

SPEAK OUT  
ON FGM



A **WESPEAKOUT** PUBLICATION

# FEMALE GENITAL MUTILATION

A GUIDE TO ELIMINATING  
PRACTICE OF FGM IN INDIA

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WOMEN'S RIGHTS INITIATIVE

# FEMALE GENITAL MUTILATION

## GUIDE TO ELIMINATING THE FGM PRACTICE IN INDIA



*Affiliate program of Trust for Promotion  
of Wellness & Wellbeing of People*

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## LIST OF ABBREVIATIONS

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<b>CEDAW</b>	Convention on the Elimination of all forms of Discrimination against Women, 1979
<b>CWC</b>	Child Welfare Committee
<b>DPA</b>	Dowry Prohibition Act, 1961
<b>EU</b>	European Union
<b>FGM/C</b>	Female Genital Mutilation/Cutting
<b>GC Act</b>	The Goa Children’s Act, 2003
<b>ICCPR</b>	International Convention on Civil and Political Rights, 1966
<b>ICESCR</b>	International Convention on Economic, Social and Cultural Rights, 1966
<b>IPC</b>	Indian Penal Code, 1860
<b>ICPS</b>	Integrated Child Protection Scheme
<b>NPC</b>	National Policy for Children, 2013
<b>PCM Act</b>	Prohibition of Child Marriage Act, 2006
<b>PC &amp; PNDT Act</b>	Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994
<b>POCSO Act</b>	Protection of Children from Sexual Offences Act, 2012
<b>PTSD</b>	Post-traumatic Stress Disorder
<b>PWDVA 2005</b>	Protection of Women from Domestic Violence Act, 2005
<b>UDHR</b>	Universal Declaration of Human Rights, 1948
<b>UNCRC</b>	United Nations Convention on the Rights of the Child, 1989
<b>UNICEF</b>	United Nations Children’s Fund
<b>UNFPA</b>	United Nations Population Fund
<b>WHO</b>	World Health Organisation

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**LIST OF CASES**

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1. *A.S Narayana v. State of Andhra Pradesh* 1996 AIR 1765
2. *Anuj Garg v. Hotel Association* 2008 (3) SCC 1
3. *Manoj Narula v. Union of India* 2014 (9) SCC 1
4. *Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay* AIR 1962 SC 853
5. *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of Uttar Pradesh* 1997 (4) SCC 606

# FEMALE GENITAL MUTILATION

## GUIDE TO ELIMINATING THE FGM PRACTICE IN INDIA

### BACKGROUND

**Female Genital Mutilation/Cutting (FGM/C)** comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reason. While it is mainly carried out on girls between the ages of 1 and 15 years, occasionally, adult and married women are also subjected to this procedure.<sup>1</sup> A Joint Statement of the WHO/UNICEF/UNFPA on Female Genital Mutilation<sup>2</sup> classified FGM/C into four types based on the severity and extent of cutting. Type 1 is the removal of the prepuce (clitoral hood), with or without the removal of part or all of the clitoris. Type 2 is the removal of the clitoris with the partial or total excision of the *labia minora*. Type 3 is the removal of part or all of the *labia minora* and/or *labia majora* and stitching and narrowing of the vaginal orifice. This is also known as infibulation. Type 4 contains all other types of harmful non-medical procedures to the female genitalia, including pricking and piercing of the clitoris, cauterisation, stretching of the clitoris/labia, scraping and introduction of corrosive substances into the vagina.

**Despite the global and national efforts to promote abandonment of the practice, FGM/C remains widespread in different parts of the world.** Over 200 million girls and women have undergone FGM/C. The practice is most common in 30 countries across Africa and in some countries in Asia (particularly the Middle East) and Latin America and among migrants from these areas.<sup>3</sup> In India, this practice is common amongst the *Bohra* community, where the ritual is referred to as “*Khatna*” or “*Khafz/Khafd*”. *Khatna* essentially involves cutting the tip of a girl's

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<sup>1</sup> OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, ‘Eliminating Female Genital Mutilation: An interagency statement’, 2008 at p. 4. Available at: [http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442_eng.pdf)

<sup>2</sup> ‘Female Genital Mutilation: A Joint WHO/UNICEF/UNFPA Statement’, 1997. Available at: <http://apps.who.int/iris/bitstream/10665/41903/1/9241561866.pdf>

<sup>3</sup> UNFPA, ‘Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation’, November 2014, at p. 16

clitoris when she is 6-7 years old.<sup>4</sup> It is performed by *Mullanis* - women who have a semi-religious standing, by traditional cutters, or by any woman with some experience. As some families become more interested in a safe circumcision, they prefer to go to doctors.<sup>5</sup> Members of the family are usually involved in the decision-making about FGM/C, although the elder women of the family are usually responsible for the practical arrangements for the ceremony. An online survey carried out amongst *Bohra* women by *Sahiyo*, an NGO, suggests that 80% of the 400 respondents have been through the process of *khatna*<sup>6</sup>.

**There are various socio-cultural reasons for FGM/C, which vary from region to region.** Underlying all these reasons, however, is deep rooted discrimination against women and girls. The various justifications that have been advanced for FGM/C include religious dicta, an aid to female hygiene and a tool to control or reduce female sexuality. In many places, the practice is often linked to a ritual marking the coming of age and initiation to womanhood.<sup>7</sup> In a study conducted amongst women of the *Darwoodi Bohra* community,<sup>8</sup> it was found that religious requirements, traditions and customs and the wish to curb the girl's sexuality were the main reasons for the flourishing practice.

FGM/C, in many instances, is also perceived as a way to cleanse a girl from impure thoughts and desire. The perception is that a girl who is circumcised does not get as aroused as one who is in '*qalifa*' (meaning with a clitoral hood) or one whose clitoris is intact. Sexual desire in girls and women is viewed as something from which they need 'protection'. This perceived protection extends beyond protection of the girl herself to the protection of the whole family's reputation.<sup>9</sup> In many places, the belief that the clitoral head is 'unwanted skin' or that it is a 'source of sin', which will make them 'stray' out of their marriages are reasons that lie at the

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<sup>4</sup> Harinder Baweja, *India's Dark Secret*, Hindustan Times. Available at: <http://www.hindustantimes.com/static/fgm-indias-dark-secret>

<sup>5</sup> R. Ghadially, '*All for 'Izzat': The Practice of Female Circumcision among Bohra Muslims*', *Manushi*, No.66, September- October 1991

<sup>6</sup> See <https://sahiyo.com/2016/01/> dated April 13, 2016

<sup>7</sup> *Supra*, note 3

<sup>8</sup> *Supra*, note 5

<sup>9</sup> Norman K, Joanne H, Hussein E, Oyortey, '*FGM is Always With Us: Experiences, Perceptions and Beliefs of Women Affected by FGM in London*', Centre for Development Studies (Swansea)



heart of a practice that predates Islam but thrives amongst *Bohras*. Some women also referred to the clitoral hood as '*haraam ki boti*' or immoral lump of flesh.<sup>10</sup>

**FGM/C has short term and long term ill effects on the health and psychological well-being of the victims.** The severity of the cutting/mutilation directly corresponds to the harm suffered. Since anaesthesia is rarely used<sup>11</sup> on the victim during the procedure, there is extreme pain. The other short term health risks are excessive bleeding, swelling and inflammation in the genital area, infection, urinary problems and in some extreme cases, even death.<sup>12</sup> The long term consequences include chronic genital infections, recurring urinary tract infections, painful sexual intercourse, complications during pregnancy, labour and delivery of the child, perinatal risks and debilitating psychological consequences like Post-traumatic Stress Disorder (PTSD) and depression. FGM/C thus affects the health and social development of girls and women. FGM/C unlike male circumcision does not have beneficial health effects.

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<sup>10</sup> Harinder Baweja, *India's Dark Secret*, Hindustan Times. Available at: <http://www.hindustantimes.com/static/fgm-indias-dark-secret>

<sup>11</sup> WHO, Health risks of female genital mutilation (FGM). Available at: [http://www.who.int/reproductivehealth/topics/fgm/health\\_consequences\\_fgm/en/](http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/)

<sup>12</sup> *Ibid.*

## SECTION I

### LEGAL FRAMEWORK

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#### A. INTERNATIONAL LAW

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Due to the nature and consequences of FGM/C, it is a violation of the human rights of women and children. It infringes on the right to life and physical integrity<sup>13</sup>, the right to health<sup>14</sup> and the right to freedom from torture, cruel and unusual treatment, and violence.<sup>15</sup> Since FGM/C is mostly practiced on girls below the age of 18 years, it is also a violation of rights enshrined in the United Nations Convention on the Rights of the Child, 1989<sup>16</sup> (UNCRC) and violates the guarantee of non-discrimination.

**The right to be free from gender discrimination** is guaranteed in numerous international human rights instruments. Article 1 of the Convention on the Elimination of all forms of Discrimination against Women, 1979 (CEDAW) defines ‘discrimination’ as:

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<sup>13</sup> **Article 3, UDHR:** “Everyone has the right to life, liberty and security of person.” Full text of UDHR available at: <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>. Also **Article 6(1), ICCPR:** “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Full text of ICCPR available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>14</sup> **Article 12, ICESCR:** “1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.  
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:  
(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;  
(b) The improvement of all aspects of environmental and industrial hygiene;  
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;  
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Full text of ICESCR available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>15</sup> **Article 5, UDHR:** “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”  
**Article 7, ICCPR:** “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

<sup>16</sup> Full text of UNCRC available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

*“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.”<sup>17</sup>*

Unlike male circumcision that has beneficial health consequences, FGM/C adversely affects the health of females and is a practice aimed primarily at controlling women’s sexuality and subordinating their role in society. When a woman undergoes FGM/C, she is a victim of discrimination based on sex that compromises the recognition and enjoyment of her fundamental rights and liberties.<sup>18</sup> The prohibition of gender discrimination is supported in numerous international and regional human rights instruments including Universal Declaration for Human Rights, 1948 (UDHR)<sup>19</sup>, International Convention on Civil and Political Rights (ICCPR)<sup>20</sup> and International Convention on Economic, Social and Cultural Rights (ICESCR).<sup>21</sup>

**The right to life** is considered a basic human right and is protected by a number of international instruments, including Article 3 of the UDHR,<sup>22</sup> Article 6(1) of the ICCPR<sup>23</sup> and Article 6 of the UNCRC.<sup>24</sup> In extreme cases of FGM/C, the procedure also sometimes leads to death or may also contribute to maternal and neo-natal deaths.

**The right to physical integrity**, while often associated with the right to freedom from torture, encompasses a number of broader human rights principles, including the inherent dignity of the person, the right to liberty and security of the person, and the right to privacy. Acts of violence threatening a person’s safety, such as FGM/C, also violate a person’s right to physical integrity.

