

Beyond Tradition and Silence: A Constitutional and Human Rights Analysis of Female Genital Mutilation in India

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Abstract: *Female Genital Mutilation (FGM) remains a serious violation of the fundamental rights of women and children, infringing bodily integrity, dignity, autonomy, equality, and health. Although internationally recognised as a harmful traditional practice and a form of gender-based violence, FGM persists in India, primarily within the Dawoodi Bohra community, where it is practised as khatna or khafz. Despite documented evidence of irreversible physical, reproductive, sexual, and psychological consequences, India lacks explicit legislation specifically prohibiting the practice. Existing criminal provisions fail to recognise FGM as a distinct offence or provide effective protection and deterrence. This paper examines FGM through the constitutional guarantees of equality, non-discrimination, dignity, and personal liberty, alongside India's international human rights obligations. It analyses the cultural, religious, and patriarchal structures sustaining the practice while evaluating the inadequacy of existing legal remedies. Drawing upon comparative legal frameworks in the United Kingdom, Australia, and selected African jurisdictions, the paper demonstrates that dedicated legislation, survivor-centred protection measures, effective enforcement, and preventive policies strengthen accountability and protect vulnerable girls and women. It argues that legislative inaction perpetuates judicial uncertainty, limits access to justice, and weakens prevention. The paper advocates the enactment of comprehensive anti-FGM legislation supported by community engagement, public awareness, survivor rehabilitation, institutional accountability, and coordinated implementation. Such a rights-based framework would align domestic law with international standards, reinforce constitutional protections, advance gender justice, and contribute to the eradication of FGM while ensuring meaningful protection, dignity, and equality for every girl and woman in India through sustainable legal reform.*

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I. INTRODUCTION

Female Genital Mutilation (FGM) represents one of the gravest and most enduring forms of violence and discrimination against women and girls worldwide. It is internationally recognised not only as a profound violation of human rights but also as a direct infringement of the rights to health, bodily integrity, self-determination, and the rights of the child. The World Health Organization (WHO) unequivocally defines FGM as **"All procedures that involve the partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons."** This definition is significant because it clarifies that FGM is not a medical procedure but rather a practice rooted in social, cultural, and, at times, purported religious beliefs that deliberately inflict harm without conferring any health benefits. Consequently, FGM is universally recognised as an extreme form of gender-based violence and child abuse. The practice is deeply embedded within patriarchal traditions and is sustained by a complex interplay of cultural norms, misinterpretations of religious texts, and intense community pressures that collectively seek to regulate women's sexuality, reproductive autonomy, and bodily integrity.



Geographically, FGM has been extensively documented in more than 30 countries, predominantly across Africa, the Middle East, and parts of Asia. However, contrary to the common misconception that FGM is confined to these regions, the practice also persists in India. Within India, FGM remains a largely hidden yet persistent practice, primarily occurring within the Dawoodi Bohra community, an estimated one-million-strong sect of Shia Islam. In this context, the practice is locally known as *khatna* or *khafz* and typically involves the partial cutting of the clitoral hood of girls between the ages of six and twelve. Although the form of FGM practised in India is often described as "milder," corresponding to WHO Type I, in contrast to more extensive forms such as infibulation (Type III), this distinction should not diminish the seriousness of the harm inflicted. Any form of non-consensual genital cutting causes irreversible physical injury and can result in long-term reproductive, sexual, emotional, and psychological consequences for survivors.

Despite being unequivocally condemned by international organisations such as the United Nations (UN), the World Health Organization (WHO), and the United Nations Children's Fund (UNICEF), and explicitly prohibited through legislation in numerous countries, FGM continues to be practised in India in the absence of any specific statutory prohibition. The Indian legal system therefore lacks a dedicated and comprehensive legislative framework addressing FGM. This legislative vacuum is not merely an omission; it significantly impedes effective protection, accountability, and access to justice for survivors. Consequently, victims and anti-FGM advocates are compelled to rely on general provisions of criminal law, including the Bharatiya Nyaya Sanhita, 2023 (formerly the Indian Penal Code), together with the Protection of Children from Sexual Offences Act, 2012. However, these statutes neither explicitly recognise FGM as a distinct offence nor adequately address its unique nature and consequences, thereby limiting their effectiveness in preventing the practice and securing convictions.

