrid terminology in view of the risk of "demonizing cultures under cover of condemning practices harmful to women and the girl child". It noted that UNICEF and the United Nations Population Fund (UNFPA) use the hybrid term in consideration for the significance of the term "mutilation" at the policy level, and, at the same time, to acknowledge that the practice is a violation of the rights of girls and women. As such, it recognizes the importance of employing respectful terminology when working with practicing communities. Subsequently, many individuals and organizations have begun to use the term FGM. However, UN agencies often use the term "FGM" as a "tool" to advocate for the abolition of this practice. Since the UN General Assembly adopted a resolution to eradicate FGM in 2012, many individuals and organizations have begun to use the term again in the context of a stronger campaign for abolition.¹⁶

Although the term "female genital mutilation" has been a very effective policy and advocacy tool, organizations working with communities that practice FGM have found that this term can be offensive or even shocking to women who have never considered the practice a mutilation. Out of respect and sensitivity, many organizations have opted to use local terminology or more neutral terms such as "female circumcision" or "female genital cutting (FGC)" when working with these populations.¹⁶

In India, female genital mutilation is referred to as "khatna", "khafz", and "khafd" which is usually practiced by Dawoodi Bohra Muslim community when a girl is around six to seven years old. This community with one million members belongs to a sect of Shia Islam which is found ostentatiously in Gujarat, Rajasthan, Maharashtra, and Madhya Pradesh. It has been estimated that around 75-80% girls belonging to the community have undergone Khatna. Sometimes, it entails removing the labia minor and the entire clitoris; other times, it might merely entail cutting off the prepuce.¹⁷

Historical Background

There is no exact established region where FGM's origin is dated back to, however, scholars have proposed Ancient Egypt and Sudan. There are different reasons and purposes for the continuous practice of FGM such as maintenance of virginity for marriage, to protect a girls' sexual purity and morality and reduce or increase their sexual pleasure or as a sign of submission and obedience in marriage.

¹⁴ Female Genital Mutilation, UNFPA, available at <https://www.unfpa.org/female-genital-mutilation> (last visited on April 17, 2023).

¹⁵ *Ibid.*

¹⁵ Kyoko Nakamura, Kaori Miyachi, et.al., *Female Genital Mutilation/Cutting: Global Zero Tolerance Policy and Diverse Responses from African and Asian Local Communities 3* (Springer Imprint, Singapore, 2023).

¹⁶ Anika Rahman and Nahid Toubia (eds.), *Female Genital Mutilation: A Guide to Laws and Policies Worldwide 3* (Zed Books, New York, 2000).

¹⁷ Female Genital Mutilation in India: A well-kept secret, available at: <https://borgenproject.org/female-genital-mutilation-inIndia/> (last visited on April 17, 2023).

Origin

- Female genital mutilation (FGM) has an ambiguous history. On the basis of the finding of circumcised mummies from the fifth century BC, some academics have nominated Ancient Egypt (modern-day Sudan and Egypt) as the region of origin.
- Other academics contend that the practise expanded along the lines of the slave trade, from the Red Sea's western shore to parts of southern and western Africa, or that it did so via Arab traders who travelled from the Middle East to Africa.
- Roman female slaves were also subjected to the act, which served to prevent recipients from having sex and conceiving a child.

Given its vast dissemination, a "multi-source origin" has also been suggested, which contends that FGM expanded from "original cores" by fusing with previously existing initiation rituals for both men and women.¹⁸