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<sup>17</sup> Article 1, CEDAW. Full text of CEDAW available at:

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>

<sup>18</sup> ‘Female Genital Mutilation: A Matter of Human Rights’, Centre for Reproductive Rights (New York, 2006) at p. 14

<sup>19</sup> *Supra*, note 13. Article 2, UDHR

<sup>20</sup> *Supra*, note 13. Refer Article 2, 3 and 26, ICCPR

<sup>21</sup> *Supra*, note 14. Article 2 and 3, ICESCR

<sup>22</sup> *Supra*, note 13

<sup>23</sup> *Supra*, note 13

<sup>24</sup> *Supra*, note 16. **Article 6, UNCRC:** “1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

The **right to the highest attainable standard of physical and mental health** is enshrined in a number of international and regional instruments particularly Article 25 of the UDHR.<sup>25</sup> Further, Article 12 of the ICECSR states that all State parties to *Covenant* recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>26</sup>

While the immediate health consequences include extreme pain and bleeding, the long-term consequences can include chronic pain, infections, decreased sexual enjoyment and psychological consequences, such as post-traumatic stress disorder as mentioned earlier.<sup>27</sup> Further, a WHO multi-country study confirmed that women who had undergone genital mutilation/cutting faced significantly increased risks for adverse events during childbirth and death rates among babies during and immediately after birth were higher for those born to mothers who had undergone FGM/C.<sup>28</sup>

FGM/C is commonly performed upon girls in the age range of 1 to 15 years. Therefore, the international community has generally regarded FGM/C as a **violation of the rights of the child**. The UNCRC places on the government the ultimate responsibility for ensuring that the fundamental rights of children are recognised and protected. The guiding standard established by the UNCRC under Article 3 is *“the best interests of the child.”* Article 24, UNCRC, specifically mentions traditional practices, saying that *“States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”*

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## B. FGM/C AS A FORM OF VIOLENCE AGAINST WOMEN AND THE GIRL CHILD

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The **Declaration on Elimination of Violence against Women** defines ‘violence against women’ under Article 2. It reads as follows:

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<sup>25</sup> *Supra*, note 13. **Article 25, UDHR**: *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.”*

<sup>26</sup> *Supra*, note 14. **Article 12, ICECSR**: *“The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.*

<sup>27</sup> OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, *‘Eliminating Female Genital Mutilation: An Interagency Statement’*, 2008 at p. 11. Available at: [http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442_eng.pdf)

<sup>28</sup> *Ibid.*

*“Violence against women shall be understood to encompass, but not be limited to, the following:*

- (a) Physical, sexual and psychological violence .....dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;*
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”*

**General Recommendation No. 19 of the CEDAW Committee** explicitly states that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 thereby bringing it under the scope of the Convention and, thus, under international human rights law.

**Article 2 of the CEDAW** requires all State Parties to pursue by all appropriate means a policy of eliminating discrimination against women and, to this end, undertake all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. **Article 5(a)** thereunder requires 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*”.

In 1990, the **CEDAW Committee adopted General Recommendation No. 14 on Female Circumcision**, which calls upon States to take appropriate and effective measures with a view to eradicating the practice and requests them to provide information about measures being taken to eliminate FGM/C in their reports to the Committee. **The Joint General Recommendation / General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child** on harmful practices has indicated the duty of States to undertake diligence to ensure, protect and fulfill the rights of its citizens.

Under **General Comment No. 25**, the **CEDAW Committee** outlined the obligation that CEDAW imposes on State Parties in the following words:

*“Firstly, States Parties’ obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organisations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States Parties’ obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States Parties’ obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.”*

*“States Parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women.”*

In the early years, FGM/C was framed as a health issue and its elimination focused more on the health consequences of FGM/C. This led to increased medicalisation of the practice with FGM/C being carried out by medical professionals rather than traditional practitioners. However, from a human rights perspective, medicalisation of FGM/C does not, in any case, make it acceptable as the practice itself violates a number of basic human rights.<sup>29</sup> The focus thus shifted to elimination of the practice itself.

Till date, more than 20 countries across Africa and 13 countries elsewhere have laws criminalising FGM/C. Legal provisions that apply to FGM/C vary in scope and approach. In countries such as Ghana, Egypt, Austria, Belgium, Cyprus, Denmark, Italy, Norway, Portugal, Spain and Sweden, it has been specifically incorporated in provisions of the penal code or under specific Acts (Kenya Children’s Act, 2001). In the United States, France, Germany, Mali, the Netherlands and Switzerland, existing penal code provisions have been applied to FGM/C.

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<sup>29</sup> See: ‘Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation’, UNFPA, November 2014, at p. 9. Available at: <https://www.unfpa.org/sites/default/files/pub-pdf/FGMC-humanrights.pdf>

In other countries such as the United Kingdom and Togo, special laws have been enacted to address FGM/C.

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### C. FGM/C AS A FORM OF DISABILITY

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The **United Nations Convention on the Rights of Persons with Disabilities, 2006 (Article 1)** defines ‘Persons with disabilities’ to include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

It is interesting to see how FGM/C is seen as a form of disability under the French legal regime. A similar case could be made in India under the newly enacted disability rights law of 2016.

In India, under **The Rights of Persons with Disabilities Act, 2016 (Section 2 (s))** depending on the facts and extent of FGM/C, a girl or a woman may fall under the legal definition of a ‘person(s) with disability’ which is as follows:

*“a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;”*

There can be no denying that FGM disables a woman permanently from being able to enjoy sexual pleasure and hence there is sensory impairment. These are a diminution of what it means to be fully human. As mentioned above, it has also often led to inability to give birth or difficulties in giving birth, sometimes leading to death. While the French Penal Code looks at disability from a punitive perspective, the UN Convention on which India’s disability law is based on looks at it from a human rights perspective and as impairing the full enjoyment of life and affecting the dignity of the individual.

In France, FGM/C is prohibited under the provisions of the **French Penal Code**. In 1979, France became the first European country to institute legal proceedings, under Article 222-9 of the French Penal Code covering acts of violence “causing mutilation or permanent disability”<sup>30</sup>.

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<sup>30</sup> **Article 222-9 of the French Penal Code:** “Acts of violence causing mutilation or permanent disability are punished by ten years’ imprisonment and a fine of €150,000”.

France is the country with the most criminal court cases and the best track record in prosecuting and punishing cases of FGM/C. At least 37 cases have been tried in the highest criminal court of the country, resulting in extensive media coverage on the topic of FGM/C in France.

An important reason for this extensive reportage is the system of regular medical check-ups on girls below the age of 6 years and requirement of disclosure by medical professionals of physical abuse. The regular medical check-up (including genital examination) of children up to the age of six years is not mandatory, but the receipt of social security is contingent on participation. Further, there is a requirement for regular annual check-ups for girls who are at risk of FGM/C and whenever they return from abroad. However, the introduction of compulsory gynaecological screening for girls as a means of enforcing the law on FGM/C is highly controversial in many countries of the European Union (EU). France has been criticized for being intrusive and inducing further trauma in girls, for alienating communities and for having the effect of increasing the age at which FGM/C is performed on girls.

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#### D. IMPACT OF FMG/C

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As mentioned earlier, FGM is widely perceived as a way of controlling female sexuality. Sexual desire in girls and women is viewed as something that needs protection and it is perceived to be a family's duty to circumcise their daughters to provide this protection. Not only can FGM/C provide physical protection by creating a barrier to intercourse but it is also perceived as a way to cleanse a girl from impure thoughts and desires.<sup>31</sup> Female circumcision or FGM/C seeks to protect a woman's virginity before marriage by reducing her enjoyment of intercourse, and on marriage it is seen to dissuade her from being unfaithful to her husband.<sup>32</sup>

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<sup>31</sup> Norman K, Joanne H, Hussein E, Oyortey, *'FGM is Always with Us: Experiences, Perceptions and Beliefs of Women Affected by FGM in London'*, Centre for Development Studies (Swansea, 2009) at p. 21

<sup>32</sup> *Ibid.* At p. 22



In addition to physical harm, another adverse health consequence commonly described by woman as being linked to FGM/C is mental health problems such as PTSD. Ongoing psychological and emotional suffering as a result of the procedure itself could affect women's lives severely.<sup>33</sup> Some of the experiences shared by women who have undergone FGM/C are recounted below:

*"FGM causes a lot of trouble from childhood. It is very painful to recall the memory. People think that this operation is a horrible practice small girls never forget their experience all their lives. The effects follow them all their lives and they experience suffering. Girls who have been circumcised experience fear. Many of them get traumatized, they can't sleep and they get nightmares after this. They get fear and anxiety when they get married".<sup>34</sup>*

*"As the girl starts to grow up especially after starting her menstrual cycle, she starts facing problems which affect her emotional and psychological well-being. Emotionally, she might feel that she has been a victim of her parents, the nearest to her, who have put her in this position and she might even have a mixed feeling of anger towards them<sup>35</sup>.*

The abuse leaves women physically, psychologically and sexually damaged and disabled. Boston-based Mariya Taher is pursuing a career in social work and domestic violence because of her own personal experience. *Is she emotionally damaged?* Here is what she has to say:

*"No. It's something I had to come to terms with. It took a long time for me to be okay. It is something that has affected me; it's affected the kind of work I do. I am a social worker and my work revolves around gender violence. It's made me the kind of person that I am."<sup>36</sup>*

Leyla Hussein explains through her personal story and experience as a psychotherapist working with survivors of FGM/C:

*"I only realized how deeply FGM had affected me when I became pregnant. My pregnancy was extremely traumatic and I was severely depressed. Every time I had a medical appointment, I would feel ill to the point of passing out. I felt anxious whenever anyone touched me and had*

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<sup>33</sup> *Supra*, n. 29 at p. 38

<sup>34</sup> *Ibid.*

<sup>35</sup> *Supra*, n. 29 at p. 39

<sup>36</sup> Harinder Baweja, 'India's Dark Secret', *Hindustan Times*. See: <http://www.hindustantimes.com/static/fgm-indias-dark-secret>

*panic attacks whenever I was checked by medical staff. Not one doctor or midwife questioned this or understood why...*

*We often associate FGM/C with the horrific physical trauma suffered but there is less awareness about the psychological trauma that can haunt a woman throughout her lifetime. Sometimes the emotional scars are even harder to heal than the physical, as I was finding out."<sup>37</sup>*

In a rare controlled comparison, two researchers recently demonstrated the connected possibility of PTSD symptoms and FGM/C. The study compared 23 Senegalese women who had undergone FGM/C with 24 Senegalese women who had not undergone FGM/C along dimensions of traumatic stress symptoms and other mental health problems. The two groups were comparable on age and socio-demographic variables and, importantly, experiences of non-FGM/C traumatic events. This study provides clear evidence for the association between FGM/C and mental health problems in general and traumatic symptoms in particular. Whilst traumatic events do not always lead to PTSD symptoms, symptoms are more likely to develop following events that involve threat of death or serious injury to the person or another person, with the sufferer's response being marked by intense fear, helplessness or horror.