This legislative deficiency, compounded by the persistent reluctance of successive governments to formally acknowledge the prevalence of FGM within India, has effectively relegated the issue to a legal and social "grey zone." Within this environment of ambiguity, secrecy, and institutional silence, the practice continues with limited legal scrutiny or intervention. By situating FGM within the broader framework of constitutional rights, gender justice, and international human rights law, while drawing comparative insights from jurisdictions that have enacted explicit anti-FGM legislation, this paper underscores the urgent need for India to move beyond its current position of denial and legal ambiguity. It argues for the adoption of a comprehensive, rights-based legal framework that explicitly criminalises FGM, strengthens survivor protection, promotes community awareness, and ultimately advances the eradication of the practice in furtherance of gender equality and the protection of the fundamental rights of women and girls.

II. CONCEPTUALISING FEMALE GENITAL MUTILATION: DEFINITION AND TYPOLOGIES

The conceptualisation of Female Genital Mutilation (FGM) is fundamental to understanding its legal characterisation as a human rights violation and a form of gender-based violence. A precise definition of the practice is essential for distinguishing it from medically indicated procedures and for assessing its implications under constitutional, criminal, and international human rights law. The World Health Organization (WHO) defines FGM as "*All procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.*" This internationally accepted definition establishes that FGM lacks any therapeutic or medical justification and instead constitutes the intentional alteration of healthy female genital tissue for cultural, social, or purported religious reasons.

The WHO definition also highlights an essential characteristic of FGM it is overwhelmingly performed on infants, children, and adolescent girls who are incapable of providing free and informed consent. As such, the practice is not an expression of personal autonomy or religious choice but a socially imposed custom perpetuated through familial expectations, patriarchal structures, and community pressures. This absence of meaningful consent further reinforces its classification as a form of child abuse and gender-based violence.

To facilitate uniform legal, medical, and policy responses, the WHO classifies FGM into four principal categories based on the nature and extent of genital alteration; *Type I (Clitoridectomy)* involves the partial or total removal of the



clitoral glans and/or the clitoral hood. Although often portrayed as the least invasive form, it nevertheless results in the removal of highly sensitive tissue and may cause severe pain, haemorrhage, infection, psychological trauma, and long-term sexual and reproductive complications. **Type II (Excision)** involves the partial or total removal of the clitoral glans and the labia minora, with or without removal of the labia majora, thereby increasing the risk of chronic pain, urinary complications, infections, obstetric injuries, and sexual dysfunction. **Type III (Infibulation)**, regarded as the most severe form, involves narrowing the vaginal opening by cutting and repositioning the labia to create a covering seal, leaving only a small opening for urine and menstrual blood. This form often necessitates surgical opening before sexual intercourse or childbirth and is associated with severe obstetric and psychological consequences. **Type IV** includes all other harmful procedures performed for non-medical purposes, such as pricking, piercing, incising, scraping, cauterisation, or the introduction of substances into the vagina to narrow or tighten it. Regardless of severity, all four categories constitute FGM under the WHO classification.

Within the Indian context, Female Genital Mutilation (FGM) is predominantly practised within the Dawoodi Bohra community, where it is commonly referred to as *khatna*, *khafz*, or *khafd*. The procedure generally corresponds to **WHO Type I FGM**, involving the partial removal of the clitoral hood or, in some instances, a portion of the clitoris. Although proponents frequently characterise this form as comparatively "milder" than the more extensive forms of FGM, such as infibulation practised in certain African countries, this distinction does not diminish its harmful nature. From both medical and legal perspectives, any non-therapeutic genital cutting performed on a child without free and informed consent constitutes irreversible bodily harm and infringes the fundamental rights to health, bodily integrity, dignity, and personal autonomy. The extent of tissue removed cannot justify or mitigate the violation inherent in the practice.

FGM must therefore be understood not merely as a cultural ritual or religious observance but as a manifestation of gender-based violence rooted in patriarchal norms that seek to regulate female sexuality and reproductive autonomy. The practice is commonly justified through notions of chastity, purity, marriageability, and social conformity rather than demonstrable medical or unequivocal religious necessity. Consequently, international organisations, including the United Nations and the World Health Organization, recognise FGM as a violation of multiple human rights protected under international instruments such as the **Convention on the Rights of the Child (CRC)** and the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, both ratified by India. Contemporary international law therefore regards FGM as a harmful practice requiring explicit legal prohibition, effective enforcement, and sustained community-based interventions to ensure its complete eradication.

