FEMALE GENITAL MUTILATION:
(A Socio- Legal Perspective In Indian Context)

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Abstract

The children and the women are exploited all over the world in one way or another, many of the ways are openly practiced against them while some are deeply covered behind the curtains, Female Genital Mutilation (FGM) is one such gruesome method of exploitation of young girls. The practice refers to the forceful cutting or manipulation of the genital organ of young girls in name of cultural and religious beliefs. It reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. This paper is aimed at explaining the meaning and the procedures and techniques involved in this derogatory practice along with the harmful effects which it has on the life and dignity of the individuals and the reasons behind its prevalence in the society. The paper also deals the legal status of this practice in India and internationally. It is nearly always carried out on minors thus is a violation of the rights of children. The practice is aimed at gender inequality, attempts to control women’s sexuality, and ideas about purity, modesty and beauty. This paper is an attempt to highlight the hidden existence of this life threatening practice behind the curtain of culture and religion in India.

KEYWORDS: FEMALE EXPLOITATION, INEQUALITY, SEXUAL OFFENCE,

Hypothesis

This research paper is aimed to analyse the practice of Female Genital Mutilation along with the reasons of its prevalence in the society. This paper also aims at analysing the legal status of FGM in India with specific reference to Indian Penal Code and whether there are sufficient laws in India on the issue.

I

Concept of Female Genital Mutilation

According to World Health Organization,
Female genital mutilation (FGM) comprises of 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. It is also known as “female circumcision" or "cutting", and by other terms such as sunna, gudniin, halalays, tahir, megrez and khatna, among others.

The practice is mostly carried out by traditional circumcisers, who often play other central roles in communities, such as attending childbirths. In many settings, health care providers perform

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FGM due to the erroneous belief that the procedure is safer when performed by medical practitioner. FGM has no health benefits, and it harms girls and women in many ways. It involves removing and damaging healthy and normal female genital tissue, and interferes with the natural functions of girls' and women's bodies.

The practice also violates a person's right to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life. This practice is dangerous to both the dignity and the life of a person.

More than 200 million girls and women alive today have been cut in 30 countries in Africa, the Middle East and Asia where FGM is concentrated. The practice is most common in the western, eastern, and north-eastern regions of Africa, in some countries the Middle East and Asia, as well as among migrants from these areas. FGM is therefore a global concern.

### Procedures

Female genital mutilation is classified into 4 major types.

- **Type 1:** Often referred to as clitoridectomy, this is the partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals), and in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).

- **Type 2:** Often referred to as excision, this is the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia majora (the outer folds of skin of the vulva).

- **Type 3:** Often referred to as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris (clitoridectomy).

- **Type 4:** This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.

### Health risks of female genital mutilation (FGM)

The practice of FGM is a very barbaric and derogatory practice against the women. The victims of this practice suffer not only from physical and sexual problems but also from various Psychological problems which maybe long term or short term.

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• Severe pain which is caused due to the cutting of nerve ends and sensitive genital tissue and lack of proper anaesthesia.

• Excessive bleeding (haemorrhage) is caused as a result of cutting the clitoral artery or other blood vessel during the procedure.

• Shock due to pain, infection and/or haemorrhage.

• Genital tissue swelling: due to inflammatory response or local infection.

• Infections: may spread after the use of contaminated instruments (e.g. use of same instruments in multiple genital mutilation operations), and during the healing period.

• Human immunodeficiency virus (HIV) can be caused due to use of same surgical instrument without sterilization.

• Urination problems: these may include urinary retention and pain passing urine. This may be due to tissue swelling, pain or injury to the urethra. If not treated, such infections can ascend to the kidneys, potentially resulting in renal failure, septicaemia and death. An increased risk for repeated urinary tract infections is well documented in both girls and adult women.

• Impaired wound healing: can lead to pain, infections and abnormal scarring

• Death: can be caused by infections, including tetanus and haemorrhage that can lead to shock.

• Chronic reproductive tract infections: May cause chronic back and pelvic pain.