Women may experience few traumatic symptoms but report other difficulties such as problems of anxiety or low mood. Chronic illness is associated with reduced psychological well-being and overall quality of life, and some women may suffer chronic health problems (e.g. chronic pain) left behind by FGM/C. A number of psychological therapies have been shown to be effective in reducing distress and disabilities associated with chronic ill health and these have the potential to benefit women and girls whose health has been adversely affected by FGM/C.

It is clear that FGM/C in any format is a form of child abuse as it is done on minors, in secret. There can be, and will be, no excuse to legitimise such an abhorrent practice in any way. Further, there have been cases where it has caused deep emotional damage between the daughter and the mother as it comes to signify a deep breach of trust. There have also been

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<sup>37</sup> See: 'The Invisible Scar of FGM'. Available at <http://www.girleffect.org/what-girls-need/articles/2015/02/the-invisible-scars-of-fgm/>

cases of physical complications because the prick actually turned out to be much more than that – as well as deep psychological concerns caused in women about sex and sexual relations, which have hampered many marriages. Further, world over today, there exist stringent laws that recognise that even if a girl or woman is touched in the genitals, it is inappropriate and unacceptable.

It is pertinent to note that while FGM/C has definite adverse health impact, male circumcision has no such adverse impact and indeed it can be argued that it in fact has a positive effect on health in avoiding certain kinds of infections. Hence, in FGM there are not only violations of the right to life and dignity but also a clear violation of the right to non- discrimination based on sex. The object and purpose and impact to male and female circumcision are different and result in gross discrimination against women.

## SECTION II

### DYNAMICS OF THE BOHRA COMMUNITY

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#### A. ABOUT THE BOHRAS

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FGM in India is practiced mainly in the *Bohra* community. It is commonly known that Muslims are divided into two sects: *Sunnis* and *Shias*. The *Bohras* belong to the *Shia* sect. They are found in many parts of India, notably in Gujarat, Rajasthan, Maharashtra and Madhya Pradesh. They also live in many other parts of the world – Pakistan, Sri Lanka, Singapore, East African countries, United Kingdom, Canada, Australia and the United States of America, among others. Their total population in the world is estimated at about one million.

The *Shias*, like *Sunnis*, believe that there is one God and that Mohammed is his Prophet to whom he revealed the Holy book (*Quran*). But this is where the agreement ends.

The *Shias* hold the belief that *Ali* succeeded Mohammed by '*Nasse-e-Jali*', which may be loosely translated as 'declaration'. *Ali*, according to the *Shia* belief, was succeeded by a line of *Imams* each of whom in turn was appointed by '*Nasse-e-Jali*' by his immediate predecessor.

At a later date, the *Shia* sect itself became divided into two sects known respectively as *Ismailia* and *Isna-Asharia*. This division arose out of a disputed succession on the death of the 5<sup>th</sup> Imam *Jafar-as-Sadiq* in about the year 765 A.D. Those who supported *Musa-al-Kazim* were in majority and they are called *Isna-Asharias*. Those who wanted *Ismail's* son to succeed were known as *Ismailis*. *Dawoodi Bohras* belong to the *Ismaili* branch. Over the years there have been several splits within the *Dawoodi Bohras* itself on issues of succession and multiple sects like the *Sulemanis*, *Alvis* and other such sects have arisen.

According to the legend believed by the *Bohras*, the last of the revealed *Imams* was *Imam Tayyab* who was the 21<sup>st</sup> *Imam* in the line of succession. He was a child when he succeeded to his predecessor in 1131 A.D. The further belief is that owing to the persecution of *Tayyab*, the 21<sup>st</sup> *Imam*, went into seclusion. Because of the seclusion of *Tayyab*, his predecessor - the 20<sup>th</sup> *Imam* -

had directed his *Hujjat* (a dignitary next in rank) to appoint a *Dai* (Missionary) to carry on the *Dawat* (Mission) of the *Imam* so long as he should remain in seclusion, and to take and receive from the faithful an oath of allegiance.

Every *Dai* would appoint his successor by *Nasse-e-Jali*. The *Dai* acts as a representative of the *Imam* and is called *Dai-ul-Mutlaq* or absolute *Dai*. When *Imam* comes out of seclusion, the powers of the *Dai* will immediately cease. The word '*Bohra*' is a Gujarati word meaning traders. The seat of power of the High-priest of the *Bohras* shifted from Yemen to Gujarat hundreds of years ago. In Gujarat, it was shifted from place to place until it became established at Surat where it remained for more than 150 years. It is now located in Mumbai. The High-priest of *Dawoodi Bohras* is called *Syedna Saheb* or *Maulana*.

Each *Dai* went on appointing his successor. The current *Syedna, Mufaddal Saifuddin*, became the spiritual leader on the death of his father, *Syedna Muhammed Burhanuddin*, the 52<sup>nd</sup> *Dai*, in 2014. His leadership was disputed by his step-uncle, *Khuzema Qutbuddin* who served as *Syedna Muhammed Burhannuddin's Mansoos* (essentially, his right-hand man) for 50 years. *Khuzema Qutbuddin* died in 2016 and the dispute for leadership of the *Dawoodi Bohra* community continues with his son and chosen successor, *Syedna Taher Fakhruddin*.

The *Bohras* have a reputation for being successful businesspeople with a strong focus on education. The women in the community are highly educated. However, it is thought to be the only Muslim sect in India that practices *khatna*, or clitoral unhooding, on girls at the tender age of seven, which is thought to have stemmed from the community's roots in Egypt and Yemen. While the *Dawoodi Bohras* are the largest sect among *Bohras*, the other *Bohra* sects such as *Sulemani* and *Alvi Bohras* all practice FGM.

While the *Quran* does not sanction female circumcision / *khatna* / *khafz*, *Daimul Islam*, a religious text followed by *Bohras*, endorses the practice on girls after they reach the age of 7 for hygienic reasons. Some *Bohras* also believe it enhances a woman's complexion, controls her sexual urges and makes her more devout.

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## B. THE BATTLE AGAINST SOCIAL BOYCOTT

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The *Dai* has complete control over the lives of the *Bohras*, including in secular matters. Several *Bohras* and their families are victims of social boycott. The reason behind it is that they questioned various religious and administrative practices within the community.

The threat and fear of social boycott, or excommunication, for any form of protest or disobedience is so deep and so real that not many have the stomach to be booted out of the confines of the close-knit community. Any stepping out of line immediately attracts ostracism from near and dear ones, disallows one from participating in social and religious gatherings and meetings, prevents the marriage of their children into the community, and prohibits the burial of their body from being buried in the community burial ground. This fear has prevented women from raising their voice against the practice of *khatna* or FGM/C, which continues to flourish in the community in an extremely secretive manner.

It is interesting to note that in 1949, the **Bombay Prevention of Excommunication Act** was enacted as a redressal sought by some boycotted members of the *Darwoodi Bohra* community. The Act prohibited the expulsion of any person from his or her religious creed, caste or sub-caste and held any such excommunication to be invalid. Under the law, no community could deprive a person of their right to property, to worship in religious places, to perform funeral rites or other rituals. In 1951, however, the 51<sup>st</sup> *Dai*, *Syedna Taher Saifuddin*, challenged the Act in the Bombay High Court. After a prolonged legal battle that culminated in a decision of the Supreme Court in *Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay*<sup>38</sup>, a majority judgment regarded excommunication as a legitimate practice of a community protected under Article 26 of the Indian Constitution. Article 26 grants every religious denomination or any section thereof the freedom to manage their religious affairs. The matter is still pending before the Supreme Court as reformist *Bohras* filed a review petition against the said judgement asking for a reconsideration of the decision.

In the meantime, on April 14, 2016, the Maharashtra legislature passed the **Maharashtra Prohibition of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016**

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<sup>38</sup> AIR 1962 SC 853

to prohibit the social boycott of individuals or families by caste panchayats (local caste councils) or any community and defines such behavior as an offense punishable with imprisonment, which may be up to seven years, or with a fine that may be as much as five lakh rupees (about US\$ 7,522) or both. Although this law was not specifically targeted at any one community, it applies to all communities including the *Dawoodi Bohras* and it remains to be seen how the community will react to this law when it is invoked against them. As of now, it seems clear that few people would risk excommunication by going against the norms set by the community. Voices against the practice of FGM/C are also muzzled because of an inherent fear of social boycott that prevails in the community. There are no signs of FGM/C being done away with by the community itself, and hence, the need to consider the available legal options. There is no doubt about the fact that the fear of excommunication and religious sanctions act as a compulsion to *Bohra* parents to perform FGM on their daughters, and in that sense, there is also no doubt that the *Syedna* Muffadal Saifuddin is actively advocating and propagating FGM.

## SECTION III

### IMPORTANT CONSIDERATIONS REGARDING THE FGM/C PRACTICE

As is clear from the reports and the testimonies shared herein above and the international conventions and national legislations listed under Annexure I and II, there are various social and cultural dimensions within which the practice of FGM/C is executed. Some of the important considerations and questions raised in this regard pertain to the following:

- (a) FGM/C is carried out behind closed doors;
- (b) FGM/C is a gender specific crime and the “victims” in most cases are minor girls;
- (c) People involved in the decision-making process for administering this procedure generally include elder women of the family (mother, grandmother or aunts) of the girl child;
- (d) Role of medical professionals, traditional practitioners and the religious/community leaders needs to be examined;
- (e) Time limit within which the “aggrieved woman” may approach the legal system, considering that this procedure would have been carried out when she was a child/minor;
- (f) Stipulations on the duty to report;
- (g) De-merits to justifying the practice of FGM/C as being a part of “religious practice”;
- (h) Addressing the crucial need for awareness generation amongst the community, school and colleges regarding the practice of FGM/C; and
- (i) Need for prevention strategies.

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### EXISTING LEGAL FRAMEWORK

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In India, various forms of violence against women are dealt within the Indian Penal Code, 1860 (IPC). Being a criminal law, the focus is on penalising the accused/perpetrator of the crime. **Section 319 to 326, IPC** address varying degrees of hurt and grievous hurt. According to the WHO, the immediate complication of FGM/C can include excessive bleeding (hemorrhage), genital tissue swelling, wound healing problems, injury to surrounding genital tissue, shock and death while the long term consequences include urinary problems, vaginal



problems, menstrual problems, sexual problems etc.<sup>39</sup> and thus persons undertaking FGM/C may be prosecuted under the IPC.