III. ISLAMIC JURISPRUDENCE VERSUS THE CULTURAL EVOLUTION OF *KHAFZ* : REASSESSING *KHAFZ* IN ISLAM

The association between Female Genital Mutilation (FGM), commonly referred to as *khafz* or *khatna* within the Dawoodi Bohra community, and Islam remains one of the most contested aspects of the practice. Any legal or theological examination must distinguish **Islamic jurisprudence (fiqh)**, which represents the human interpretation and application of Islamic sources, from cultural and customary practices, which evolve within particular societies. Conflating religious doctrine with cultural tradition risks attributing divine legitimacy to practices that may have developed independently of Islamic teachings.

Notably, the ***Qur'an contains no explicit verse prescribing, endorsing, or recommending female circumcision or FGM***. Rather, the Qur'an consistently upholds the principles of human dignity, justice, and the preservation of life and bodily integrity. Allah states, "***We have certainly honoured the children of Adam***" (Qur'an 17:70), thereby affirming the inherent dignity of every human being. Likewise, the Qur'an cautions believers, "***Do not throw yourselves into destruction with your own hands***" (Qur'an 2:195), and further commands, "***Do not kill yourselves. Indeed, Allah is ever Merciful to you***" (Qur'an 4:29). Collectively, these verses have been interpreted by contemporary Islamic scholars as embodying the broader objectives of Islamic law (*Maqasid al-Shariah*), namely the protection of life, health, dignity, and human welfare.

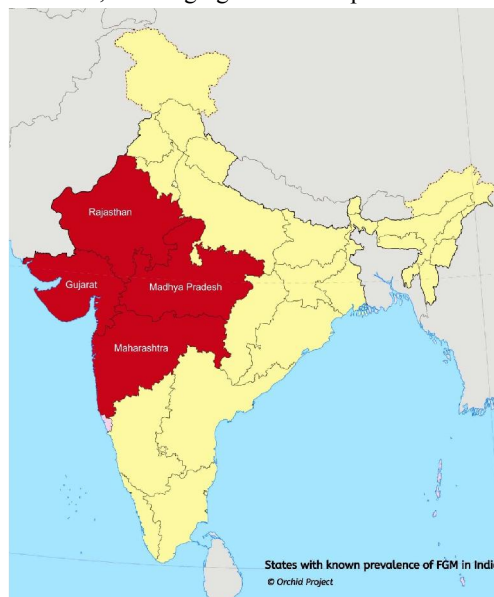


Arguments supporting *khafz* are primarily derived not from the Qur'an but from a limited number of hadith narrations. Among the most frequently cited is the narration concerning a woman in Madinah who performed circumcision, wherein the Prophet Muhammad is reported to have advised: *"Do not cut severely, for that is better for the woman and more pleasing to the husband."* This narration appears in Sunan Abu Dawud; however, its chain of transmission has been widely regarded as weak (*da'if*) by hadith scholars, including Imam Abu Dawud himself. Consequently, numerous contemporary Islamic scholars and institutions, including Al-Azhar University, have concluded that there is ***no authentic religious evidence making FGM either obligatory or recommended***. Accordingly, no consensus (*ijma'*) exists among Muslim jurists recognising FGM as a mandatory or essential Islamic practice.

Historical and anthropological scholarship further indicates that FGM predates Islam and was practised in several regions of Africa and the Middle East before the advent of the religion. As Islam spread into these regions, pre-existing customs gradually became intertwined with local religious identities, resulting in the perception that FGM constituted an Shia - Islamic obligation. Within the Dawoodi Bohra community, *khafz* has traditionally been justified on grounds of modesty, ritual purity, and the regulation of female sexuality. However, these rationales are more accurately understood as products of patriarchal socio-cultural norms than unequivocal religious injunctions. From the perspective of the *Maqasid al-Shariah*, which prioritises the preservation of life (*hifz al-nafs*), human dignity (*karamah*), and bodily integrity, practices that inflict irreversible physical or psychological harm cannot readily be reconciled with the ethical foundations and objectives of Islamic law. The continued justification of FGM on religious grounds therefore reflects a conflation of cultural tradition with Islamic doctrine rather than a clear mandate derived from the primary sources of Islam.

IV. THE UNACKNOWLEDGED CRISIS: PREVALENCE OF FGM IN INDIA

Although Female Genital Mutilation (FGM) is not practised across the majority of India's diverse communities, it continues to persist within the Dawoodi Bohra community, a sect of Shia Islam primarily concentrated in the states of Gujarat, Maharashtra, Madhya Pradesh, and Rajasthan. Despite its relatively limited geographical and demographic prevalence, the practice remains deeply embedded within the community's socio-cultural traditions. The clandestine nature of FGM, coupled with the absence of official government data, has rendered the practice largely invisible within the national policy discourse. Nevertheless, independent academic studies and survivor-led advocacy organisations have consistently documented its prevalence, challenging the official position that FGM is not practised in India.