• Menstrual problems: result from the obstruction of the vaginal opening. This may lead to painful menstruation (dysmenorrhea), irregular menses and difficulty in passing menstrual blood.

• Keloids: there have been reports of excessive scar tissue formation at the site of the cutting.

• Female sexual health: removal of, or damage to highly sensitive genital tissue, especially the clitoris, may affect sexual sensitivity and lead to sexual problems, such as decreased sexual desire and pleasure, pain during sex, difficulty during penetration, decreased lubrication during intercourse, reduced frequency or absence of orgasm (anorgasmia).

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Sexual And Reproductive Health, WHO
http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/
accessed on March 16, 2017
Scar formation, pain and traumatic memories associated with the procedure can also lead to such problems.

- Obstetric complications: FGM is associated with an increased risk of Caesarean section, post-partum haemorrhage, recourse to episiotomy, difficult labour, obstetric tears/lacerations, instrumental delivery, prolonged labour, and extended maternal hospital stay. The risks increase with the severity of FGM.

- Obstetric fistula: a direct association between FGM and obstetric fistula has not been established. However, given the causal relationship between prolonged and obstructed labour and fistula, and the fact that FGM is also associated with prolonged and obstructed labour it is reasonable to presume that both conditions could be linked in women living with FGM.

- Perinatal risks: obstetric complications can result in a higher incidence of infant resuscitation at delivery and intrapartum stillbirth and neonatal death.

- Psychological consequences: some studies have shown an increased likelihood of post-traumatic stress disorder (PTSD), anxiety disorders and depression. The cultural significance of FGM might not protect against psychological complications.

Cultural and social factors for performing FGM

The communities which practice this cruel process claims to have various socio-cultural factors within families and communities. Though no religious scripts prescribe the practice, practitioners often believe it to have religious support. Religious leaders take varying positions with regard to FGM: some promote it, some consider it irrelevant to religion, and others contribute to its elimination. In most societies, where FGM is practised, it is considered a cultural tradition, which is often used as an argument for its continuation. The most commonly cited reasons are:

- Where FGM is a social convention (social norm), the social pressure to conform to what others do and have been doing, as well as the need to be accepted socially and the fear of being rejected by the community, are strong motivations to perpetuate the practice. In some communities, FGM is almost universally performed and unquestioned.

- FGM is often considered a necessary part of raising a girl, and a way to prepare her for adulthood and marriage.

- FGM is often motivated by beliefs about what is considered acceptable sexual behaviour. It aims to ensure premarital virginity and marital fidelity. FGM is in many communities believed to reduce a woman's libido and therefore believed to help her resist extramarital sexual acts. When a vaginal opening is covered or narrowed (type 3), the fear of the pain
of opening it, and the fear that this will be found out, is expected to further discourage extramarital sexual intercourse among women with this type of FGM.

- FGM is associated with cultural ideals of femininity and modesty, which include the notion that girls are clean and beautiful after removal of body parts that are considered unclean, unfeminine or male. The clitoris is referred to as the ‘Haram kiboti’ or ‘sinful piece of flesh’ a recognition of its biological role in women’s orgasms and libido.

II

International Status

In past few years there has been growing efforts both at international and the nation levels to curb the practice of FGM. The international monitoring bodies have passed certain resolutions to condemn the practice and to help the countries revise their legal frameworks with the help of political support. The prevalence of FGM has decreased in most countries and an increasing number of women and men in practising communities support ending its practice. Below are given some of the measures adopted by the WHO:


- In 2008, WHO together with 9 other United Nations partners, issued a statement on the elimination of FGM to support increased advocacy for its abandonment, called: “Eliminating female genital mutilation: an interagency statement”. This statement provided evidence collected over the previous decade about the practice of FGM.

- In 2010, WHO published a "Global strategy to stop health care providers from performing female genital mutilation" in collaboration with other key UN agencies and international organizations.

- In December 2012, the UN General Assembly adopted a resolution on the elimination of female genital mutilation.

- Building on a previous report from 2013, in 2016 UNICEF launched an updated report documenting the prevalence of FGM in 30 countries, as well as beliefs, attitudes, trends, and programmatic and policy responses to the practice globally.