Particularly, **Sections 324 and 326, IPC** provide penalties of imprisonment and fines for 'voluntarily causing hurt' and 'voluntarily causing grievous hurt'.<sup>40</sup> 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>41</sup>

**Section 3 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act)** that addresses penetrative sexual assault by any person on any child, *inter alia* defines it as insertion of any object into the vagina of the girl.<sup>42</sup> It is established precedence that penetration in sexual offences need not be complete penetration. In fact, Explanation 1 of Section 375, IPC categorically states that the term vagina includes *labia majora*. FGM/C, which requires insertion of a sharp object into the vagina of a child, may be covered under Section 3, POCSO Act read with Explanation 1 of section 375 IPC.

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<sup>39</sup> See: <http://www.who.int/mediacentre/factsheets/fs241/en/>

<sup>40</sup> **Section 324 of IPC:** "*Voluntarily causing hurt by dangerous weapons or means.--Whoever, except in the case provided for by section 334, voluntarily causes 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, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*"

**Section 326 of IPC:** "*Voluntarily causing grievous hurt by dangerous weapons or means.--Whoever, except in the case provided for by section 335, 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, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*"

<sup>41</sup> Rasheeda Bhagat, 'Ban this barbarous practice!', Hindu Business Line, July 29, 2014. Available at: <http://www.stopfgmmideast.org/india-ban-this-barbarous-practice/>

<sup>42</sup> **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"*

**The Goa Children's Act, 2003 (GC Act)** under **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,..."*

FGM/C depending on facts and circumstances may fall to be prosecuted under any one of these provisions.

The **National Policy for Children, 2013 (NPC)** affirms 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 grow with equity, dignity, security 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 recognises and prioritises the right to health, survival, development and protection as inalienable rights of children. With regard to protection, the NPC recognises 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 reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces",* and protecting children from all forms of violence, abuse, exploitation and discrimination, or any activity that harms their personhood or impedes their development.

Further, the NPC notes the State's obligation to take special 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 reintegration"*. The Policy also states that the State must *"enact progressive legislation, build a preventive and responsive child protection system, including emergency outreach services, and promote effective enforcement of punitive legislative and administrative measures against all forms of child abuse and neglect to comprehensively address issues related to child protection."*

The centrally sponsored **Integrated Child Protection Scheme (ICPS)**, launched in 2009 by the Ministry of Women and Child Development, aims to create and establish an efficient protective system for vulnerable children. Its objectives include institutionalising and integrating essential services and strengthening structures for emergency outreach, institutional care, family and community based care, counselling and support services; strengthening child protection at family and community level, and promoting preventive

measures to protect children from situations of vulnerability, risk and abuse. The scheme aims to integrate service provision into a range of existing services to cater to the multiple needs of children in difficult circumstances, through an interface with various sectors, including health, education, judiciary, police, and labour, among others. Systems under ICPS promote right to privacy and confidentiality of the child and institutionalisation of the child is seen as a measure of last resort.

While the practice of carrying out FGM/C may qualify as a form of **“hurt or grievous hurt” under the IPC and a crime under Section 3 of the POCSO Act** being carried out with an instrument used for cutting and may be addressed under the existing laws of sexual assault, child sexual abuse and domestic violence, addressing this practice requires a more holistic approach. Such an approach needs to address the various other aspects of FGM/C including abetting or aiding the practice, propagating the practice, prevention of FGM/C, regulations on medical/health professionals who carry out this practice, duty to report, support and rehabilitative provisions and awareness generation.

## SECTION IV

### TOWARDS ADDRESSING FGM/C IN INDIA

In order to address an issue such as FGM/C any legislative or policy response should address the following components:

- Comprehensive definition of FGM/C
- Time period within which one can report an incidence of FGM/C
- Mandatory reporting
- Parties to be penalised
- Reporting of incidents(s) of FGM/C that are undertaken or are proposed to be undertaken
- The practice of FGM/C justified as being a part of ‘religious practice’
- Prevention of FGM/C, which includes provisions for girls at risk of FGM/C and awareness generation
- Support, rehabilitation and others forms of assistance to the ‘victim/survivor’

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#### A. DEFINITION OF FGM/C

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It has been seen that in countries where FGM/C has been criminalised, the lack of a definition for FGM/C has impeded efforts for eradicating and successfully prosecuting such offences. In a report<sup>43</sup> presented at an Expert Group Meeting on Good Practices in Legislation to Address Harmful Practices against Women in 2009, it was noted that the lack of a definition of FGM/C in Chad’s legislation made *“it subject to opinions of the perpetrators as well as law enforcement agents.”*

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*

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<sup>43</sup> Berhane Ras-Work, ‘Legislation to Address the Issue of Female Genital Mutilation’, EGM/GPLHP/2009/EP.01. Available at:

[http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2009/Expert%20Paper%20EGMGPLHP%20\\_Berhane%20Ras-Work%20revised\\_.pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Berhane%20Ras-Work%20revised_.pdf)

female genitalia, or other injury to the female genital organs for non-medical reasons”<sup>44</sup>. Some countries have, however, adopted specific definitions. As per **Section 1 of United Kingdom’s Female Genital Mutilation Act, 2003**, a person is guilty of the offence of female genital mutilation/cutting “if he excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris”. **Section 3 of Australia’s Crimes (Female Genital Mutilation) Act, 1996** defines FGM as “all or any of the following— (a) infibulation; (b) the excision or mutilation of the whole or a part of the clitoris; (c) the excision or mutilation of the whole or a part of the labia minora or labia majora; (d) any procedure to narrow or close the vaginal opening; (e) the sealing or suturing together of the labia minora or labia majora; (f) the removal of the clitoral hood”.

FGM/C in India, as carried out by the *Bohra* community, falls into the Type I and IV category as identified by WHO/UNFPA/UNICEF. That is, the removal of the prepuce (clitoral hood), with or without the removal of part or whole of the clitoris, and all other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.<sup>45</sup> For the purpose of defining the offence in the legislation, it should have a broader definition to address any future change in the practice.

#### RECOMMENDATION

It is recommended that the definition as provided in the joint statement by WHO/UNFPA/UNICEF be adopted and FGM/C be 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”.

The definition should, however, specifically exclude any necessary surgical procedure for the purpose of the girl’s physical or mental health, or any post-partum procedure performed by a registered medical practitioner.

<sup>44</sup> A Joint WHO/UNICEF/UNFPA Statement on FGM, 1997. Available at <http://apps.who.int/iris/bitstream/10665/41903/1/9241561866.pdf>

<sup>45</sup> *Ibid.*

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## B. PARTIES WHO MAY BE PENALISED

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As mentioned earlier, *khatna* is either carried out by *Mullanis*, women who have a semi-religious standing, or by traditional cutters or by doctors<sup>46</sup>. According to a 2008 UNFPA report titled '*A Qualitative Study on FGM/C among the Dawoodi Bohra Community*', it was observed that religious beliefs regarding FGM/C 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/C performers, were silently creeping in the society.<sup>47</sup>

This report suggests that those who perform or abet the performance of and propagate FGM/C should all be held guilty of the offence. Support for this can be found in legislation of other countries as also in legislations from India in relation to other offences against women and children.

### 1. Those who Perform and Participate

In most countries, specific FGM/C laws consider performing and participating in, or even attempting to subject a girl or a woman to FGM/C a criminal offence. Most laws penalise both accomplices, such as family members, and principal perpetrators. In **Nigeria, the Violence against Persons (Prohibition) Act, 2015** under Section 6 (2) seeks to penalise anyone who carries out FGM/C or engages another to carry out FGM/C. Under section 6(2) and 6(3) anyone who abets, incites, aids or counsels another person to carry out FGM/C or even a mere attempt to carry out this process attracts a criminal penalty.<sup>48</sup>

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<sup>46</sup> *Supra*, note 5

<sup>47</sup> Dr. Farida Shah, '*A Qualitative study on FGM/FGC among Dawoodi Bohra Community*', at p. 19

<sup>48</sup> **Section 6 of the Violence against Persons (Prohibition) Act, 2015:**

*"(1) The Circumcision or genital mutilation of the girl child or women is hereby prohibited.*

*(2) A person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N 200,000.00 or both*

*(3) A person who attempts to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N 100,000.00 or both*

*(4) A person who incites, aids, abets or counsels another person to commit the offence provided for in sub section (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N 100,000.00 or both."*

In the **United Kingdom, the Female Genital Mutilation Act, 2003** was enacted to address the issue of FGM/C. Section 1<sup>49</sup> thereunder seeks to penalise those who carry out the process and Sections 2 and 3<sup>50</sup> to those involved in aiding, abetting, procuring or counseling the process.

In **Australia, the Crimes (Amendment) Act, 1995** made necessary amendments towards penalising FGM/C. It sought to penalise any person who carries out FGM/C and also those who take or arrange to take any child outside the territory for FGM/C to be performed on the child under Sections 92W and 92X of the Crimes Act, 1900.<sup>51</sup>

We recommend in this report that those who perform or engage the services of another either directly or indirectly, for remuneration or without remuneration, to perform FGM/C must be held guilty of the offence of committing FGM. Those who abet the practice of FGM/C by promoting propagating or coercing another must also be held liable. In India, the IPC itself contains provisions for punishing those who abet an offence.<sup>52</sup> Apart from that, social

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<sup>49</sup> **Section 1 of UK FGM Act, 2003:** “Offence of female genital mutilation - (1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris.”

<sup>50</sup> **Section 2 of UK FGM Act, 2003:** “Offence of assisting a girl to mutilate her own genitalia - A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.”

**Section 3 of UK FGM Act, 2003:** “Offence of assisting a non-UK person to mutilate overseas a girl’s genitalia - (1) A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom national or permanent United Kingdom resident to do a relevant act of female genital mutilation outside the United Kingdom.”

<sup>51</sup> **Section 92W of Crimes Act, 1900:** “Prohibition of female genital mutilation (1) A person shall not intentionally perform female genital mutilation on another person. Penalty: Imprisonment for 15 years.

(2) It is not a defense to a prosecution for an offence under this section that the person on whom the female genital mutilation was performed, or a parent or guardian of that person, consented to the mutilation.”

**Section 92X of Crimes Act, 1900:** “Removal of child from Territory for genital mutilation (1) A person shall not take a child from the Territory, or arrange for a child to be taken from the Territory, with the intention of having female genital mutilation performed on the child. Penalty: Imprisonment for 7 years.

(2) In proceedings for an offence against subsection (1), if it is proved that— (a) the defendant took a child, or arranged for a child to be taken, from the Territory; and (b) female genital mutilation was performed on the child while outside the Territory; it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the Territory with the intention of having female genital mutilation performed on the child.

(3) In this section— ‘child’ means a person under the age of 18 years.”

<sup>52</sup> **Section 107 of IPC:** “Abetment of a thing.--A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

**Section 109 of IPC:** “Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.--Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

(footnote continued)

legislations intended to prevent an evil also has provisions for punishing those who abet. Some examples are Sections 10 and 11 of the **The Prohibition of Child Marriage Act, 2006**.<sup>53</sup> The Act which was enacted to prevent Child Marriages penalizes those who solemnize child marriages and also those who have been involved in **performing, conducting, directing or abetting any child marriage**.