One of the earliest and most influential empirical studies was conducted by Mariya Taher, founder of the non-governmental organisation Sahiyo, in 2017. Based on a survey of more than 400 Dawoodi Bohra women, the study found that approximately 80% of respondents had undergone *khatna* during their childhood. Participants identified religious obligation, preservation of community traditions, and the perceived regulation of female sexuality as the principal justifications for the practice. The study was particularly significant because it provided one of the first systematic accounts of FGM within the Indian context, demonstrating that the practice was neither isolated nor anecdotal but deeply entrenched within sections of the Bohra community.

These findings were further corroborated by WeSpeakOut, a survivor-led advocacy organisation, whose 2018 report similarly found that over 80% of surveyed Bohra women had experienced FGM. More significantly, the report identified an emerging shift in community attitudes. Approximately 82% of mothers surveyed expressed a desire for the practice to end, while 98% stated that they did not want their daughters to undergo FGM. These findings suggest a gradual generational transformation, with increasing numbers of women questioning the continuation of a practice historically justified on cultural and purported religious grounds.

When these prevalence rates are applied to estimates of the Dawoodi Bohra population in India, between 600,000 and 800,000 women and girls may have undergone FGM. Despite this substantial evidence, the Government of India has neither undertaken a comprehensive national survey nor officially acknowledged the prevalence of FGM. In proceedings before the Supreme Court, the Government has asserted that there is insufficient evidence to establish the existence of FGM in India, a position that contrasts sharply with independent research and survivor testimonies. A 2022 study by Anjani Nanda and Vandane Ramani further highlighted limited public awareness of FGM, although participants overwhelmingly condemned the practice once informed of its consequences. Collectively, these findings establish that FGM in India is a significant human rights concern rather than an isolated cultural practice. Addressing this hidden issue requires formal governmental recognition, reliable national prevalence data, explicit legislative intervention, and sustained community engagement to eliminate the practice while protecting the dignity, bodily integrity, and fundamental rights of women and girls.

V. PROFOUND HARMS : HEALTH, REPRODUCTIVE, SEXUAL, AND PSYCHOLOGICAL CONSEQUENCES OF FEMALE GENITAL MUTILATION

Female Genital Mutilation (FGM) constitutes one of the most serious violations of the rights to health, bodily integrity, dignity, and personal autonomy. Far from being a benign cultural or religious practice, it inflicts irreversible physical, reproductive, sexual, and psychological harm upon women and girls, with consequences that frequently persist throughout their lives. The World Health Organisation (WHO) unequivocally affirms that FGM has no therapeutic or medical benefit and is associated exclusively with adverse health outcomes. As the procedure is predominantly performed on infants, children, and adolescent girls who are incapable of providing free and informed consent, it also constitutes a grave form of child abuse and gender-based violence. The cumulative impact of FGM extends beyond the immediate procedure, profoundly affecting survivors' health, well-being, and quality of life.

The immediate medical consequences of FGM are often severe and may be life-threatening. The procedure is commonly performed by untrained practitioners using non-sterile instruments, frequently without anaesthesia or appropriate medical supervision. As a result, survivors are exposed to intense pain, excessive haemorrhage, wound infections, urinary retention, tetanus, septicemia, and acute psychological distress. In many instances, inadequate hygiene and the absence of timely medical intervention significantly increase the risk of life-threatening complications, including hypovolemic shock and death. The resulting injuries often require prolonged recovery and may lead to permanent scarring and chronic pain.

The long-term health and reproductive consequences are equally profound. Extensive scar tissue may contribute to recurrent urinary tract infections, chronic pelvic pain, dysmenorrhoea, cysts, abscesses, and persistent genital discomfort. Women who have undergone FGM are also at a substantially greater risk of adverse obstetric outcomes, including obstructed labour, postpartum haemorrhage, perineal trauma, obstetric fistula, maternal mortality, stillbirth,



and neonatal death. The World Health Organization has consistently recognised the correlation between FGM and increased maternal and neonatal morbidity, demonstrating that the consequences of the practice extend beyond the individual survivor to affect maternal and child health more broadly.