Historical Attempts to Stop FGM

- In the past, there have been numerous initiatives to raise awareness about or put an end to FGC. Early in the 20th century, colonial governments and missionaries in Burkina Faso, Kenya, and Sudan made an effort to put an end to the practise by passing laws and church regulations. Such activities, however, simply served to inflame opposition to foreign intervention.¹⁹
- Later, in the 1940s and 1950s, the governments of Sudan and Egypt created laws outlawing FGC, but they were ineffectual because to the lack of knowledge and awareness that went along with them.
- Early in the 1950s, when the UN Commission on Human Rights took up the matter, the United Nations took its initial steps to bring the practise to the attention of the world community.
- In 1958, the World Health Organisation was asked by the UN Economic and Social Council to conduct research on the continuation of traditions that subject females to ritual procedures. Although these activities were an important step in putting these human rights issues on the world agenda, their influence was rather marginal.
- During the 1960s and 1970s, campaigns to raise awareness of the damaging consequences of the practise on the health of girls and women were led by women's organisations in various nations.
- Additionally, physicians who saw patients with FGC difficulties started to chronicle the procedure and to write about its clinical side effects in medical publications, primarily in Sudan, Somalia, and Nigeria.²⁰
- In Khartoum, Sudan, 1979, WHO held the first regional symposium on harmful traditional practises that affect the health of women. It denounced the practise in all of its manifestations, even when carried out under sanitary and suitable medical settings. Moreover, it suggested that the Inter-African Committee on Traditional Practises Affecting the Health of Women and Children should be established.
- FGC is considered to be a violation of human rights, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) played a crucial role in advancing this idea.
- A number of significant international mechanisms and conferences have since strengthened the FGC's human rights component including the Convention on the Right of the Child (1989), the African Charter on the Rights and Welfare of the Child (1999), the Vienna Conference on Human Rights (1993), the Cairo International Conference on Population and Development (1994), the Beijing Fourth World Conference on Women (1995), as well as its follow-up event in 2000 and 2005.

However, we know that culture-related issues are extremely delicate, thus anyone attempting to address the problem of female genital mutilation, which is strongly ingrained in history and culture should avoid generalizing different cultures. As they are a part of the people and their lives, historical, economic, social, political, and geographic elements must be taken into account while talking about people and their culture. Female genital mutilation is a

¹⁸ Female Circumcision: The history, the current prevalence and the approach to a patient, retrieved from: <https://med.virginia.edu/family-medicine/wp-content/uploads/sites/285/2017/01/Llamas- Paper.pdf>

¹⁹ Anika Rahman and Nahid Toubia (eds.), *Female Genital Mutilation: A Guide to Laws and Policies Worldwide* 9 (Zed Books, New York, 2000).

²⁰ Martina Döcker, "Overcoming Female Genital Cutting: An Examination of Approaches to Overcome the Harmful Traditional Practice: A Children's Rights Perspective" World Vision Institute for Research and Innovation, Germany (2011).

hideous tradition that engages in health risks and societal stigma, with consequences that include not just physical harm but also psychological harm and affects not only its victims but also the family and society at large.

Human rights are intended to safeguard every person, regardless of colour, ethnicity, nationality, or age. Female genital mutilation has demonstrated to be one of those cultural or traditional norms that requires examination in the context of human rights standards. It is cruel, harmful, painful and unnecessary because, it affects the health of others. Currently the practice is not only seen as a violation of human rights but also a criminal offence among many African countries. In order to ensure increased government involvement in the defence of women's rights, efforts to address FGM are a part of a protracted process. There are serious repercussions for both NGOs and governments when FGM is characterised as a violation of women and girls' human rights. Human rights laws can be used by activists to hold governments responsible for their failure to take action against FGM. There is no one method that can completely eradicate FGM. Criminal laws alone won't make individuals behave differently. Similarly, educational initiatives cannot completely eradicate support for the practice. What is required is a multi-strategy policy.

One glimmer of hope for eliminating this practice from its very roots is legal involvement on the part of the government and courts. To create enlightenment in women's minds about the harms they typically suffer as a result of the cruel practice of FGM, education and legal understanding about women's bodily rights at the most basic primary school level is a promising first step. Semi-governmental institutions and organisations that work to advance women's rights are extremely important in this context because they can start door-to-door programmes and campaigns, particularly in communities where FGM is practiced, to educate everyone about the negative effects of this custom. Political resolve is also needed to bring about long-lasting change because too many governments globally are not putting the legislation into practice to end FGM. All efforts to end FGM must be based on the understanding that the procedure is a product of gender inequality and women's subordinate position in society.