**The Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002** under section 7.6 lists out **carrying sex determination tests** as a form of professional misconduct making him/her liable for disciplinary action. Hence, laws which penalise those who perform the offensive act are well known and necessary for the deterrence effect to have any meaning.

In a similar vein, those who engage another to perform, those who actually perform and those who abet the performance of an act of FGM/C should be held accountable and be punished by law.

## 2. Those that Propagate

Similarly, prorogation of harmful practices have also been made an offence in India for example in reaction to propagation of Sati in India, **The Commission of Sati (Prevention) Act, 1987 penalized the propagation of sati as a measure towards prevention**. The Act seeks to provide for effective prevention of the commission of sati and its glorification. The law also

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*Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."*

<sup>53</sup> **Section 10 of the Prohibition of Child Marriage Act, 2006: "Punishment for solemnizing a child marriage - Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage."**

**Section 11 of the Prohibition of Child Marriage Act, 2006: "Punishment for promoting or permitting solemnization of child marriages - (1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organization or association of persons who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees: **Provided that no woman shall be punishable with imprisonment.****

**(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnized."**



provides penalty for glorification of sati that includes *“supporting, justifying and propagating the practice”*.<sup>54</sup>

It was reported on June 6, 2016, at the time of upholding the decisions of the Bohra Trusts in their places to end the practices where it is against the law, the Syedna Muffadal Saifuddin clarified that circumcision was a religious obligation for all Bohras. A statement issued by his office stated that *“male and female circumcision (called khatna and khafz respectively) are religious rites that have been practiced by Dawoodi Bohras throughout their history... Religious books, written over a thousand years ago, specify the requirements for both males and females as acts of religious purity.”*<sup>55</sup>

Further, on April 25, 2016 a recording reported to be of a sermon of the Syedna Muffadal Saifuddin began to circulate on social media. In a statement that was widely reported, a person believed to be the Syedna defended *khafz* as a religious duty and defied foreign authorities to

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<sup>54</sup> **Section 2(b) of The Commission of Sati (Prevention) Act, 1987:** *“glorification, in relation to sati, whether such sati was committed before or after the commencement of this Act, includes, among other things, —*

*(i) the observance of any ceremony or the taking out of a procession in connection with the commission of sati; or*

*(ii) the supporting, justifying or propagating the practice of sati in any manner; or*

*(iii) the arranging of any function to eulogise the person who has committed sati; or*

*(iv) the creation of a trust, or the collection of funds, or the construction of a temple or other structure or the carrying on of any form of worship or the performance of any ceremony thereat, with a view to perpetuate the honour of, or to preserve the memory of, a person who has committed sati;”*

**Section 5 of The Commission of Sati (Prevention) Act, 1987:** *“Punishment for glorification of sati- Whoever does any act for the glorification of sati shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.”*

**Section 4 of The Commission of Sati (Prevention) Act, 1987:** *“Abetment of sati*

*(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860) , if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.*

*(2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.*

*Explanation.- For the purposes of this section, any of the following acts or the like shall also be deemed to be an abetment, namely:...(b) making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative or the general well being of the family;...”*

<sup>55</sup> ‘Bohra leader upholds female circumcision in countries where it is not banned’, *scroll.in*, June 7, 2016. Available at: <https://scroll.in/article/809463/bohra-leader-upholds-female-genital-mutilation-in-countries-where-it-is-not-banned>

prevent the practice from taking place. The *Times of India* quoted<sup>56</sup> a translation of a recording thought to be from his sermon:

*“It must be done. If it is a man, it can be done openly and if it is a woman it must be discreet. But the act must be done. Do you understand what I am saying? Let people say what they want...but Rasoolullah [Prophet Mohammed] has said it...Rasoolullah will never say anything against humanity. He has only spoken [of] what is beneficial...from the perspective [“haisiyat”] of the body and the soul. What do they say?...that this is harmful? Let them say it, we are not scared of anyone.”*<sup>57</sup>

While it is clear that FGM/C should not be tolerated in any possible way, one cannot ignore the pressures, be it social, cultural or religious that parents may be subjected to for making their daughters undergo this procedure. A study conducted by an organisation based in London states that while it is too easy to view FGM/C as a barbaric and uncaring practice, in reality, parents or grandparents are often doing so in a context in which not circumcising a girl is almost unthinkable for the long-established social reasons.<sup>58</sup> The most common perception is that, now it is ultimately the parent’s decision as to whether or not girls are circumcised. However, they undergo immense pressure from their extended family with maximum pressure when they are in their countries of origin.<sup>59</sup>

In situations where suitability for marriage is based on whether the girl is circumcised or not, (with men’s families looking for circumcised brides) many parents would want to ensure that the procedure is carried out at the earliest. Pressure to circumcise is described as passing down through generations of women with grandmothers pressuring mothers of young girls who in turn exert pressure on their own daughters or daughters-in-law.<sup>60</sup> The practice is clearly brought to be borne on them due to the fear of social ostracism and religious sanctions that may follow non-performance of the practice of FGM/C. Hence, once the practice is

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<sup>56</sup> ‘Bohra cleric urges female genital mutilation?’ *The Times of India*, April 29, 2016. Available at:

<http://timesofindia.indiatimes.com/city/mumbai/Bohra-cleric-urges-female-genital-mutilation/articleshow/52031699.cms>

<sup>57</sup> *Supra*, note 44

<sup>58</sup> FORWARD (Safeguarding Rights and Dignity) and Options Consultancy Services, ‘FGM is always with Us: Experiences, Perceptions and Beliefs of Women Affected by FGM in London’, July 2009 at p. 23

<sup>59</sup> *Ibid.*, at p. 25

<sup>60</sup> *Ibid.*

criminalized, it is necessary to prevent the propagation of the practice in any manner whatsoever.

### 3. *Bona fide* Informants

The main objective of having a legal framework specifically for FGM/C is to prevent the commission of an act of FGM/C. Thus, it is important to have a legal provision that will enable persons/informants to provide information regarding the proposed commission of an act of FGM/C without fear of prosecution and backlash from the community. Similarly, information of an FGM/C performed must also be entertained by the law without fear of consequences to a *bona fide* person conveying the information.

Thus, this report recommends a legal provision that states that information of an incident of FGM/C which is likely to be performed or has been performed to a designated person authorised to receive such information provided in good faith will not make the informant liable in any manner.

The designated person must be enabled to obtain a prohibitory protection order in case of a proposed FGM. A similar provision exists **under the Prohibition of Child Marriage Act, 2006**, where pursuant to Section 13, a Judicial Magistrate / Metropolitan Magistrate, under a complaint made by any person having knowledge or reason to believe or having reasonable information relating to the likelihood of a child marriage, can issue injunction against any person towards prohibiting such marriage.<sup>61</sup>

According to 2008 Report of the Special Rapporteur on Torture - adolescent girls and women very often agree to undergo FGM/C because they fear the non-acceptance of their communities, families and peers.<sup>62</sup> Thus, this report recommends that the identity of such informant shall be protected and not be published in the public domain.

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<sup>61</sup> **Section 13 of the Prohibition of Child Marriage Act, 2006:** *“(1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.  
(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.”*

<sup>62</sup> See: <http://www.endfgm.eu/female-genital-mutilation/fgm-in-europe/>

### RECOMMENDATION

Since within the *Bohra* community, it is primarily the parents who take their daughters to cutters for FGM/C, they should be the first category of perpetrators who may be held accountable. The procedure is primarily carried out by 'traditional cutters' or, in some cases, 'medical professionals', they should be the next category of perpetrators who may be held accountable. Further, since it is primarily under the encouragement / advice / guidance of the religious / community leaders that the procedure is carried out, their role should also not be negated. Propagation of this practice should also be recognised as an offence.

It is, therefore, recommended that:

- Any person should be able to provide information of a proposed FGM/C, or of an undertaken incident of FGM/C before a recognised agency that could be an accredited NGO. Such an accredited NGO should be enabled to bring a civil action for an injunction restraining the commission of an act(s) of FGM/C.
- In the event of an undertaken incident of FGM/C, the appropriate authorities shall conduct an investigation. The NGO shall give notice to the appropriate authority to commence prosecution and if the appropriate authority or law enforcement agencies do not initiate action, the accredited NGO can approach the courts of law.
- Strict penalties should be provided for any person who carries out the FGM/C or causes FGM/C to be conducted. However, the exception regarding carrying out such a procedure as a part of surgical operation necessary for the girl's physical or mental health or on a person in labour by a registered medical practitioner should be included.
- Any person who aids, abets, counsels or procures any girl/woman to carry out such procedure should also be penalised. This would also include persons who promote and permit the practice within the community as well.
- Strict penalty should be provided for those who propagate or glorify this practice on any grounds whatsoever.
- Specific amendments may be made in the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 stating that carrying out FGM/C as a form of misconduct making him/her liable for disciplinary proceedings.

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### C. TIME PERIOD FOR REPORTING

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In the case of FGM/C, the process is generally carried out when the girls are minors, the average age being 7, and they do not possess the ability to understand what is being done to them. The girls are usually too young to comprehend the consequences or the impact of it on their right to dignity and right to physical integrity. Girls are unable to comprehend at that age that FGM/C involves the mutilation of healthy body parts. Hence, the right to a legal remedy must be made available up to a reasonable time period after the commission of the act of FGM/C. This is the pattern of other Indian laws as well such as the Prohibition of Child Marriage Act, 2006.

#### RECOMMENDATION

It is recommended that a victim of FGM/C should be given at least three (3) years of time after the commission of FGM/C to file a complaint against those who subjected her to FGM/C similar to the provisions of the Prohibition of Child Marriage Act, 2006 where the parties can declare the marriage void within two (2) years of attaining majority.