FGM likewise produces significant and often irreversible effects on sexual and psychological well-being. The removal or injury of highly innervated genital tissue frequently results in diminished sexual sensation, dyspareunia, impaired sexual functioning, and reduced sexual satisfaction. In some cases, chronic infections and extensive scarring may contribute to infertility and other reproductive complications. The psychological consequences are equally debilitating. Survivors commonly experience anxiety, depression, post-traumatic stress disorder (PTSD), diminished self-esteem, and persistent emotional distress arising from the traumatic experience of involuntary genital cutting. Feelings of fear, betrayal, and loss of bodily autonomy are particularly acute where the procedure is facilitated by trusted family members. Furthermore, the culture of secrecy surrounding FGM frequently discourages survivors from seeking medical treatment or psychological support, thereby exacerbating long-term trauma and social isolation.

Collectively, the extensive physical, reproductive, sexual, and psychological consequences of FGM unequivocally demonstrate that the practice cannot be justified on cultural, social, or purported religious grounds. Rather, it constitutes a profound violation of internationally recognised human rights and a significant public health concern with lifelong and, in some instances, intergenerational repercussions. These enduring harms underscore the imperative for comprehensive legal prohibition, accessible healthcare services, survivor-centred rehabilitation, psychological support, and sustained community engagement to eliminate the practice and ensure the effective protection of the rights, dignity, and bodily autonomy of women and girls.

VI. THE INDIAN LEGAL LANDSCAPE AND JUDICIAL ENGAGEMENT WITH FEMALE GENITAL MUTILATION

Unlike several jurisdictions across Africa, Europe, and Australia that have enacted dedicated legislation criminalising Female Genital Mutilation (FGM), India continues to lack a specific statutory framework prohibiting the practice. This legislative vacuum is particularly concerning given the documented prevalence of FGM within the Dawoodi Bohra community and India's constitutional and international obligations to safeguard the rights of women and children. Although FGM is not expressly recognised as a distinct criminal offence, certain provisions of the Bharatiya Nyaya Sanhita, 2023 (formerly the Indian Penal Code, 1860), together with the Protection of Children from Sexual Offences Act, 2012 (POCSO), may be invoked to prosecute perpetrators. However, reliance upon these general criminal provisions has proven inadequate because they neither expressly recognise the unique nature of FGM nor adequately address its gendered, cultural, and human rights dimensions. Consequently, the absence of explicit legislation has created legal ambiguity, inconsistent enforcement, and inadequate protection for survivors while limiting meaningful deterrence against the continuation of the practice.

The Bharatiya Nyaya Sanhita criminalises acts involving voluntarily causing hurt and grievous hurt, offences capable of encompassing the physical injuries inflicted through FGM. Since the procedure involves the intentional cutting or removal of healthy genital tissue without any medical necessity, resulting in permanent bodily injury, it may reasonably be classified as grievous hurt within the existing criminal law framework. Nevertheless, these provisions were enacted to address general offences against the human body rather than harmful traditional practices directed specifically at women and girls. Consequently, investigating authorities and courts are required to interpret broad statutory provisions without legislative guidance tailored to the distinctive characteristics of FGM. This lack of specificity complicates prosecution, discourages reporting, restricts accountability, and impedes the development of specialised victim-support mechanisms and coherent public policy. Moreover, the absence of explicit recognition prevents systematic data collection and undermines efforts to formulate targeted prevention strategies.

The Protection of Children from Sexual Offences Act, 2012, provides an additional legal basis for addressing FGM because the procedure is overwhelmingly performed on girls below the age of eighteen. The intentional injury inflicted upon a child's genital organs may fall within the statutory definitions of sexual assault or aggravated sexual assault



under the Act. Furthermore, POCSO extends criminal liability to those who abet, facilitate, encourage, or conceal offences against children, thereby encompassing parents, guardians, traditional practitioners, and other individuals involved in arranging or performing FGM. Although the Act incorporates child-sensitive investigative procedures and victim protection measures, it does not expressly identify FGM as a separate offence. Consequently, its application remains dependent upon judicial interpretation, limiting its effectiveness as both a preventive and prosecutorial mechanism while creating uncertainty regarding consistent enforcement.

Beyond statutory criminal law, the Constitution of India provides a compelling normative foundation for prohibiting FGM. Article 14 guarantees equality before the law, while Article 15 prohibits discrimination on the grounds of sex. More significantly, Article 21 guarantees the right to life and personal liberty, which the Supreme Court has consistently interpreted to include the rights to dignity, bodily integrity, privacy, health, and decisional autonomy. Since FGM permanently alters the body of a child without free and informed consent, the practice is fundamentally incompatible with these constitutional guarantees. Furthermore, India is a State Party to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), both of which impose positive obligations upon States to eliminate harmful practices affecting women and children. The continued absence of dedicated anti-FGM legislation therefore represents a significant disconnect between India's domestic legal framework and its international human rights commitments.