Strange as it may seem, some people remain willing to defend a harmful practice. For some, the issue of female genital mutilation is clear; it is a human rights violation and must be eradicated. For others, the issue is cultural preservation and the recognition that practices should not be judged as right or wrong. Scholars, researchers, activists, and policy makers worldwide have for the most part, condemned the practice of female genital mutilation yet it persists in many countries. Some of the reasons the procedure persists are due to religiously based myths, patriarchy, and criminalization. Criminalization of female genital mutilation has not been successful because of the inability of these laws and legal systems to address the roots of the elements which opposes it. The communities practicing FGM and those in favour of the practice view it as a form of cultural identity and a sacred ritual that is an essential part of the rite of passage. This practice is protected by cultural beliefs and myths. This cultural practice is however of a controversial nature because of its health hazards. The presence or non-presence of genital cutting should be determined through medical examination by trained personnel, rather than self-report, if feasible. Recognizing that prevalence can be difficult to measure, other useful indicators include intention to perform FGM on daughters, approval of FGM, and knowledge about the harmful consequences of FGM. Efforts to abandon the practice of FGM have used several different approaches, including those based on human rights frameworks, a health risk approach, training health workers as change agents, and the use of comprehensive social development approaches.

There is a need for a culture-sensitive approach in modifying and adapting cultural practices that are seen to be in conflict with human rights. Simply terming a cultural practice as barbaric or horrific is not a sensitive approach in tackling the practice of FGM and this can be said to be one of the basic reasons why the practice is still very much in existence. In order to create this proposed modification and adaptation, there must be local initiatives and involvement of the people involved and the modification and adaptation must not in any way compromise the culture and integrity of the people. Also, the people involved in this cultural practice must feel a sense of ownership of the process of change and adaptation. In other words, change, modification or adaptation suggestions must not come from external sources or influence, but must come from inside these communities for it to be effective. The preservation of culture which is the most important justification was not only put forth as a reason for its origin but also as a reason for its continued existence.

The need for a cultural transformation in dealing with the issue of FGM is expedient because law reforms and other measures such as awareness projects have seemed to fail in the past. The best way to curb this practice is to seek a form of cultural modification or transformation that enables the culture to be in line with the core values of human rights as well as maintaining its significant features. The practice of female genital mutilation has been in existence for a long period of time. Although its origin remains a mystery, it is a practice that is firmly embedded in the culture of many African countries. Internationally, female genital mutilation is viewed as a violation of human rights due to its coercive and forceful features. However human rights arguments have produced little or no result when used as an argument in putting an end to FGM. This is because it is difficult to attempt to protect the rights of an individual who does not know about these rights or believe in these rights. The understanding of the motive behind this cultural practice is essential because it helps in understanding the mind-set of the people who strongly believe in and uphold this practice.

The most crucial reason put an end to this practice is because it is cruel and disrespectful to women. This practice is forbidden and made illegal in several nations. There are still pending cases in India, and the legislature hasn't provided much information on the subject. The Indian Penal Code and POCSO are two examples of laws that already exist to punish this barbaric act. But Indian Penal Code ought to include specific provisions to make FGM illegal. A woman is the sole owner of her body. Neither the society nor her family members have the right to circumcise a woman or a girl without her consent in the name of tradition or religion.

CONCLUSION

In conclusion, Female Genital Mutilation (FGM) stands as a stark violation of human rights and a deeply entrenched cultural practice. Its origins may be shrouded in ambiguity, but its detrimental effects on the physical and psychological well-being of women and girls are unequivocal. Across generations, FGM has persisted due to a complex interplay of cultural norms, societal expectations, and entrenched gender inequalities. Efforts to eradicate FGM have been multifaceted, ranging from legislative measures to grassroots awareness campaigns. While progress has been made, the persistence of FGM underscores the need for a nuanced, culturally sensitive approach. Simply criminalizing the practice has proven insufficient, as deeply ingrained cultural beliefs and social pressures continue to perpetuate it. A more effective strategy involves empowering communities themselves to lead the charge against FGM, fostering a sense of ownership and agency in the process of cultural transformation. This entails education, dialogue, and the promotion of rites and customs that uphold human rights and dignity. Furthermore, legal frameworks must be strengthened to unequivocally prohibit FGM and hold perpetrators accountable. In regions where FGM remains prevalent, legislative efforts should be coupled with comprehensive support systems for survivors and initiatives to challenge the underlying norms that perpetuate the practice. Ultimately, ending FGM requires a concerted effort at local, national, and international levels. It demands a profound shift in societal attitudes, grounded in a steadfast commitment to upholding the rights and dignity of women and girls. Only through collective action and unwavering advocacy can we consign this egregious violation of human rights to history.