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### D. DUTY TO REPORT

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On the issue of reporting cases of FGM/C, most countries target health professionals, social workers and teachers. The duty to report for at least one category of professionals is applicable in countries such as Austria, Denmark, Estonia, Finland, France, Greece, Hungary, Italy, Norway, Portugal, Spain, and Switzerland. In many countries, even citizens have the duty to report FGM/C to the social services or prosecution authorities. These include Cyprus, France, Greece, Hungary, Norway, Spain, Sweden and the United Kingdom.<sup>63</sup>

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<sup>63</sup> Els Leye and Alexia Sabbe, 'Overview Of Legislation In The European Union To Address Female Genital Mutilation: Challenges And Recommendations For The Implementation Of Laws: Expert Group Meeting On Good Practices In Legislation To Address Harmful Practices Against Women', United Nations Conference Centre, Addis Ababa, Ethiopia, May 25 to 28, 2009 at p. 5. Reports available at: <http://www.un.org/womenwatch/daw/vaw/v-egms-gplahpaw.htm>

In the **United Kingdom, the Female Genital Mutilation Act, 2003**, as amended by Section 74 of the Serious Crime Act, 2015<sup>64</sup>, has introduced the legal duty for regulated health and social care professionals and teachers to make a report to the police<sup>65</sup> if they are informed by a girl under the age of 18 that she has undergone an act of FGM/C or they observe physical signs that an act of FGM/C may have been carried out on a girl under the age of 18. The duty does not apply where a woman over the age of 18 discloses she had FGM/C when she was less than 18 years of age. **The duty only applies in cases where the disclosure is made by the victim.** If someone else, such as a parent or guardian, discloses that a girl under 18 has had FGM/C, a

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<sup>64</sup> **Section 74 of Serious Crime Act, 2015:** “Duty to notify police of female genital mutilation - After section 5A of the Female Genital Mutilation Act 2003 (inserted by section 73 above) insert—

**“Section 5B Duty to notify police of female genital mutilation**

**(1)** A person who works in a regulated profession in England and Wales must make a notification under this section (an “FGM notification”) if, in the course of his or her work in the profession, the person discovers that an act of female genital mutilation appears to have been carried out on a girl who is aged under 18.

**(2) For the purposes of this section—**

(a) a person works in a “regulated profession” if the person is—

(i) a healthcare professional,

(ii) a teacher, or

(iii) a social care worker in Wales;

(b) a person “discovers” that an act of female genital mutilation appears to have been carried out on a girl in either of the following two cases.

**(3) The first case** is where the girl informs the person that an act of female genital mutilation (however described) has been carried out on her.

**(4) The second case is where—**

(a) the person observes physical signs on the girl appearing to show that an act of female genital mutilation has been carried out on her, and

(b) the person has no reason to believe that the act was, or was part of, a surgical operation within section 1(2)(a) or (b).

**(5) An FGM notification—**

(a) is to be made to the chief officer of police for the area in which the girl resides;

(b) must identify the girl and explain why the notification is made;

(c) must be made before the end of one month from the time when the person making the notification first discovers that an act of female genital mutilation appears to have been carried out on the girl;

(d) may be made orally or in writing

(6) .....

**(7) A disclosure made in an FGM notification does not breach—**

(a) any obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information.”

<sup>65</sup> See: ‘Female Genital Mutilation: The Facts’. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/482799/6\\_1587\\_HO\\_MT\\_Updates\\_to\\_the\\_FGM\\_The\\_Facts\\_WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482799/6_1587_HO_MT_Updates_to_the_FGM_The_Facts_WEB.pdf).

report to the police is not mandatory. If professionals fail to comply with the duty, this will be dealt with in accordance with existing performance procedures in place for each profession.<sup>66</sup>

In **France**, the general law with regard to professional secrecy and disclosure may be applied to report cases of performed or planned FGM/C. **Article 226–14 of the French Penal Code** concerns medical and social workers and other professionals usually bound by secrecy. They are requested to report physical or psychological abuse perpetrated against children or persons unable to protect themselves due to their age or incapacity. The same applies to physical or psychological abuse noticed by a physician within the frame of their daily practice and supporting the strong presumption that physical, sexual or psychological violence has been perpetrated against the patient. Sexual mutilations have been explicitly categorised as physical abuses.<sup>67</sup>

The **Protection of Children from Sexual Offences Act, 2012** under Section 19 makes it mandatory on any person who has any information of the offence to report to the police. Young girls are usually taken by a female relative for the *Khatna* and very often are themselves not aware of what is happening to them. In such a case, thus, it is recommended that whoever, including teachers, doctors etc., come upon any information of the commission of such an offence, they are duty bound to inform the police for necessary action.

### RECOMMENDATION

It is recommended that a duty may be cast on front line professionals such as teachers, doctors, social workers as well as *Amils* (the local religious leaders) to report to the police in case any girl is under the threat of FGM/C or FGM/C had been performed on a girl.

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<sup>66</sup> See 'Female Genital Mutilation: Legislation, Policy and Guidance'. Available at: <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/female-genital-mutilation-fgm/legislation-policy-and-guidance/>

<sup>67</sup> See: European Institute of Gender Equality, 'Current situation of female genital mutilation in France'. Available at: [http://eige.europa.eu/sites/default/files/documents/current\\_situation\\_and\\_trends\\_of\\_female\\_genital\\_mutilation\\_in\\_france\\_en.pdf](http://eige.europa.eu/sites/default/files/documents/current_situation_and_trends_of_female_genital_mutilation_in_france_en.pdf)

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## E. FGM/C CANNOT BE JUSTIFIED AS A “RELIGIOUS PRACTICE”

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In many places, the practice of FGM/C is often linked to a ritual marking the coming of age and initiation to womanhood.<sup>68</sup> In a study conducted among women of the *Dawoodi Bohra* community,<sup>69</sup> it was found that religious requirements, tradition, custom and the wish to curb the girl’s sexuality were the main reasons for the practice. According to a 2008 study “A Qualitative study on FGM/C among *Dawoodi Bohra* community” conducted by the UNFPA, in a focus group discussion with the women of the community, all were of the opinion that if FGM/C is “*Sunnat*” (normative) for them, then they must follow it. In an online survey of *Dawoodi Bohra* women, 56% said that they had to undergo FGM/C for religious purposes and 45% said it was to decrease sexual arousal.<sup>70</sup> The practice of FGM/C is often sought to be justified on grounds of protecting women from sexual desires and on grounds of religious freedoms of communities.

Articles 25 and 26 of the Indian Constitution guarantee the right to freedom of religion and freedom to manage religious affairs.

The individual right to religious freedom as guaranteed under Article 25. However, such freedom is subject to provisions of Part III of the Indian Constitution i.e., to fundamental rights including the fundamental right to equality and non-discrimination based on sex as guaranteed under Articles 14 and 15 of the Indian Constitution. Such freedom is also subject to public order, morality and health.

Article 25 reads as:

***“Article 25 - Right to Freedom of Religion: (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*”**

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<sup>68</sup> UNFPA, ‘Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation’, November 2014, at p. 16

<sup>69</sup> R. Ghadially, ‘All for ‘Izzat’: The Practice of Female Circumcision among Bohra Muslims’, *Manushi*, No.66, September - October 1991

<sup>70</sup> See <https://sahiyo.com/2016/01/> dated April 13, 2016



(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

*Explanation I.* — The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

*Explanation II.* — In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

Articles 14, 15 and 21 read as:

**“Article 14 – Equality before the Law:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

**“Article 15 – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:** (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including

*private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”*

*“Article 21 - Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law”*

Even if one assumes for the sake of argument that FGM/C is a religious practice, such practice is not protected under Article 25 as it violates Articles 14, 15 and 21 of the Indian Constitution.

The practice of FGM/C is an act that targets women with the objective of curbing girls’ and women’s sexual desires and leads to ill health effects. Women and girls are seen as objects with sexual desires that need to be curbed to protect women and girls from being violated by other men. Such practice is unconstitutional as it gender stereotypes women and girls and thus is violative of their fundamental rights under Articles 14 and 15 of the Indian Constitution. Such practice, in the garb of religion and the object to protect girls and women, victimizes women and violates their rights to physical autonomy, to be in control of their own bodies and to be protected from physical violence and mental trauma and thus is violative of their right to life guaranteed under Article 21 of the Indian Constitution.

Gender stereotyping is contrary to the principles of equality as enshrined in the Indian Constitution and India’s international obligations under CEDAW as have elaborated earlier. The Supreme Court in *Anuj Garg v. Hotel Association*<sup>71</sup> while adjudicating a challenge to 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 in which liquor or another intoxicating drug was being consumed, rejected the gender stereotypical arguments that the said legislation was essential to ensure the “security” of women. The Court observed that:

*“The present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by state for pursuing the ends of protection should be proportionate to the legitimate aims...Gender equality today is recognized by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe...It is for the court to review that the majoritarian impulses rooted in*

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<sup>71</sup> 2008 (3) SCC 1

***moralistic tradition do not impinge upon individual autonomy.** This is the backdrop of deeper judicial scrutiny of such legislations world over...Therefore, one issue of immediate relevance in such cases is the effect of the traditional cultural norms as also the state of general ambience in the society which women have to face while opting for an employment which is otherwise completely innocuous for the male counterpart. In such circumstances the question revolves around the approach of state...In another similar case wherein there was an effective bar on females for the position of guards or correctional counselors in the Alabama state penitentiary system. The prison facility housed sexual offenders and the majority opinion on this basis inter alia upheld the bar. Justice Marshall's dissent captures the ranges of issues within a progressive paradigm. Dissent in *Dothard v. Rawlinson* 433 U.S. 321 : 97 S.Ct. 2720 serves as useful advice in the following terms:*

***It appears that the real disqualifying factor in the Court's view is 'the employee's very womanhood.'** The Court refers to the large number of sex offenders in Alabama prisons, and to **'the likelihood that inmates would assault a woman because she was a woman.'** In short, **the fundamental justification for the decision is that women as guards will generate sexual assaults.** With all respect, this rationale regrettably perpetuates one of the most insidious of the old myths about women that **women, wittingly or not, are seductive sexual objects.** The effect of the decision, made I am sure with the best of intentions, is **to punish women because their very presence might provoke sexual assaults.** ..... To deprive women of job opportunities because of the threatened behavior of convicted criminals is to turn our social priorities upside down."*

The Supreme Court in the said case held that:

*"The Court's task is to determine whether the measures furthered by the State in form of legislative mandate, to augment the legitimate aim of protecting the interests of women are proportionate to the other bulk of well-settled **gender norms** such as autonomy, equality of opportunity, right to privacy et al. The bottom-line in this behalf **would a functioning modern democratic society which ensures freedom to pursue varied opportunities and options without discriminating on the basis of sex, race, caste or any other like basis.**"*

The group/denomination right to religious freedom to manage one's own religious affairs is guaranteed under Article 26. However, such freedom is also subject to public order, *morality* and health. Article 26 read as follows:

***“Article 26 - Freedom to manage religious affairs: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:***

- (a) to establish and maintain institutions for religious and charitable purposes;*
- (b) to manage its own affairs in matters of religion;*
- (c) to own and acquire movable and immovable property; and*
- (d) to administer such property in accordance with law.”*

“Morality” in both Articles 25 and 26 refers to “constitutional morality”. The Supreme Court in *Manoj Narula v. Union of India*<sup>72</sup> has interpreted “constitutional morality” as follows:

*“The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society... **“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people are yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic...** **The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner.** It actually works at the fulcrum and guides as a laser beam in institution building. **The traditions and conventions have to grow to sustain the value of such a morality...** **Commitment to the Constitution is a facet of constitutional morality.”***

The Supreme Court, in *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of Uttar Pradesh*,<sup>73</sup> while upholding the constitutional validity of Uttar Pradesh Sri Kashi Vishwanath Temple, 1983 governing the management and administration of the Vishwanath Temple that overrode customs and usages, laws, and decrees to the contrary, held that:

***“The denomination sect is also bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. ... For instance, untouchability was believed to be a part of Hindu religious belief. But human rights denounce it***

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<sup>72</sup> 2014 (9) SCC 1

<sup>73</sup> 1997 (4) SCC 606

*and Article 17 of the Constitution of India abolished it and its practice in any form is a constitutional crime punishable under civil Rights Protection Act. Article 15(2) and other allied provisions achieve the purpose of Article 17.”*

Further, the Supreme Court in *A S Naryana Deekshitulu v. State of Andhra Pradesh*,<sup>74</sup> while adjudicating upon the issue of hereditary appointment rights of *Archakas*, held that:

*“Though Agamas prescribed class discriminatory placement for worship in the temples, it became obsolete after the advent of the Constitution of India which, by Articles 14 15 17 25 and 26, that prohibit discrimination on grounds only of caste, class, sect etc.”*

The practice of FGM/C regardless of being a religious practice of the *Bohra* community or not, is subject to constitutional morality and the *Bohra* community will have to bow to the constitutional norms of equality and non-discrimination. Such practice will not be protected under Article 26. Gender justice, that is non-discrimination at the very least, is part of the constitutional morality of India. As explained earlier, the practice of FGM/C is violative of Articles 14 and 15 to the extent it runs counter to gender justice. It also offends Articles 25 and 26 of the Indian Constitution as it runs counter to constitutional morality.