Judicial engagement with FGM has likewise been characterised by constitutional complexity and prolonged uncertainty. The issue gained national prominence following the Public Interest Litigation filed by advocate Sunita Tiwari before the Supreme Court in 2017, seeking a nationwide prohibition on *khatna* practised within the Dawoodi Bohra community. The petition contended that FGM violated Articles 14, 15, and 21 of the Constitution and was inconsistent with India's obligations under international human rights law. Although the Ministry of Women and Child Development initially acknowledged FGM as a violation of children's rights, the Union Government subsequently asserted before the Supreme Court that insufficient evidence existed to establish the prevalence of the practice in India, despite substantial empirical evidence produced by independent researchers, survivor testimonies, and advocacy organisations.

During hearings conducted in 2018 and 2019, the Supreme Court recognised the constitutional significance of the issues involved and referred the matter to a Constitution Bench to determine whether *khatna* constitutes an essential religious practice protected under Article 25 or whether it must yield to the competing fundamental rights of women and children. Indian constitutional jurisprudence consistently recognises that religious freedom remains subject to public order, morality, health, and other fundamental rights. Accordingly, enacting dedicated anti-FGM legislation has become an urgent legal imperative to eliminate ambiguity, strengthen accountability, protect survivors, and ensure that harmful practices cannot override constitutional guarantees of dignity, equality, bodily integrity, and personal liberty.

VII. GLOBAL RESPONSES TO FEMALE GENITAL MUTILATION: A COMPARATIVE LEGAL AND POLICY ANALYSIS

The global response to Female Genital Mutilation (FGM) has developed through the combined influence of international human rights law and domestic legislative reform. Although no international treaty is exclusively devoted to FGM, numerous human rights instruments recognise the practice as a violation of the rights to health, bodily integrity, dignity, equality, and freedom from discrimination and violence. Consequently, States are required to adopt legislative, administrative, educational, and policy measures to eliminate the practice and protect women and girls from its harmful consequences.

The *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 1979, obliges States to eliminate discriminatory customs and practices that perpetuate gender inequality. This obligation was strengthened through *CEDAW General Recommendation No. 14 (1990)*, which specifically called upon States to adopt legislative and educational measures to eradicate female circumcision, and *General Recommendation No. 35 (2017)*, which recognises FGM as a form of gender-based violence constituting discrimination against women. Likewise, *Article*



24(3) of the Convention on the Rights of the Child (CRC), 1989 requires States to abolish traditional practices prejudicial to children's health, a provision consistently interpreted as encompassing FGM. Additional protection is provided under the **Convention against Torture (CAT), 1984**, and the **International Covenant on Civil and Political Rights (ICCPR), 1966**, both of which recognise that practices inflicting severe physical and psychological suffering may amount to cruel, inhuman, or degrading treatment. Furthermore, **United Nations General Assembly Resolution 67/146 (2012)** urged all Member States to intensify efforts to eliminate FGM through legislative reform, awareness programmes, education, survivor rehabilitation, and international cooperation. Together, these instruments establish a comprehensive international framework requiring States to prevent, prohibit, and eradicate FGM.

Reflecting these international obligations, several jurisdictions across Europe, Australia, and Africa have enacted dedicated legislation criminalising FGM while adopting complementary policy measures aimed at prevention, victim protection, and community engagement. Although the effectiveness of these frameworks varies according to enforcement capacity and social acceptance, they collectively demonstrate that explicit legislation provides the essential legal foundation for addressing FGM as a distinct form of gender-based violence.

The United Kingdom has established one of the most comprehensive legal frameworks through the **Female Genital Mutilation Act 2003**, which criminalises all forms of FGM and prescribes severe criminal penalties. The framework was strengthened through **Female Genital Mutilation Protection Orders (FGMPOs)**, enabling courts to issue preventive orders for girls at risk. The United Kingdom also introduced a mandatory reporting duty requiring healthcare professionals, teachers, and social workers to report known or suspected cases involving girls below eighteen years of age. Although early prosecutions were constrained by evidentiary difficulties and victims' reluctance to testify, recent decisions, including **R v Noor**, have reinforced the country's commitment to accountability. Nevertheless, concerns remain regarding the disparity between reported cases and successful prosecutions, together with criticism that safeguarding measures may disproportionately affect migrant communities.