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In May 2016, WHO in collaboration with the UNFPA-UNICEF joint programme on FGM launched the first evidence-based guidelines on the management of health complications from FGM. The guidelines were developed based on a systematic review of the best available evidence on health interventions for women living with FGM.

To ensure the effective implementation of the guidelines, WHO is developing tools for front-line health-care workers to improve knowledge, attitudes, and skills of health care providers in preventing and managing the complications of FGM. WHO efforts to eliminate female genital mutilation focus on:

- Strengthening the health sector response: guidelines, tools, training and policy to ensure that health professionals can provide medical care and counselling to girls and women living with FGM;
- Building evidence: generating knowledge about the causes and consequences of the practice, including why health care professionals carry out procedures, how to eliminate it, and how to care for those who have experienced FGM;
- Increasing advocacy: developing publications and advocacy tools for international, regional and local efforts to end FGM within a generation.

III

Female Genital Mutilation In India

In India, FGM is practiced by the DawoodiBohra community, which is a sect of the Shia-Muslims, prevalent in Western India mainly (Gujarat and Maharashtra) who are led by the Syedna(community head). It is a smallcommunity,girls are generally circumcised just after/before they attain their puberty. So, the matter, even though unjust, gets buried inside the girls’ mind like any normal process like menstruation.

In Bohra community the practice is termed as “Khatna” in which only a part of the clitoral hood or the prepuce above the glans of the clitoris is cut in contrast to African Countries where the entire external genitalia, clitoris, and the labia minora and majora are cut, after which the vaginal

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passage is stitched up – a process known as infibulation is followed. Some of the reasons include family honor, increasing sexual pleasure for the male, enhancing fertility, social acceptance (especially for marriage) and preservation of virginity/chastity. Usually, a girl’s own mother or grandmother takes her for the performance of this practice which results in complete betrayal of a child’s trust.

It was a discreet activity in the community about which very few knew outside the community. The practice came on the fronts when an Islamic community leader was imprisoned over female genital mutilation in Australia. The mother and the former nurse involved in the female genital mutilation of two sisters, aged six and seven, have been spared jail. The Supreme Court in Australia convicted him the leader for the practice FGM. This incident helped in opening up of secrecy regarding the practice.

In response to the increasing protest against the practice, on 25 April 2016, the Syedna in Mumbai, MuffadalMaula openly exhorted his followers to follow FGM.

“The procedure, the procedure, the procedure has to happen! If it is a man, then it is right, it is openly, and if it is a woman then discreetly but it must be done. You understand what I am trying to talk about, you understand properly about. In the man it is open, in women it is secret, but the procedure must be done! Whoever it is, whoever says it.”

Initiatives by People:

There has been a widespread movement in India among the people to fight against the cruel practice of FGM. There are various initiatives some of them are:

- **Organizations / NGOs**

  Sahiyo began a conversation between five women who felt strongly about the ritual of female genital cutting (khatna) in the Bohra community. The group includes a social worker, a researcher, two filmmakers and a journalist, all of whom are against practice of khatna.

  Sahiyo is dedicated to empowering DawoodiBohra and other Asian communities to end female genital cutting (FGC) and create positive social change. By working towards an FGC-free world, they aim to recognize and emphasize the values of consent and a child’s/woman’s right over her own body. They aim to enable a culture in which female sexuality is not feared or suppressed but embraced as normal. Like Sahiyo there are many organizations coming up to fight against this cruel practice.

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Petitions For Change
Masooma Ranalvi, a victim of this practice began an online petition urging women to speak about it. In a historic move 16 Dawoodi Bohra women who have all been subjected to FGM have signed the petition openly in order to end this ritual.

Since the group of like-minded women got together in 2015 under ‘Speak Out on FGM,’ they have taken up several campaigns to reach out to the community. They started with the very first petition which was named after their group that received 80,000 signatures.

Another campaign called ‘Not My Daughter,’ started in April, had over 150 Bohra mothers and fathers pledging that they will not put their daughter through the suffering.

Ranalvi has joined the movement with a campaign called ‘Each One Reach One’, to spread awareness on female genital cutting among Bohras.