### **Experience of other countries**

The practice of FGM/C is criminalised in more than 30 countries around the world. Following a number of members of the *Dawoodi Bohra* community in Australia being convicted by the Supreme Court of Wales for carrying out this procedure, the *Anjuman-e-Burhani* (Sydney) issued the following statement:

1. *It is a well-known hadith of the Prophet, Mohammed Rasulullah (SAW) that “Hubbul watan minal imaan”, which means “love for the land of abode is part of faith”. The Hudaat Kiraam (AS) have therefore taught us and made it our tradition to **remain loyal to the country of abode and to be law abiding and contributory citizens.***
2. *Khafd (also known as khatna and female circumcision) has recently been interpreted by the Supreme Court of NSW to be within the meaning of Female Genital Mutilation (FGM) as defined in section 45 of the Crimes Act of NSW. It is likely that the practice will be interpreted to fall within the specific laws in relation to FGM in other states or*

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<sup>74</sup> 1996 (9) SCC 548

*territories of the Commonwealth of Australia. Consequently, khafd is illegal, whether I is carried out within any of the states of Australia or overseas.*

3. *All parents and guardians are hereby directed in the strictest terms not to carry out khafd under any circumstances.*
4. *You are further instructed not to take any person out of Australia for the purpose of khafd.*
5. *Parents and guardians are advised that should you engage in this illegal act, you will be doing so against specific warning of Anjuman-e-Burhani (Sydney), and the consequences of breaking the law will be solely yours."*

Similar statements have been issued by *Anjumans* in London, New York, Washington DC, Toronto and Paris to name a few. The contents of these circulars clearly state that despite being justified as a part of "custom or religion", it has been well accepted by the representatives of the community that such a practice is subject to the law of the land one is residing in, and in case any parent carries on such practice, then they would be doing so against specific warning of the *Anjuman*.

Similarly, in India, the foundational law of the land being encapsulated in the Indian Constitution, it is beyond time that *Bohra* community accepts that the practice of FGM/C is against the constitutional values of gender justice and thus unconstitutional. Many girls and women belonging to the *Bohra* community, who are the subjects of the practice of FGM/C are speaking out on FGM/C and have displayed a demand to stop FGM/C. In an online survey of 385 *Darwoodi Bohra* women from around the world (majority women being from India and the United States) conducted by *Sahiyo*, an NGO, 82% said they are unlikely or extremely unlikely to continue *Khatna* on their daughter and 81% said they are not okay with *Khatna* continuing in the community.<sup>75</sup>

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<sup>75</sup> See <https://sahiyo.com/2016/01/> dated April 13, 2016

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## F. PREVENTING FGM/C

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In the event that a girl or a woman is suspected to be at risk of FGM/C, protection systems that help with identification, reporting, referral and support should work together to prevent her from being cut.

### 1. Measures in other countries for preventing the practice of FGM/C

A number of countries have declared the applicability of child protection laws to female genital mutilation/cutting, while others have enacted and applied specific provisions for the elimination of harmful practices, including female genital mutilation/cutting. Child protection laws provide for state intervention in cases in which the State has reason to believe that child abuse has occurred or may occur.<sup>76</sup> Also, specific laws enacted to address domestic violence can be used to prevent and provide necessary support to women who are at the risk of facing FGM/C.

In the United Kingdom, the **Female Genital Mutilation Act, 2003** was amended by **Section 73 of the Serious Crime Act, 2015** to include **FGM Protection Orders**.<sup>77</sup> An FGM Protection Order is a civil measure, which can be applied for through a family court. The FGM Protection Order offers the means of protecting actual or **potential victims** from FGM/C under the civil law. Breach of an FGM Protection Order is a criminal offence carrying a sentence of up to five years in prison. FGM Protection Orders are unique to each case and contain legally binding conditions, prohibitions and restrictions to protect the person at risk of FGM/C. The court can make an order in an emergency so that protection is in place straightaway.

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<sup>76</sup> *Supra*, note 54, at p. 5

<sup>77</sup> **Section 73 of the Serious Crime Act, 2015**: “Power to make FGM protection order -

(1) *The court in England and Wales may make an order (an “FGM protection order”) for the purposes of—*

(a) *protecting a girl against the commission of a genital mutilation offence, or*

(b) *protecting a girl against whom any such offence has been committed.*

(2) *In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.*

(3) *An FGM protection order may contain—*

(a) *such prohibitions, restrictions or requirements, and (b) such other terms, as the court considers appropriate for the purposes of the order.....”*

In 2008, **the Egyptian Parliament** criminalised FGM/C by amending the country's Penal Code (through Article 242bis) to ensure that existing articles that address deliberate bodily injury (Articles 241 and 242) be applied to FGM/C. That same year the Egyptian Parliament amended the Child Law. While the amended **Child Law no. 126 of 2008**, does not directly address FGM/C in its provisions, it establishes Child Protection Committees in all governorates mandated to develop the general policy for childhood protection and conduct the necessary follow-up. Moreover, sub-committees for childhood protection are required to monitor all cases of children at risk and take the necessary preventive and therapeutic measures.<sup>78</sup>

In France, general child protection law could be applied in cases of FGM/C. Social protection measures for persons under the age of 18 years old are listed in Article No. 375 of the Civil Code: in cases in which a child suffers psychological or physical abuse at home, a judge can order the child to be placed in public institutions, family shelters or under the responsibility of authorised associations.<sup>79</sup>

## 2. Measures in India that may be relevant to prevent the practice of FGM/C

In India, the **Integrated Child Protection Scheme (ICPS)** is targeted towards providing preventive and rehabilitative services to “**children in need of care and protection and children in conflict**” as defined under the **Juvenile Justice (Care and Protection of Children) Act, 2015** and with children who come in contact with the law, either as victim or as a witness or due to any other circumstance." Girls who have undergone the procedure of FGM/C or who are at risk of such a procedure would come under the definition of "children in need of care and protection" as per the scope and meaning of the term under the Juvenile Justice Act. They are, thus, beneficiaries under the ICPS. The ICPS also envisages the preparation of an individual care plan by professional assessment, which would incorporate the specialised and required services under the scheme for the child. Keeping in mind the unique and multiple needs of a girl who has undergone FGM/C or is at risk of FGM/C, it is essential that the following services under ICPS be made available:

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<sup>78</sup> See policy note on 'Legislative Reform to Support the Abandonment of Female Genital Mutilation/Cutting', UNICEF, August 2010 at p. 25. Available at: [https://www.unicef.org/policyanalysis/files/UNICEF\\_-\\_LRI\\_Legislative\\_Reform\\_to\\_support\\_the\\_Abandonment\\_of\\_FGMC\\_August\\_2010.pdf](https://www.unicef.org/policyanalysis/files/UNICEF_-_LRI_Legislative_Reform_to_support_the_Abandonment_of_FGMC_August_2010.pdf)

<sup>79</sup> *Supra*, n. 57



- **Childline emergency phone outreach:** Any girl in crisis or an adult on her behalf should be able to call the national emergency toll free number (1098) to access the emergency and long-term rehabilitation services. The call operators at Childline should be sensitised and trained on the issue of FGM/C, and should be able to provide suitable advice and guidance to the callers. This should include rescue services, where appropriate, producing the child before the Child Welfare Committee (CWC), coordinating with the CWCs, generate awareness in communities, and other activities deemed necessary.
- **Foster care:** As described in the ICPS, *"fostering is an arrangement whereby a child lives, usually on a temporary basis, with an extended or unrelated family member. Such an arrangement ensures that the birth parents do not lose any of their parental rights or responsibilities. This arrangement shall cater to children who are not legally free for adoption, and whose parents are unable to care for them due to illness, death, desertion by one parent or any other crisis. The aim is to eventually re-unite the child with his/her own family when the family circumstances improve, and thus prevent institutionalization of children in difficult circumstances."* It is recommended that such an arrangement be made available to the child. Care must be taken that identification of the foster family be done with consultation with the child. The Specialised Adoption Agency is responsible for identifying vulnerable families and children in need of foster care, for preparing the individual care plan and for recommending the case to the CWC. It is also responsible for monitoring the child and reporting progress to the CWC.

### 3. Awareness generation and sensitisation

In cases such as FGM/C, circumstances are such that it makes it difficult for the child to consider making a complaint to the necessary authorities. It is thus essential that widespread awareness and sensitisation on the issue is carried out amongst frontline professionals tasked with handling such complaints, including police officers, medical professionals, school teachers, nurses and counselors. Awareness and sensitisation should not be restricted to personnel handling complaints or school-teachers but rather the whole public, through inclusion of the subject of FGM/C in school curricula and staging of street plays. Ward committees, *Panchayats* and civil society organisations should coordinate with each other effectively to sensitise the *Bohra* community and conduct safety audits. Further, specific duty

may be cast on the religious/community leaders, to carry out such awareness generation programmes.