Australia has likewise criminalised FGM across all states and territories, recognising the practice as both a criminal offence and a child protection issue. Its legal framework is complemented by multidisciplinary policies requiring healthcare professionals to identify, report, and appropriately manage cases involving survivors or girls at risk. Beyond criminalisation, Australia integrates legislative enforcement with professional training, culturally sensitive community engagement, public awareness initiatives, and specialised medical and psychological services. This coordinated strategy has been widely recognised as an effective model for balancing legal enforcement with preventive education and survivor support.

Across Africa, legislative reform has expanded significantly, with countries including **Benin, Burkina Faso, Côte d'Ivoire, Eritrea, Ethiopia, Kenya, Senegal, Togo, Uganda, and Zambia** enacting specific laws criminalising individuals who perform, facilitate, procure, or encourage FGM. Several jurisdictions have also introduced mandatory reporting obligations and penalties for professionals who fail to report suspected cases. However, the effectiveness of these legal frameworks varies considerably depending upon enforcement mechanisms, institutional capacity, judicial effectiveness, and prevailing socio-cultural norms.

Among African jurisdictions, **Burkina Faso** is widely regarded as a successful example of legislative intervention. Following the enactment of anti-FGM legislation in 1996, the country experienced a significant decline in FGM prevalence, with research estimating that more than **237,000 women and girls** were protected during the subsequent decade. This success has been attributed to the combined effect of criminal sanctions, public education campaigns, institutional commitment, and sustained community engagement. In contrast, countries such as **Sudan** continue to encounter considerable enforcement challenges despite legislative prohibitions, illustrating that legal reform alone cannot eradicate practices sustained by deeply entrenched cultural norms. Comparative experience therefore demonstrates that explicit legal recognition, supported by effective enforcement, survivor-centred services, public awareness, and community participation, provides the most comprehensive and sustainable framework for eliminating FGM and protecting the rights, dignity, health, and bodily integrity of women and girls.



VIII. INDIA'S LEGAL RESPONSE TO FEMALE GENITAL MUTILATION: CONSTITUTIONAL CHALLENGES AND THE NEED FOR A RIGHTS-BASED FRAMEWORK

Unlike several jurisdictions across Africa, Europe, and Australia that have enacted dedicated legislation criminalising Female Genital Mutilation (FGM), India continues to rely upon general criminal laws despite documented evidence of the practice within the Dawoodi Bohra community. This legislative omission has created a significant gap in the protection of women and girls because existing laws neither expressly recognise FGM as a distinct criminal offence nor adequately address its gendered, cultural, and human rights dimensions. Consequently, the absence of a specific statutory framework has contributed to legal ambiguity, inconsistent enforcement, limited institutional recognition, and inadequate protection for survivors, thereby allowing the practice to remain largely invisible within India's criminal justice and public health systems.

The Bharatiya Nyaya Sanhita, 2023 (formerly the Indian Penal Code, 1860), presently provides the principal criminal provisions capable of addressing acts associated with FGM. Since the procedure involves the intentional removal or injury of healthy genital tissue without medical necessity, resulting in permanent bodily harm, it may fall within offences relating to voluntarily causing hurt or grievous hurt. However, these provisions were enacted to address general offences against the human body rather than harmful traditional practices directed specifically at women and girls. Consequently, investigators and courts must rely upon broad statutory interpretation, creating uncertainty regarding prosecution, sentencing, and victim protection. The absence of explicit legal recognition also restricts systematic data collection, informed policy formulation, specialised rehabilitation, and coordinated preventive strategies.

The Protection of Children from Sexual Offences Act, 2012 (POCSO), provides an additional legal basis because FGM is predominantly performed on girls below eighteen years of age. Injury intentionally inflicted upon a child's genital organs may fall within the statutory definitions of sexual assault or aggravated sexual assault, while the Act also criminalises the abetment and facilitation of offences against children. Accordingly, parents, guardians, traditional practitioners, and other individuals involved in arranging or performing FGM may incur criminal liability. Nevertheless, POCSO does not expressly identify FGM as a separate offence, leaving its application dependent upon judicial interpretation and limiting its effectiveness as a preventive and prosecutorial framework.

Beyond statutory criminal law, the Constitution of India provides a strong normative foundation for prohibiting FGM. Article 14 guarantees equality before the law, Article 15 prohibits discrimination on the grounds of sex, and Article 21 protects the rights to life and personal liberty, including dignity, bodily integrity, privacy, health, and decisional autonomy. As FGM permanently alters the body of a child without free and informed consent, the practice is fundamentally incompatible with these constitutional guarantees. Furthermore, India is a State Party to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), both of which require States to adopt effective legislative measures to eliminate harmful practices affecting women and children. The continued absence of dedicated anti-FGM legislation therefore reflects a clear disconnect between India's constitutional commitments, international obligations, and domestic legal framework.