Documentaries
A Pinch of Skin by Priya Goswami, a short documentary made in 2012, depicts the practice of Female Genital Cutting. Screened worldwide, the film received the prestigious National Award of India for being the first documentary to highlight the taboo practice of khatna. The film brings together personal narratives on the experience of undergoing the blade, juxtaposing both the people who support the practice as well as a small but significant voice of questioning dissent. There are a number of films made by women speaking up about their experience and how it affected their life.

Medical Development
The psychological damage can’t be undone yet, there is possibility of another chance for them to have a normal life. In The United States, reversing surgeries are being performed, in order to repair the vagina and the clitoris. The procedure started in 2001, aiming to repair the genital area in general. Later in 2004, a more advanced procedure called “Clitoraplasty” was improved by a French urologist, Dr. Pierre Foldès. The surgery is very beneficial as it can give the woman the ability to give birth naturally, to urinate comfortably, to menstruate comfortably, and it can give the woman a part of her sexual pleasure back. The purpose of the procedure is to expose the clitoral tissue, but unfortunately, it’s not very common.

Legal Development
Advocate Sunita Tiwari, who has been working on the issue of FGM since the last couple of years, had filed an PIL in the Hon’ble Supreme Court of India against this cruel some practice. The Petitioner had raised the contention that the practice of FGM

12Debayan Roy, SC Issues Notice to Centre in Female Genital Mutilation Case(May 8, 2017)
does not find any mention in the Quran or anywhere else, thus it is not an essential part of religion and hence the government could make legal provisions to end this practice. The petitioner also said that the UN General Assembly, through a special resolution in 2012, had banned the practice. After this, 27 African countries banned the practice. But India, which is a signatory to the convention on child rights and human rights, has paid no heed to the issue so far. Thus there is need to ban the practice as soon as possible.

The Hon’ble Supreme Court of India had held in Javedvs State of Haryana, (2003) SC and in Khurshed Ahmed Khan vs State of UP (2015), SC that “what was protected under Article 25 was the religious faith and not a practice which may run counter to public order, health or morality”. It was also observed “that a practice did not acquire sanction of religion simply because it was permitted”. Thus legally this practice of FGM has no sanction or protection.

Legal Provision in India

Due to the secrecy and the religious claims around the practice there are no explicit provision in India guiding the practice of FGM despite the fact that India is a signatory of UN resolution for protection of Child And Women and ending all types of exploitation. The fear of exclusion and the social embarrassment had prevented the women who are subjected to this practice to approach the court or to file any complaints. Even though there are no explicit Act/Provision regulating this barbaric practice yet a person, performing this activity can be made liable under following provisions:

1. The Indian Penal Code:
   a. **Section 320** in The Indian Penal Code describes certain kinds of grievous hurt, ie if any person causes hurt to another person in any of the way specified in the said section is liable of causing grievous hurt which is a punishable offence they. The practice of FGM has certain long term affects which are dangerous for health of a person. These affects will fall in the clause Eighthly of Sec 320, these includes the following:
      - FGM causes severe pain and bleeding, shock, difficulty in passing urine, infections, injury to nearby genital tissue and sometimes death because of

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13 (First) — Emasculation.
(Secondly) — Permanent privation of the sight of either eye.
(Thirdly) — Permanent privation of the hearing of either ear,
(Fourthly) — Privation of any member or joint.
(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.
(Sixthly) — Permanent disfiguration of the head or face.
(Seventhly) — Fracture or dislocation of a bone or tooth.
(Eighthly) — Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

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severe bleeding. The pain inflicted by FGM does not stop with the initial procedure, but often continues as on-going torture throughout a woman’s life according to Manfred Nowak, UN Special Rapporteur on Torture. In addition to the severe pain during and in the weeks following the cutting, women who have undergone FGM experience various long-term effects - physical, sexual and psychological.

- Women may experience chronic pain, chronic pelvic infections, development of cysts, abscesses and genital ulcers, excessive scar tissue formation, infection of the reproductive system, decreased sexual enjoyment and psychological consequences, such as post-traumatic stress disorder.