In the United Kingdom, for girls at risk of FGM/C, either voluntary child protection measures are undertaken, such as hearings with the family, providing information, counseling and warnings to the family; or compulsory child protection measures, such as removing a child from the family or suspending parental authority. A policy document “Working together to safeguard children”, issued by the Department of Health, contains guidelines on how professionals should work together to promote children’s welfare. In this document, a specific reference is made to the practice of FGM/C.<sup>80</sup>

### RECOMMENDATION

It is recommended that adequate steps be taken by the Government including the religious/community leaders towards prevention and awareness generation. The following measures may be considered in this regard:

- The law should prioritise prevention measures to protect girls and women from FGM/C based on an integrated framework addressing gender-based discrimination
- The State should also provide information about the harmful impact of the practice and awareness regarding the available legal recourse
- The law should provide for the participation of the practicing population in the process of review, law-making and the development of strategies
- The law should be made widely available, child-friendly and translated in the appropriate local languages
- The *Syedna* should be called upon to pass *Jamaat* resolutions all over the country decrying the practice of FGM/C and calling upon the community members to stop practising FGM.

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<sup>80</sup> See: ‘Female Genital Mutilation: The Facts’, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/482799/6\\_1587\\_HO\\_MT\\_Updates\\_to\\_the\\_FGM\\_The\\_Facts\\_WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482799/6_1587_HO_MT_Updates_to_the_FGM_The_Facts_WEB.pdf).

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## **G. SUPPORT AND REHABILITATION MEASURES**

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Several characteristics of FGM/C make it a unique form of violence against women and girls. It is usually a singular instance of abuse in the girl's life and she might otherwise not face further events of physical or sexual abuse. However, this is not to say that FGM/C does not have a long-term impact on the physical and mental health of the girl child. It is a secretive practice, and close female family members such as the mother or the grandmother of the child are involved in the decision-making. It is seen by some as an essential cultural or religious practice, and is seen as a requirement for marriage of the girl. Since FGM/C is usually carried out on girls below 10 years of age, the child generally does not have the necessary understanding of her body to complain about or refuse the procedure, if performed on her.

In such circumstances, in addition to creating awareness and sensitising the front line professionals, it must be ensured that the girl child has the support of a robust system of protection once she/any other person on her behalf has complained of the offence, and that she can effectively realise her right to remedy, reparations and rehabilitation.

The right to remedy and reparations refers to the obligation of the wrong-doing party to redress the wrong done to the victim and also of the State to step in ensure that the victim is rehabilitated. The right to remedy and reparations is well recognized in international human rights instruments.

Specifically, the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious violations of International Humanitarian Law, adopted by the General Assembly in 2005, start with the premise that "the State is responsible for ensuring that victims of human rights violations enjoy an individual right to reparation". The Basic Guidelines and Principles affirm that the modality of reparation must be proportional to the gravity of the violation and can include the following forms: restitution, as those measures to restore the victim to her original situation before the violation; compensation for any economically assessable damage; measures of satisfaction including, among others, the verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and

administrative sanctions against persons liable for the violations, commemorations and tributes to the victims; and guarantees of non-repetition.

The right to reparation with regard to violence targeted at girls and women is linked to the due diligence principle and the failure of the State to meet its commitments under international laws. General Recommendation 19 (1992) of the Committee on the Elimination of Discrimination against Women provides that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

The right to reparation and remedy is recognised in India under Section 357<sup>81</sup> and Section 357A<sup>82</sup> of the Cr.P.C. The two sections are distinct from each other in terms of the authority

<sup>81</sup> **Section 357 of Cr.P.C:** “**Order to pay compensation.-**

- 1) *When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied—*
  - a) *in defraying the expenses properly incurred in the prosecution;*
  - b) *in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;*
  - c) *when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;*
  - d) *when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.*
- 2) *If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.*
- 3) *When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.*
- 4) *An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*
- 5) *At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”*

<sup>82</sup> **Section 357A of Cr.P.C, 1973:** “**Victim compensation scheme. –**

- (1) *Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.*
- (2) *Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).*
- (3) *If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.*
- (4) *Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.*

(footnote continued)

awarding the compensation, and the conditions for award of compensation. Under Section 357, the Court awards compensation, while under Section 357A, the State Legal Services Authority or District Legal Services Authority is the authority responsible for disbursing of compensation.

Pursuant to **Section 357-A** government schemes have been framed in States for victim compensation. Such schemes can be used for victims of FGM/C.

Further, apart from immediate disbursement of compensation, as envisaged under Section 357-A of the Cr.P.C, the child should receive free medical intervention in the case of complications arising out of the procedure. She should be given the right to access free counseling by registered counselors. The child may also need to access shelter homes since there might be a threat of violence at her home after registering a complaint. An entire mechanism must be devised which will hand-hold the survivor of FGM/C through the various stages of investigation, trial and post award of compensation to ensure that the survivor becomes an active stakeholder in the criminal justice administration process and that the money so awarded is utilized in her best interest. An effort similar in the direction similar to that of setting up of the One Stop Crisis Centres (OSCC) by the Ministry of Women and Child Development can be followed.

Furthermore, taking into account the relief and rehabilitative provisions of **The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**, and **The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013**, it is suggested that the law on FGM/C may draw from such provisions<sup>83</sup>. There can be provisions such as one-time

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(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

\*[Inserted by Code of Criminal Procedure Amendment Act, 2008]

<sup>83</sup> **Section 13 of The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013:**

"(1) Any person included in the final list of manual scavengers published in pursuance of sub-section (6) of section 11 or added thereto in pursuance of sub-section (3) of section 12, shall be rehabilitated in the following manner, namely:—

(a) he shall be given, within one month,—

(i) a photo identity card, containing, inter alia, details of all members of his family dependent on him, and

(ii) such initial, one time, cash assistance, as may be prescribed;

(b) his children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;

(footnote continued)

cash assistance and education scholarships for girl victims subjected to FGM/C. Monitoring and supervising committees can be set up. There can be provisions for periodic surveys to assess the implementation of the law preventing FGM/C.

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- (c) he shall be allotted a residential plot and financial assistance for house construction, or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger, and the provisions of the relevant scheme of the Central Government or the State Government or the concerned local authority;
- (d) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, training in a livelihood skill, and shall be paid a monthly stipend of not less than three thousand rupees, during the period of such training;
- (e) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis, in such manner as may be stipulated in the relevant scheme of the Central Government or the State Government or the concerned local authority;
- (f) he shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.
- (2) The District Magistrate of the district concerned shall be responsible for rehabilitation of each manual scavenger in accordance with the provisions of sub-section (1) and the State Government or the District Magistrate concerned may, in addition, assign responsibilities in his behalf to officers subordinate to the District Magistrate and to officers of the concerned Municipality.”

## CONCLUSION

While it has been demonstrated above that some provisions exist in Indian law for criminal action against any form of hurt, there is no specific mention of FGM/C in our laws and the practice largely goes unnoticed. It has also been seen, internationally, that it has proved necessary to have a specific law dealing with the subject, which addresses not only prosecution but also prevention, education, awareness building, relief and rehabilitation. Thus, the discussion here is conclusive that a separate law on FGM/C is necessitated for similar reasons, that is, to expose the problem and address it as a harmful criminal practice and not as an acceptable religious practice.

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## ANNEXURE I: INTERNATIONAL CONVENTIONS

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1. Universal Declaration for Human Rights (UDHR)<sup>84</sup>
2. International Convention on Civil and Political Rights (ICCPR)<sup>85</sup>
3. International Convention on Economic, Social and Cultural Rights (ICESCR)<sup>86</sup>
4. Declaration on Elimination of Violence against Women (DEVAW)<sup>87</sup>
5. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>88</sup>
6. General Recommendation No. 14 of the CEDAW on Female Circumcision (1990)<sup>89</sup>
7. General Recommendation No. 19 of the CEDAW<sup>90</sup>
8. The Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child<sup>91</sup>

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<sup>84</sup> Available at: <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>

<sup>85</sup> Available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>86</sup> Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>87</sup> Available at: <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>88</sup> Available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

<sup>89</sup> Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>90</sup> *Ibid.*

<sup>91</sup> Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18)



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## ANNEXURE II: NATIONAL LEGISLATIONS

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1. French Penal Code (Articles 222-9 and 222-10)<sup>92</sup>
2. Female Genital Mutilation Act, 2003<sup>93</sup>, United Kingdom
3. Crimes (Female Genital Mutilation) Act, 1996<sup>94</sup>, Australia
4. Violence Against Persons (Prohibition) Act, 2015<sup>95</sup>, Nigeria
5. Child Law no. 126 of 2008<sup>96</sup>, Egypt
6. Kenyan Children Act, 2001, Kenya<sup>97</sup>
7. Protection of Children from Sexual Offences Act, 2012, India<sup>98</sup>
8. Goa Children's Act, 2003, India<sup>99</sup>
9. The Protection of Women from Domestic Violence Act, 2005, India<sup>100</sup>
10. Prohibition of Child Marriage Act, 2006, India<sup>101</sup>
11. Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, India<sup>102</sup>
12. The Rights of Persons with Disabilities Act, 2016, India<sup>103</sup>

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<sup>92</sup> Available at: [https://www.legifrance.gouv.fr/content/download/1957/13715/version/4/.../Code\\_33.pdf](https://www.legifrance.gouv.fr/content/download/1957/13715/version/4/.../Code_33.pdf)

<sup>93</sup> Available at: [http://www.legislation.gov.uk/ukpga/2003/31/pdfs/ukpga\\_20030031\\_en.pdf](http://www.legislation.gov.uk/ukpga/2003/31/pdfs/ukpga_20030031_en.pdf)

<sup>94</sup> Available at: <https://www.hsph.harvard.edu/population/fgm/victoria.fgm.96.pdf>

<sup>95</sup> Available at: <http://www.refworld.org/docid/556d5eb14.html>

<sup>96</sup> Available at:

[https://www.unodc.org/res/cld/document/egy/2002/egypt\\_child\\_act\\_english\\_html/Egypt\\_Child\\_Act\\_English.pdf](https://www.unodc.org/res/cld/document/egy/2002/egypt_child_act_english_html/Egypt_Child_Act_English.pdf)

<sup>97</sup> Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61290/115495/F1975053564/KEN61290%202012.pdf>

<sup>98</sup> Available at:

<http://indiacode.nic.in/amendmentacts2012/The%20Protection%20of%20Children%20From%20Sexual%20Offences%20Act.pdf>

<sup>99</sup> Available at: <http://www.childlineindia.org.in/CP-CR-Downloads/Goa%20children's%20act%20and%20rules.pdf>

<sup>100</sup> Available at: [http://chdlsa.gov.in/right\\_menu/act/pdf/domviolence.pdf](http://chdlsa.gov.in/right_menu/act/pdf/domviolence.pdf)

<sup>101</sup> Available at: <http://ncw.nic.in/acts/pcma2006.pdf>

<sup>102</sup> Available at: <http://tribal.nic.in/WriteReadData/CMS/Documents/201303131039493105468poaact989E4227472861.pdf>

<sup>103</sup> Available at: [http://ajjnhb.nic.in/RPWD\\_ACT2016.pdf](http://ajjnhb.nic.in/RPWD_ACT2016.pdf)