Judicial engagement with FGM has likewise been characterised by constitutional complexity and prolonged uncertainty. The issue gained national prominence through the Public Interest Litigation filed by advocate Sunita Tiwari before the Supreme Court in 2017, seeking a nationwide prohibition of *khatna* practised on women within the Dawoodi Bohra community. The petition argued that FGM violates Articles 14, 15, and 21 of the Constitution while being inconsistent with India's international human rights obligations. Although the Ministry of Women and Child Development initially acknowledged FGM as a violation of children's rights, the Union Government subsequently maintained before the Supreme Court that insufficient evidence existed to establish its prevalence in India, a position that contrasts with independent academic research, survivor testimonies, and advocacy reports documenting the continued existence of the practice.

Recognising the constitutional significance of the issues involved, the Supreme Court referred the matter to a Constitution Bench to determine whether *khatna* constitutes an essential religious practice protected under Article 25 or



whether it must yield to the competing fundamental rights of women and children. Indian constitutional jurisprudence has consistently recognised that the freedom of religion is not absolute and remains subject to public order, morality, health, and other fundamental rights. Consequently, practices that demonstrably inflict physical or psychological harm cannot claim constitutional protection solely on the basis of religious assertion. However, the absence of a definitive judicial determination has prolonged legal uncertainty and delayed the development of a clear constitutional position on FGM.

Comparative legal developments demonstrate that countries such as the United Kingdom, Australia, and several African nations have adopted explicit anti-FGM legislation supported by mandatory reporting obligations, child protection measures, survivor assistance programmes, and community-based interventions. Although legislation alone cannot eradicate practices rooted in longstanding social norms, these jurisdictions demonstrate that explicit statutory recognition establishes legal certainty, strengthens institutional accountability, and facilitates effective prevention, prosecution, and victim protection. India's existing legal response therefore remains fragmented and insufficient. A dedicated statutory framework recognising FGM as a distinct criminal offence would eliminate interpretative ambiguity, strengthen enforcement mechanisms, improve national data collection, establish specialised systems for survivor rehabilitation, and align India's domestic legal framework with its constitutional values and international human rights obligations.

IX. CONCLUSION

Female Genital Mutilation (FGM) presents a significant legal and human rights challenge within the Indian context, exposing the disconnect between constitutional guarantees, international obligations, and the practical operation of domestic law. Although internationally recognised as a form of gender-based violence and a violation of the rights to bodily integrity, dignity, health, equality, and personal autonomy, FGM has not received explicit statutory recognition within India's legal framework. The continued reliance on general criminal provisions under the Bharatiya Nyaya Sanhita, 2023, and the Protection of Children from Sexual Offences Act, 2012, reflects the absence of a legal regime specifically designed to address the unique characteristics of FGM as a harmful traditional practice directed primarily against women and girls. This legislative omission has contributed to legal ambiguity, inconsistent enforcement, limited institutional recognition, and the continued invisibility of the practice within the criminal justice and public health systems.

The analysis undertaken in this paper demonstrates that the challenge of addressing FGM extends beyond the question of criminalisation. The persistence of the practice is closely linked to the interaction of cultural norms, religious interpretations, institutional limitations, and legal uncertainty. Consequently, an effective response requires a holistic framework that combines legislative clarity with institutional coordination, public health initiatives, community engagement, and survivor-centred support. The unresolved constitutional questions arising from the pending proceedings before the Supreme Court further illustrate the complexity of balancing the protection of religious freedom under Article 25 with the competing constitutional guarantees of equality, dignity, bodily integrity, and personal liberty under Articles 14, 15, and 21.

Accordingly, the Indian legal framework requires a more coherent and comprehensive response that expressly recognises FGM as a distinct offence while strengthening preventive, protective, and rehabilitative mechanisms. Such an approach would not only enhance legal certainty but also better align domestic law with India's constitutional principles and international human rights commitments. More fundamentally, the issue invites broader reflection on the role of constitutional governance in addressing harmful practices that exist at the intersection of culture, religion, and gender. The manner in which Indian law ultimately responds to FGM will therefore serve as an important measure of its capacity to reconcile respect for cultural diversity with the constitutional imperative of safeguarding the dignity, bodily integrity, equality, and fundamental rights of women and children.



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