- Other complications from infibulations include urinary and menstrual problems, infertility, later surgery (defibulation and reinfibulation) and painful sexual intercourse. Sexual intercourse can only take place after opening the infibulation, through surgery or penetrative sexual intercourse. Consequently, sexual intercourse is frequently painful during the first weeks after sexual initiation and the male partner can also experience pain and complications.

- When giving birth, the scar tissue might tear, or the opening needs to be cut to allow the baby to come out. After childbirth, women from some ethnic communities are often sown up again to make them “tight” for their husband (reinfibulation). Such cutting and restitching of a woman’s genitalia results in painful scar tissue.

b. **Section 326 in the Indian Penal Code**:

It states whoever, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death is liable for the offence under this section. FGM is a practice in which a part of the clitoral hood is cut with a knife or a blade or any other sharp object. Thus it would be an offence under S. 326IPC.

2. The Indian Constitution guarantees the basic fundamental rights and freedom of equality and right to life and integrity (Article 14 and Article 21 respectively) to every citizen of the country. A women could seek protection under these provisions as the practice is violative of both these Fundamental Rights.
3. The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) addresses penetrative sexual assault by any person on any child and The Goa Children’s Act, 2003 which defines ‘Sexual assault’ and specifies it as “deliberately causing injury to the sexual organs of children”

4. Also, India is a signatory to CEDAW (Convention for Elimination of all forms of discrimination against women) which clearly mentions FGM as a form of violence against women and discrimination based on gender. The CEDAW clearly states that it is the responsibility of States Parties to take “all appropriate measures” to “modify the social and cultural patterns of conduct of men and women” in an effort to eliminate practices that “are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

**Changing Legal Scenario:**

The practice of FGM is being openly criticized by people. There have been number of efforts made by the people to fight against this practice. As a result of this there has been recent development in the legal status of the practice. There have been initiatives taken by the government and an openness on the topic. Some of the developments includes:

1. According to the former Director of the Central Bureau of Investigation (CBI), R.K. Raghavan, though FGM is not explicitly an offence under the IPC, on a complaint, the police would be obligated to register a case under section 326, IPC.\(^\text{15}\) This statement has given hope to many to come forward and fight against this practice.

2. The National Commission for Women\(^\text{16}\) had said that it supports the demand for a law to end the practice of Female Genital Mutilation (FGM) in India. On the International Day of Zero Tolerance to Female Genital Mutilation (FGM), the women’s panel chairperson received two petitions initiated on Change.org—by ‘Speak Out on FGM’ and a collective of 33 global organisations which includes ‘Sahiyo’.

3. The Supreme Court on 8\(^{th}\) May, 2017 had issued notice to Centre and 4 states namely Gujarat, Rajasthan, Maharashtra and Delhi on a public interest litigation (PIL) filed by an advocate seeking a complete ban on the practice of female genital mutilation and making it a punishable offence. A bench of Chief Justice of India J S Khehar, Justice D Y Chandrachud and Justice Sanjay Kishan Kaul heard the petitioner and issued notice to the Centre. “This issue is extremely sensitive and important,” noted the CJI.


4. Union Minister Maneka Gandhi had also given a statement supporting the issue in the “We will write to respective state governments and Syedna, the Bohra high priest shortly to issue an edict to community members to give up FGM voluntarily as it is a crime under Indian Penal Code (IPC) and Protection of Children from Sexual Offenses (POCSO) Act, 2012. If the Syedna does not respond then we will bring in a law to ban the practice in India.”

All these incidents shows the changing view of the people as well as the law makers in regards of this barbaric activity.

**Conclusion**

The practice of female genital mutilation is a very derogatory, barbaric and inhumane activity against the young girls. It is prevalent in India and is practiced under the veil of culture and religion but needs to be curbed. In India there are certain provisions which could be used to end this practice but they are not sufficient. Thus there is a need for strict laws against this practice along with their proper implementation. Also the government must take initiatives to spread awareness about such practices. Hence there is need of joint effort of both the law-makers and the people to fight against this practice.

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